



ENOC 15th ANNUAL CONFERENCE

“The respect of the rights of children and young people in institutional care”

14, 15 and 16th September 2011
Warsaw, Poland

PRESENTATION OF THE INSTITUTION & SUMMARY OF ACTIVITIES

Name of the member institution : **Portuguese Ombudsman** (*Department on Children, Elderly Persons and Persons with Disabilities*)

Current Ombudsperson: **Mr. Alfredo José de Sousa** (*Deputy Ombudsperson for the Rights of the Child – Ms. Helena Vera-Cruz Pinto*)

I. Role and structural organization

- Legal framework

The Portuguese Ombudsman is established in article 23 of the **Constitution of the Portuguese Republic**.

The **Statute of the Ombudsman** is laid down by Law n.^{er} 9/91, of 9th April, as amended by Law n.^{er} 30/96, of 14th August, and Law n.^{er} 52-A/2005, of 10th October.

The **Organic Law of the Office of the Ombudsman** is laid down by Decree-law n.^{er} 279/93, of 11th August, as amended by Decree-law n.^{er} 15/98, of 29th January, Decree-law n.^{er} 195/2001, of 27th June, and Decree-Law n.^{er} 72-A/2010, of 18th June.

Legislation in Portuguese: <http://www.provedor-jus.pt/legislacao.htm> / Legislation in English: <http://www.provedor-jus.pt/Ingles/OmbudsmanStatute.htm>.

- Principal functions as defined by law

The main function of the Portuguese Ombudsman is to **defend and promote the rights, freedoms, guarantees and legitimate interests of the citizens, ensuring, through informal means, that public authorities act fairly and in compliance with the law**.

This broad mandate encompasses, *inter alia*, the protection and promotion of the **rights of children and young persons**.

Under the Portuguese Constitution, **every citizen – regardless of factor such as age, nationality or place of residence – has a right of complaint to the Ombudsman** against actions or omissions of the Portuguese public authorities that are deemed to be unfair or illegal. The Ombudsman assesses these complaints without binding power, and sends to the competent bodies such recommendations as may be necessary to prevent or remedy any illegality or injustice.

The Ombudsman may also investigate matters on his/her own initiative, based on facts that otherwise come to his/her knowledge (e.g. NGO and media reports).

While the Ombudsman acts mainly in relation to public authorities, his/her scope of activity may also include relations between private entities, insofar as there is a special relationship of power between them and the matter falls within the scope of protection of rights, freedoms and guarantees.

The Ombudsman is also mandated to **promote awareness to, and knowledge of, the content and meaning of fundamental rights, the role of the Ombudsman institution, its means of action and the ways of access to it**.

In the performance of his/her duties, the Ombudsman has significant powers, including the power to **make inspections with or without prior notice** and the power to **undertake all the investigations and inquiries he/she deems necessary or convenient**, using all reasonable means for the purposes of collecting and producing evidence, provided they do not collide with the rights and legitimate interests of citizens.

Where the Ombudsman finds illegality or injustice to exist, he/she may draw the attention of the entity concerned, make a critical remark or, in more serious cases, issue a recommendation. **Recommendations** may concern legal interpretation or amendments; the drafting of new legislation; the modification of an administrative act; or the general improvement of services provided to citizens by public administration.

The Ombudsman also has an important **power of initiative on constitutional matters**: he/she can request the Constitutional Court to rule on the unconstitutionality or illegality of legal provisions or on unconstitutionality due to legislative omission.

Both civil and military public entities have a **duty to cooperate fully with the Ombudsman, *inter alia*** by providing information, documents and files and by making inspections through the competent services, upon his/her request. The unjustified non-compliance with this duty constitutes a crime of disobedience.

- **Structural organization**

The Ombudsman is an independent body of the State, appointed by the Parliament for a four-year mandate, with the possibility of one re-election for another four years.

The Ombudsman may delegate some of his/her powers in two Deputy Ombudsmen, whom he/she may freely appoint.

In the performance of his/her duties, he/she receives technical and administrative support from an Office, which is composed by a Legal Advice Service (Coordinators and Legal Advisers freely appointed by the Ombudsman), Technical and Administrative Support Services and Local Offices in the Autonomous Regions of Azores and Madeira.

