



The Establishment of the Defender of Children's Rights in the Czech Republic

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Abstract. The article deals with the issue of the protection of children's rights in the Czech Republic. This protection is currently implemented by several authorities and institutions, hence being fragmented, lacking mutual coordination and uniformity of activities, and being almost exclusively conducted by state authorities that do not appear to be independent. This implies that the Czech Republic is failing to fulfil its international obligations, and not exclusively those under the United Nations Convention on the Rights of the Child. The establishment of the institution of a 'children's ombudsman' is therefore a necessary step that must be implemented as soon as possible. The author analyses both the current state of affairs and, in particular, the proposed legislation to establish an ombudsman for children in the Czech Republic, which would be called the Defender of Children's Rights. The benefits of this proposal, along with the problematic and controversial aspects that may hinder the proper functioning of a children's ombudsman in practice, are pointed out.

Keywords: child, protection of children's rights, Convention on the Rights of the Child, ombudsman, ombudsman for children

1. Introduction: The Current Legal Framework and Practice of Children's Rights Protection in the Czech Republic

Despite the fact that the independent Czech Republic ratified the United Nations (UN) Convention on the Rights of the Child (hereinafter referred to as the Convention) on 1 January 1993, the country has yet to establish an independent body responsible for monitoring its implementation. Although the obligation

to establish such a body is not explicitly enshrined in the Convention, the UN Committee on the Rights of the Child emphasises that this obligation is part of Art. 4 of the Convention. According to this article, the contracting states are obliged to take all necessary legislative, administrative, and other measures to implement the rights recognised in the Convention. In this context, the UN Committee on the Rights of the Child explicitly states that independent national bodies for the protection of human rights,¹ as established in accordance with the Paris Principles,² configure an important mechanism for promoting and ensuring the implementation of the Convention.

A similar approach is supported by the UN Committee on Economic, Social and Cultural Rights. The Committee points out that if Art. 2 para. 1 of the International Covenant on Economic, Social and Cultural Rights enshrines the obligation of the state to take steps to gradually achieve the full realisation of the rights recognised in the Covenant by all appropriate means, one of these ‘appropriate means’ is precisely the activities of national bodies for the protection of human rights.³ Furthermore, the UN Human Rights Committee highlighted, in general terms, that national human rights institutions have yet another important function, which is the power to remedy individual rights violations. In the context of the obligation under Art. 2 para. 3 of the International Covenant on Civil and Political Rights, which provides for the right to an accessible and effective remedy by which an individual may invoke the rights enshrined in the Covenant, the UN Human Rights Committee emphasised the role of national human rights institutions, endowed with appropriate powers. This same Committee has also pointed out that these remedies should consider the special vulnerability of certain groups, especially children.⁴

The establishment of a national authority for the rights of the child is also recommended by the European Convention on the Exercise of the Rights of the Child, which applies mainly to the procedural rights of the child in court proceedings.⁵ According to Art. 12 para. 2 of this European Convention, these

1 UN Committee on the Rights of the Child. General Comment No. 2 (2002) – The role of independent national human rights institutions in the protection and promotion of the rights of the child. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en (Accessed: 18 February 2024).

2 UN General Assembly resolution of 20 December 1993, A/RES/48/134, on National Human Rights Institutions (Paris Principles). <https://enoc.eu/wp-content/uploads/2015/01/Paris-Principle.pdf>, accessed: 18.02.2024.

3 UN Committee on Economic, Social and Cultural Rights. General Comment No. 10 (1998) – The role of national human rights institutions in the protection of economic, social and cultural rights, para. 1. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=E%2fC.12%2f1998%2f25&Lang=en (Accessed: 18 February 2024).

4 UN Human Rights Committee. General Comment No. 31 (2004) – Nature of the general legal obligations imposed on States parties under the Covenant, para. 15. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en (Accessed: 18 February 2024).