At the Office of the Ombudsman, work is distributed between seven Departments. Six of them are organised according to subject, while a seventh – the **Department on Children, Elderly Persons and Persons with Disabilities (N-CID)** – takes into account the specific needs of these three particularly vulnerable groups of citizens.

The N-CID is placed under the direct supervision of **Deputy Ombudsperson Ms. Helena Vera-Cruz Pinto** and includes staff specialized in children's rights matters. An Adviser from the Cabinet of the Ombudsman provides support to the Deputy Ombudsperson and is also the current **representative of the Ombudsman in the National Commission for the Protection of Children and Young People at Risk**.

The N-CID aims to concentrate the work of the Ombudsman related to children's rights. Among other tasks, it coordinates the **Ombudsman's toll-free Children's Hotline**, which operates since 1993 to receive complaints regarding children who may be at risk or in danger, brought forth either by the children themselves or by adults on their behalf, as well as to provide information on children's rights.

Organisational chart: <http://www.provedor-jus.pt/organograma.pdf>.

II. Individual complaints (if the institution has a competence to handle individual complaints)

- Scope of competences of the Ombudsperson in handling individual complaints

As detailed above, the Ombudsman can handle complaints against actions or omission of the Portuguese public authorities, as well as, in some cases, complaints regarding relations between privates.

In what concerns the President, the Parliament, the Government, the Courts and the Regional Legislative Assemblies and Governments, the Ombudsman's inspection and supervision are limited to the administrative activity and the acts performed under the superintendence of the Administration. This means that the Ombudsman may not review the decisions of the courts (jurisdictional activity), nor the activity of a strictly political-legislative nature (although he can, and does indeed, make suggestions towards the improvement of legislation).

In handling citizens' complaints, the Ombudsman may make use of significant powers, which have already been detailed above.

- Relevant statistics (if available) on:
 - Number of cases for the year 2010-2011 or for a given period in between,
 - Complaints' main authors. What is the percentage of complaints initiated by children,
 - Age average of concerned children,
 - Area of complaints (ex: situations relating to schools, social and housing problems etc.).

Note: The N-CID was created at the end of 2009, to restructure and replace the Ombudsman's former Project Unit on Minors, Elderly Persons, Persons with Disabilities and Women. As planned, it is undergoing a process of gradual implementation, both in terms of resources and competences. At present, it does not yet handle formal proceedings, which are distributed to the other six Departments, according to subject. At the moment, our statistical data concerning the rights of the child reflect only the activity of the N-CID. Therefore, this year we can only provide statistics on the operation of the toll-free Children's Hotline.

Calls received by the toll-free Children's Hotline

From **1st September 2010 to 31st July 2011**, the Hotline received a total of **766 calls**.

Identity of the caller:

- Parents – 222
- Other family member – 124
- Member of the community – 39
- The child or young person him/herself – 36

- Professional – 12
- Other – 30
- Not identified – 303

Child concerned:

456 children were identified in total, 205 of which girls and 245 of which boys (in 6 cases the gender was not identified).

- 0 to 3 – 50
- 3 to 7 – 172
- 8 to 12 – 131
- 13 to 16 – 78
- 17 to 18 – 16
- Not identified – 9

Most frequent issues:

- o Exercise of parental responsibilities – 215
- o Physical and psychological abuse – 81
- o Negligence – 81
- o Conduct of the Commissions for the Protection of Children and Young People – 42
- o Economic hardship in the family – 41
- o Exposure to domestic violence and deviant behaviour – 39
- o Protection measures – 38
- o Requests for information regarding the Hotline – 32
- o Need for psychological follow-up – 30
- o Risky behaviour of the child or young person – 28
- o Education and school problems – 25
- o Requests for information regarding the Ombudsman – 19
- o Sexual abuse – 16
- o Judicial protection of children's rights – 14

III. Expressed opinions, statements, policy recommendations and/or proposals for legislative and/or other reforms

In 2010, the Portuguese Ombudsman carried out an inspection to the Homes for Children and Young People and the Temporary Placement Centres in the Autonomous Region of Madeira. The aim was to assess the placement conditions offered by these institutions and the level of respect for the rights of the child. In December 2010, the final results of the inspection were made public. Overall, the Ombudsman highlighted the important role played by the various placement institutions of the Autonomous Region of Madeira, in particular by their officers, technical staff and other staff members. Nevertheless, he considered the monitoring of everyday life in the homes carried out by the entities that determine the application of the measure of placement in an institution to be insufficient. The need for regular visits, including the possibility of hearing the children, was emphasised. Given the above considerations, the Ombudsman addressed a set of suggestions to various entities, most notably proposals submitted to the Minister of Justice, the High Council of the Public Prosecution Service and the Regional Secretary for Social Affairs.