5 See Art. 1 para. 2.

national bodies should do the following: make proposals to strengthen legislation on the exercise of children's rights; comment on draft laws relating to the exercise of children's rights; provide general information on the exercise of children's rights to the mass media, the public, persons, and bodies dealing with children's issues; and seek the views of children and provide them with relevant information.⁶ The establishment of mechanisms for the promotion and protection of human rights adapted to the specific characteristics of children and accessible to children in terms of their forms, powers, and responsibilities is recommended by a number of other international documents of the UN and the Council of Europe.⁷

In the Czech environment, various authorities and institutions deal with the issue of children's rights and their protection. Currently, the Ministry of Labour and Social Affairs, which is also the coordinator for the implementation of the Convention on the Rights of the Child, carries out the largest share of activities related to children's rights. It carries out decision-making and conceptual, methodological, and control activities in the field of social and legal protection of children. In practice, children's social and legal protection is performed mainly by municipal and regional authorities, even if within the framework of the exercise of delegated state administration. The implementation of the Convention is also partly dealt with by the Committee on the Rights of the Child, an expert body of the Government Council for Human Rights, which in turn is an advisory body to the Czech government. The agenda of social and legal protection of children in relation to foreign countries falls within the competence of the Office for International Child Protection, which has the role of representing the Czech Republic externally in the framework of international conventions on the protection of children's rights. The activities of the Ministry of Education, Youth and Sports,⁸ the Ministry

6 The Explanatory Memorandum to the Convention even states that it may be appropriate to establish a separate body for this purpose, such as the Office of the Ombudsman. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cb5ee> (Accessed: 18 February 2024).

7 These are, for example, the following: UN Directive on Substitute Care (UN General Assembly resolution of 24 February 2010, A/RES/64/142); the Directive for the Prevention of Youth Delinquency (Riyadh Directive; UN General Assembly resolution of 14 December 1990, A/RES/45/112); Rules for the Protection of Children and Juveniles Deprived of Personal Liberty (Havana Rules; UN General Assembly Resolution of 14 December 1990, A/RES/45/113); Recommendation 1286 (1996) of the Parliamentary Assembly of the Council of Europe on the European Strategy for Children; Recommendation Rec(2005)5 of the Committee of Ministers to Member States on the rights of children living in residential facilities; Recommendation CM/Rec(2008)11 of the Committee of Ministers to Member States on European rules for juvenile offenders subject to sanctions and measures; Recommendation CM/Rec(2009)10 of the Committee of Ministers to Member States on integrated national strategies for the protection of children from violence; Recommendation CM/Rec(2011)12 of the Committee of Ministers to Member States on children's rights and child and family-friendly social services.

8 Schools of all grades, the Czech School Inspection, educational care centres, children's homes, children's homes with a school, diagnostic institutes, and educational institutions belong to the competence of the Ministry of Education, Youth and Sports of Poland.

of Health,⁹ the Ministry of Justice,¹⁰ and the Ministry of the Interior¹¹ are also partly concerned with children's rights. However, none of these bodies can be described as monitoring children's rights and ensuring their comprehensive protection, nor do they fulfil the criteria defined by the Paris Principles.¹²

An institution that to some extent fulfils the Paris Principles, particularly in having independence and being capable of action to protect human rights, in the Czech Republic is the current Public Defender of Rights. The Public Defender of Rights is the Czech version of the ombudsman¹³ and has general and national competence. The ombudsman was introduced into the Czech legal system by Act No. 349/1999 Coll., on the Public Defender of Rights,¹⁴ but is not enshrined at the constitutional level.¹⁵ Sládeček defines the Public Defender of Rights as follows:

[...] an independent and impartial person elected by the Parliament who, on the basis of complaints or on his/her own initiative and quite informally, investigates alleged illegality or other misconduct in the conduct (including possible inaction) of the public administration. The Ombudsman usually takes up the matter when no other effective (defensive) legal remedy is available and initiates remedies through his or her directly unenforceable recommendations.¹⁶

Moreover, Chamráthová points to the ombudsman's basic functions in society, namely:

- 9 It mainly deals with practical medicine for children and adolescents, the prevention of violence against children, support for families with children with disabilities, and the functioning of children's homes for children under 3 years (i.e. former infant institutions).
- 10 The Ministry of Justice deals with the agenda of family law and the activities of the courts, especially in the area of guardianship proceedings and justice in youth matters, and the legal regulation of the criminal law regarding the protection of children and youth.
- 11 Together with the Police of the Czech Republic, the Ministry of the Interior deals with the commercial and sexual abuse of children, the fight against human trafficking and domestic violence, the solution to risky behaviours of young people, the use of addictive substances by children and young people, and the prevention of crime by children and young people.
- 12 According to the Paris Principles, a national human rights institution must simultaneously not be under the direct control of the executive power, be independent of the judicial and legislative powers, and be separated from non-governmental organisations. In this regard, it represents a certain 'bridge' between civil society and the executive, and between the state and international institutions for the protection of human rights. Office of the United Nations High Commissioner for Human Rights: National Human Rights Institutions: History, Principles, Roles and Responsibilities. New York – Geneva, 2010. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/PTS-4Rev1-NHRI_en.pdf (Accessed: 18 February 2024).
- 13 Sládeček, 2011, p. IX.
- 14 For more details on its scope in the Czech Republic, see: Sládeček, 2017; Chamráthová and Svoboda, 2018, pp. 20–32.
- 15 See for more details: Šimíček, 2002, pp. 21–24.
- 16 Sládeček, 2019, p. 407. Translation by the author. Unless otherwise specified in the footnotes, all translations quoted from non-English sources are conducted by the author.

[...] informally, quickly and inexpensively helping citizens to seek protection against illegal or unfair acts of public administration or its inaction. The Ombudsman is to supervise the activities of the public administration [...] and to seek to remedy any misconduct or to improve its performance.¹⁷

Therefore, the Public Defender of Rights deals with the rights of the child in the context of his/her statutory activities but does not have the following: explicit competence to monitor the implementation of the Convention on the Rights of the Child; specific powers to protect children's rights (e.g. to make applications to the courts); is not entrusted with the dissemination of education in the field of children's rights, including the promotion of children's participation, although he or she may try to do so in practice.¹⁸ Moreover, its competence does not fall within the area of local self-government, and this is even if decisions and other measures of municipalities and regions can significantly interfere with the rights of the child guaranteed by the Convention (e.g. in matters of the development of social services or social housing).

In the context of children placed in institutions where their personal liberty is restricted or deprived, the supervision by the public prosecutor's office of the observance of legal regulations in places where personal liberty is restricted can also be considered a general complaint mechanism –, and this in addition to the ombudsman. However, even this mechanism does not constitute a body for the protection of human rights and fundamental freedoms. Instead, these are state bodies that represent the state in protecting the public interest in specified procedures and areas. Importantly, the content of the public interest does not have to be the same as the protection of basic human rights and freedoms, even if these two concepts may sometimes overlap.¹⁹ Moreover, considering that the Public Prosecutor's Office is always supposed to represent the state, it cannot be described as an independent national body in the sense of the Paris Principles.

To summarise the current situation, there are various authorities and institutions working in the field of children's rights protection in the Czech Republic, but they are all involved only in a specific area in accordance with their legal competences, and none fulfil all the conditions of a national human rights institution for the rights of the child. In addition, since these mentioned bodies also have executive power (except for the Public Defender of Rights), none fulfil the requirement of independence. Furthermore, none have the authority to systematically promote and protect children's rights, which includes the competence to investigate general or individual cases of violation or endangerment of children, to raise

17 Chamráthová, 2019, p. 3.

18 See, for example, the special website of the Defender, which is adapted for children. Available at: <https://deti.ochrance.cz/> (Accessed: 18 February 2024).

19 See Záruba and Kocourek, 2004, pp. 392–400.

awareness of children's rights in society, and to evaluate the relevant national legal framework. Even the Public Defender of Rights does not fulfil this function to the required extent (see above).

2. Establishment of the Children's Ombudsman in the Czech Republic: Main Principles of the Proposed Legislation

Thus, the Czech Republic has not yet established an independent national body for the purposes of the national monitoring of the implementation of the Convention, which has been repeatedly and long-standingly criticised, in particular by the UN Committee on the Rights of the Child.²⁰ Several attempts have been made in the past to establish such an institution in the country, but so far without success. In 2022, a proposal was submitted to the Chamber of Deputies by several deputies to issue a 'Children's Ombudsman Act',²¹ which was to be debated at the 94th session from 27 February 2024 of the Chamber of Deputies.²² The latest effort to address this significant deficit and the unsatisfactory state of children's rights protection in the country is the government's proposed amendment to the existing Act on the Public Defender of Rights. The proposal is currently being discussed at the government level and should be subsequently submitted to the Chamber of Deputies, where it could have the support of the government majority.²³

20 Final recommendations of the UN Committee on the Rights of the Child to the second periodic report on the Czech Republic on the fulfillment of obligations from the Convention on the Rights of the Child of 18 March 2003 (points 16 and 17). Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgnXZ0ChBsrwmcy8%2f%2bFNoDEya4pykM44cCwnDlrhj%2fks77k2KsymYiP1Bx8Iianx%2feVXPUCXHKG%2fkyjtBRxKYk%2bbhp1uuBpVdyk4Ei2LwiNr6> (Accessed: 18 February 2024); Final recommendations of the UN Committee on the Rights of the Child to the consolidated third and fourth periodic report on the Czech Republic on the fulfillment of obligations from the Convention on the Rights of the Child of 08/04/2011 (points 16 and 17). Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrpiCE%2fy0jVxzg5%2bV8i7pht4H4a4pAWsJL3pa%2fvZCeSaVBbp1g77ZAaHTDQ9mJG8VIti46tzmjcvP%2fVoFNzfm%2f1WVG%2bKM%2fcd2V99WuxlcPh> (Accessed: 18 February 2024); Final recommendations of the UN Committee on the Rights of the Child to the consolidated fifth and sixth periodic report on the Czech Republic on the fulfillment of obligations from the Convention on the Rights of the Child of 22 October 2021 (point 12). Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrpiCE%2fy0jVxzg5%2bV8i7phvBpnkT8g83zMKrkCRWboaXpx2V7EmgulUUFgCh4LN3VhPNwxe71fWWHn9QAcl3JYB4wtsJ3PmO11JKIxUeLxd8> (Accessed: 18 February 2024).

21 Available at: <https://www.psp.cz/sqw/text/historie.sqw?o=8&T=894> (Accessed: 18 February 2024).

22 Available at: <https://www.psp.cz/sqw/historie.sqw?o=9&t=262> (Accessed: 18 February 2024).

23 Stehlíková, 2009.

At this point, a question may emerge: what are the main principles of the government's proposal for a 'Children's Ombudsman'? In addressing this situation, two solutions were basically offered; first, to modify the current mandate of the Ombudsman so that he/she could become a national body for the protection of children's rights; second, to establish a new institution that would meet all the necessary requirements.²⁴ The proposed regulation is based on the second variant, describing that the Defender of Children's Rights should work simultaneously as the Public Defender of Rights. The Public Defender of Rights and the Defender of Children's Rights would be independent of each other and have independent functions, competences, and tasks. Both institutions would share an office that will provide both ombudsmen with the conditions for the performance of their mandates. The government amendment therefore introduces the concept of a multi-ombudsman institution (i.e. 'several ombudsmen under one roof'), which also works in other European countries (e.g. Sweden and the Netherlands).²⁵ The Defender of Children's Rights will not, just like the current Public Defender of Rights, have any regulatory authority, his/her activities will not have an authoritative character, and his/her measures and outputs will have only an advisory character. Both defenders would cooperate, exchange information, and coordinate their activities.

Additionally, the Defender of Children's Rights would be elected by the Chamber of Deputies for a period of six years. A natural person can be elected as a Defender if he/she has the following attributes: the prerequisite knowledge, experience, and moral qualities to be able to fulfil the position properly; is a citizen of the Czech Republic; is fully autonomous and of good character; has reached the age of 40 years; has completed a university education in a master's degree program in the field of law; has been involved in the protection or promotion of children's rights for at least five years over the last 10 years. For the purpose of evaluating the proposed candidates, the Chamber of Deputies would establish an evaluation commission comprising scientific, academic, and spiritual experts, along with representatives of civil society, nationalities, and other social groups, all while considering the fair representation of men and women. A public hearing of the candidates would be part of the evaluation procedure, which would in turn assess the prerequisites for the performance of the function of the Defender, the candidate's intentions associated with the performance of the function, the goals he/she wants to achieve, and the

24 For solutions in EU countries, see Vaculová and Syllová, 2011, updated 2019.

25 Within the framework of the European Union, 17 Member States currently successfully use an independent institution of the children's ombudsman, and another six have appointed a special representative exclusively entrusted with the protection and enforcement of children's rights. Only the following four Member States lack a children's ombudsman or a special representative of the general ombudsman: the Czech Republic, Germany, Austria, and Portugal. See the website of the European Network of Children's Ombudsmen for more on this. Available at: https://enoc.eu/?page_id=2469 (Accessed: 18 February 2024).

specific measures he/she proposes to achieve them. The evaluation committee would then publish the evaluation of individual candidates.

The proposal also regulates the nomination and election process for the Children's Ombudsman to bring it closer to the requirements for national human rights institution (also known as NHRI) accreditation at Grade A. It seeks to strengthen transparency, openness, and the consideration of expertise in the nomination and election process. The consideration of expertise within the evaluation advisory body, or more generally a participatory process open to as many candidates as possible, is recommended by several bodies – first, the Global Alliance of National Human Rights Institutions (also known as GANHRI) Sub-Committee on Accreditation, which is responsible for the accreditation of national human rights institutions²⁶ in accordance with the Paris Principles. Second, the Venice Principles, which formulate the optimal functioning of ombudsman institutions.²⁷ Third, such a method of establishment is recommended by the EU Agency for Fundamental Rights (also known as FRA)²⁸ and the Committee of Ministers of the Council of Europe.²⁹

The basic principles of the activities of the Defender of Children's Rights are based on the Convention and its general principles, especially the concept of the best interest of the child and child participation. The purpose of the institution is to balance children's vulnerability with the preservation of their autonomy, all while considering their gradual development and maturing. The Defender of Children's Rights would communicate with the child as much as possible, find out and consider his/her opinion, age, and intellectual and autonomous maturity, and strengthen his/her participation. Ongoing cooperation and communication with children must form the core of the activity of the Defender of Children's Rights, such that the opinion of the children is not just guessed by the Defender and that he/she does not promote something that the child does not really care for or wishes for something else. Similar to the Public Defender of Rights, the Defender of Children's Rights would establish an advisory body comprising children to carry out the agenda of protecting children's rights. This would appropriately strengthen children's participation in the protection and promotion of their rights, their awareness of their rights, and their ability to defend and

26 Available at: https://ganhri.org/wp-content/uploads/2019/11/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf (Accessed: 18 February 2024).

27 Principles of support and protection of ombudsman institutions (Venice Principles). Available at: <https://www.ochrance.cz/o-nas/predpisy/Benatske-principy.pdf> (Accessed: 18 February 2024).

28 Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-strong-effective-nhris-summary_cs.pdf (Accessed: 18 February 2024).

29 Recommendation CM/Rec(2021)1 of the Committee of Ministers to Member States on the development and strengthening of effective, pluralist and independent national human rights institutions. Available at: https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a1f4da (Accessed: 18 February 2024).

enforce them. Children between the ages of 12 and 18 years can be appointed members of the advisory body, members can be at most 21 years old and would be appointed by the Defender of Children's Rights after consultation with non-governmental non-profit legal entities associating with or defending children and young people.

3. The Proposed Competences and Activities of the Defender of Children's Rights

As far as the competence of the Defender of Children's Rights is concerned, he/she would do the following: perform tasks in the area of the protection of children's rights resulting from the Convention and other international treaties part of the legal order of the Czech Republic; conduct investigations into the activities of public authorities listed in the law from the perspective of compliance with the law, from the perspective of the principles of the democratic rule of law and good administration, and from the perspective of protection against the inaction of these authorities in cases where a child's rights may be affected.

The Defender of Children's Rights would also perform the following tasks to protect and promote the rights of the child arising from the Convention and other international treaties:

- a. systematically monitor and evaluate the fulfilment of the basic rights of the child;
- b. carry out research and analysis;
- c. issue reports, opinions, and recommendations on fulfilling the basic rights of the child;
- d. support the fulfilment of the rights of the child and propose measures to improve their protection, including legislative measures;
- e. support raising awareness of the rights of the child in society, including by supporting education in the field of human rights;
- f. cooperate and ensure the exchange of information with relevant international bodies that monitor the Czech Republic's compliance with the obligations set forth in the Convention and other international treaties;
- g. cooperate and ensure the exchange of information with national and foreign authorities and persons active in the field of the protection of the rights of the child, including civil society representatives.³⁰

30 See more details on the scope and functions of children's ombudsman in the following: UNICEF, 2001, *Independent Institutions Protecting Children's Rights*. Available at: <https://www.unicef-irc.org/publications/pdf/digest8e.pdf> (Accessed: 18 February 2024).

An important proposed competence of the Defender of Children's Rights is to investigate individual complaints. Everyone would have the right to turn to the Defender of Children's Rights with an initiative in matters of his/her competence, and the proposal explicitly emphasises the child's right to submit an initiative even without the knowledge of his/her legal representatives. The proposal sees children as active beings who should be supported to actively protect and defend their rights, describing, 'Therefore, they have a sufficient degree of autonomy to formulate their opinion on the matter, express their dissatisfaction with a certain matter, and directly address the child rights defender with a complaint.'³¹ The emphasis is hence also placed on easing the formal and content requirements of the initiative, the possibility of informal communication, and the adaptation of communication according to the age of the child and clarity of the child regarding the actions in relation to the child. Of course, it will also be important to understand how this informal procedure will be established in practice and how the effort to maximise the participation of children in the entire process will be taken into account.

The initiative must not be subject to any official control and is not subject to a fee. As aforementioned, not only children but also their legal representatives and other persons and authorities would be able to contact the Defender of Children's Rights. Furthermore, the notification by public authorities, persons entrusted with the performance of social and legal protection, schools and school facilities, providers of health and social services, and other facilities intended for children (or their employees) would not constitute a breach of confidentiality. The Defender of Children's Rights would be able to start the investigation both through the above initiatives and *ex officio*.

The range of subjects whose activities can be investigated by the Defender of Children's Rights would be quite wide and wider than those of the Public Defender of Rights – a characteristic desirable in the area of the protection of children's rights. In addition, the Defender of Children's Rights would be able to deal with complaints about the performance of state administration (i.e. referring to classical 'administrative authorities') and about the procedure of bodies that exercise their powers in the field of public administration (i.e. state administration or self-government), including territorial self-governing units and other bodies, legal entities, and natural persons. These refer mainly to self-governing bodies in the exercise of independent powers that affect, for example, the issues of housing or school districts of kindergartens and primary schools. However, some entities would be excluded from the scope of the Defender, such as the Parliament, the President, the Government, the Supreme Audit Office, the intelligence services, the public prosecutor's office, and courts.

31 Explanatory report on the proposal.

During the investigation, the Defender of Children's Rights would have, for example, the right to inspect a file and take copies or video recordings of it, to ask questions to the office staff (without the presence of other persons), and to suggest to the office that certain evidence or supervision actions be carried out. The authorities would be obliged to provide the Defender of Children's Rights with relevant cooperation and respond to his/her requests. The ombudsman would be entitled to speak with the child without the presence of other persons, including legal representatives. If the investigation does not reveal a violation of legal regulations or other misconducts, the ombudsman would then notify the complainant and the authority in writing. Unless this would be contrary to the interests of the child, the ombudsman would also inform the child's legal representatives. If the investigation does reveal a violation of the law or other misconducts, the ombudsman would invite the authority to comment on the findings within a reasonable period set by the ombudsman.

If, upon request, the office informs that it has taken or is taking remedial measures, and the ombudsman finds these measures sufficient, he/she would inform the complainant and the office about this. Otherwise, after receiving the statement or the time limit has expired, the ombudsman would communicate his/her final opinion in writing to the office and the complainant; a part of this opinion would be a proposal for remedial measures. In particular, the ombudsman would be entitled to propose the following remedial measures: initiation of proceedings to review the decision; act or procedure of the office; if they can be initiated *ex officio*, execution of actions to eliminate inactivity; initiation of disciplinary proceedings; initiation of prosecution for a crime, misdemeanour, or other administrative offence, providing compensation for damages and others. The office would then be obliged to inform the Defender of Children's Rights of the remedial measures it has taken within 30 days from the delivery of the final opinion. If the authority does not fulfil this obligation or if the measures are insufficient, the ombudsman would notify the superior authority and, if there is no such authority, the government. At the same time, he/she would inform the public about his/her findings, including the names and surnames of persons authorised to act on behalf of the office.

The proposal also foresees that the Defender of Children's Rights would be able to carry out visits to institutions where children are present. He/she would also help children who are discriminated against and children of European Union citizens, monitor the expulsion of minors, and monitor the situation of children with disabilities. In these and other areas, the Defender of Children's Rights would work closely with the Public Defender of Rights, also in view of the interdependence between the protection of children's fundamental rights and the protection of the rights of 'adults'. The Defender of Children's Rights would also have an increasingly important educational and awareness-raising function,

both for children themselves and for adults in contact with children, regarding children's rights among all.

The proposed regulation also provides for the participation of the Defender of Children's Rights in court proceedings. These should be essentially the same court proceedings in which the Public Defender of Rights may appear, extended by the possibility of intervening in selected proceedings, including the following: proceedings for the authorisation of the marriage of a minor; for protection against domestic violence; concerning the establishment or denial of paternity; concerning the court's care of minors; concerning the admissibility of taking or keeping a minor in a healthcare institution; concerning the inadmissibility of keeping a minor in a social services institution; concerning adoption. The possibility to intervene in court proceedings is perceived as a relatively strong power, which the ombudsman should use rather exceptionally, especially in cases where he/she is unable to obtain redress through the standard channels of action against children's social and legal protection authorities. It is expected that the ombudsman would use this possibility in 10 to 15 cases per year.³²

4. Conclusions: Evaluation of the Proposed Model of the Defender of Children's Rights in the Czech Republic

First, the establishment of an ombudsman for children is a very important and, in my opinion, necessary legislative step. In view of the above, it is more than desirable for the Czech Republic to have a national human rights institution as soon as possible, as it would be comprehensively focused on the protection of children's rights and enforce and monitor the implementation of requirements arising from the Convention, as well as the implementation of other international obligations in this area.

The regulation of the selection and election processes of the Defender of Children's Rights, which seeks to reflect international legal requirements and standards in this area, is to be welcomed. However, I think that too many requirements are placed on the person of the Defender of Children's Rights, some of which may significantly limit the selection of a suitable candidate. I find the requirement of a university degree in a master's programme in law particularly questionable. I consider that this is not the only appropriate education for a Defender of Children's Rights, and that a person with a different educational background could also be a 'good' children's ombudsman. It is also debatable whether it is necessary for a children's ombudsman to be over 40 years of age, with a good question in this regard being "What are the advantages of this age limit for the performance of this function?" I consider the moral qualities of the

32 Ibid.

ombudsman and his/her experience in the field of the promotion and protection of children's rights to be key.

Another positive aspect of the proposal is the very broad scope of the Defender of Children's Rights powers, as it is supposed to include almost the entire public administration (i.e. not only the state administration but also the local government) and only a few exceptions. I consider the breadth of this scope to be desirable, as various acts and activities of local authorities may also interfere with the legal sphere and the rights of children. Furthermore, it is appreciated that the proposal respects the personality of the child and strengthens his/her participation in the protection of children's rights, as well as considers his/her age and maturity in the form of lower requirements for the elements of the complaint submitted by the child, for the clarity of communication with him/her, and the greatest possible assistance in solving his/her problems. The aim of making the child not only an object of protection but also an active co-creator is a well-chosen concept that is in line with modern trends in the field.

Regarding some controversial aspects of the proposed legislation on the Defender of Children's Rights, probably the most important is the question of whether it is appropriate to establish a separate, 'additional' institution alongside the current ombudsman (i.e. Public Defender of Rights). Indeed, a solution consisting in extending the competences of the current ombudsman to this agenda is also proposed. Meanwhile, critics of the establishment of a separate ombudsman for children point to the financial demands of the proposed solution, and to the substantive remit of the Defender of Children's Rights not being sufficiently and precisely separated from the substantive remit of the Public Defender of Rights (i.e. there is no clear division of competences).³³ In this respect, one can ask oneself a rhetorical question: how will one proceed, for example, in a case involving domestic violence and the unlawful reaction of the Police of the Czech Republic and the child social protection authority in a situation where a woman and her child are being abused? In such a situation, the Defender of Children's Rights would have to act on the case of the child, while the Public Defender of Rights would do so on the case of the mother. However, is it appropriate for two institutions, albeit cooperating, to deal with the same situation? Although the law emphasises their cooperation, how should they proceed in the event of a clash of opinions?

I therefore believe that careful consideration should be given to whether to establish two institutions working side by side (i.e. two ombudsmen), or whether to expand the competences of the current ombudsman to include the agenda of protecting children's rights and monitoring the fulfilment of obligations under the Convention. If the option of two separate ombudsmen is chosen, their competences, relations, and cooperation should be very carefully defined, including the resolution

33 See: Doubek, 2020; Richterová, 2023, pp. 184–185.

of possible conflict situations. If we proceed to expand the competences of the current ombudsman, we can draw on his/her already relatively long experience in the field of protection of the rights of persons, qualified professional background, and staff. Nonetheless, to achieve the quality required by international legal obligations and the nature of the institution, some changes would have to be made, such as in the selection and election of the ombudsman or by extending his/her powers to include the area of self-government.

Further suggestions and comments can also be made on the very general regulation of the child's status in the context of complaints and their investigation. How old must a child be to make such a complaint? Will he/she be able to defend his/her rights sufficiently and express his/her views? If it is not appropriate to inform the legal representatives, should not a guardian at least be appointed for the child? Moreover, should not a child psychologist also be present at the hearing? In these and other respects, it will still be necessary to complete, clarify, and eliminate the alleged shortcomings in the proposal, so that the Defender of Children's Rights can truly fulfil his/her tasks responsibly and provide real and accessible protection to children's rights. There can also be reservations about the children's ombudsman's power to initiate or intervene in court proceedings, with arguments that this is a very strong new power that is not sufficiently justified. In my opinion, it is true that this is quite a significant power, but I also believe that the Defender of Children's Rights would approach it responsibly, prudently, and apply it only in justified cases –, that is, it will not be overused.

In conclusion, the establishment of an ombudsman for children is necessary in the Czech Republic, and as soon as possible. Children are an extremely vulnerable group who require an independent institution to defend and promote their rights, notwithstanding the fact that this is required by a number of international legal obligations. Furthermore, the current practice in the Czech Republic is not sufficient in this respect. It is carried out by various different authorities, there is a lack of uniformity and coordination of procedures, it is mainly state bodies that are not independent that carry out tasks in the field of the protection of children's rights, and they do so only as one of their many activities.

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