In January 2011, the Ombudsman stated to the Government that he considers the charging of different amounts upon enrolment to be incompatible with the free and universal nature of mandatory education. He suggested that provisions be adopted to prevent this. The Government agreed with the Ombudsman's position.

Following the increase in complaints against the lack of conditions of school facilities and of security in schools, the Ombudsman visited two basic education schools to assess these matters. The specific issues at

stake were access of legal guardians to school facilities; an alleged situation of bullying; and matters of security and supervision in the playground. With regard to the former, the Ombudsman addressed some suggestions to the school, which helped improve the situation. Concerning the latter two, pursuant to investigation the Ombudsman concluded that the situation did not justify an intervention.

In October 2010, the Ombudsman addressed a letter to the Secretary of State for Social Security, stating the urgent need to amend the law that regulates the attribution of the subsidy for students of special education school, so as to make swifter the conditions of access to it.

The Ombudsman is still monitoring with concern the delay in adopting legislative measures to regulate the activity of self-employed nannies, a suggestion that he had already reiterated to the Secretary of State for Social Security in June 2010. The same is true for the delay in regulating the protection to families as regards disability and dependence. In 2006 the Secretary of State for Social Security had already recognised the need to regulate the matter, which has not yet happened.

IV. Research, investigation, studies

V. Communication, Promotion and Publications

In December 2010, the Deputy Ombudsperson for the Rights of the Child, accompanied by other staff members, presented the work of the Portuguese Ombudsman in the area of child rights to master's degree students at the Law School of the University of Lisbon (under the subject "Law of Minors").

In April 2011, the Portuguese Ombudsman signed a **Cooperation Protocol with the Law School of the University of Lisbon**. Its main aim is to establish the basis for cultural, educational, scientific and technical cooperation, namely as regards the rights of the child. The Law School of the University of Lisbon and the Portuguese Ombudsman committed to organising seminars or conferences on topics connected to the Ombudsman's activity and to carrying out studies and promoting investigation projects under the aegis of the Observatory on the Rights of the Child and of the Elderly. Also envisaged is the creation of an annual publication on the rights of the child and of the elderly, which includes a commentary on legislation, judgements and national, EU and international legal theory. Under this Protocol, two seminars have already been organised:

- "Other players" (April 2011): dedicated exclusively to the topic of the legal condition of the child in the context of parental alienation. The Deputy Ombudsperson for the Rights of the Child and the Supervisor of the Children's Hotline participated in this seminar.
- 1st International Congress on Public and Private Security (July 2011): this event included a panel exclusively dedicated to Child Safety in Family, School and Play Areas. The Ombudsman was represented by the Coordinator of the department responsible for Education matters.

In May 2011, the Ombudsman signed a **Collaboration Protocol with the Minister of Education**, with a view to promoting and disseminating information to public school students regarding Human Rights, the Convention on the Rights of the Child, the existence and goal of the Ombudsman and the ways to appeal to him/her. This Protocol provides for dissemination of information on the rights and freedoms of citizens and the development of other activities, such as the creation, in schools, of participation mechanisms for children and young people regarding matters that concern them. In a first phase, initiatives will be primarily addressed to 2nd and 3rd cycle students (i.e. 10 to 15 years old) and will be developed mainly in the context of the subject of Citizenship Education.

VI. Other activities

The Ombudsman took part in different events and initiatives concerning the rights of the child. For example:

- The Ombudsman contributed with relevant information to the drafting of national implementation reports under the Convention on the Rights of the Child. In this context, he was represented in meetings of the National Commission for Human Rights dedicated to preparing those reports.
- In October 2010, the Ombudsman was represented by the Supervisor of the Children's Hotline in the 5th European Forum on the Rights of Child, in Brussels. In this forum three fundamental issues were discussed: the future of the EU strategy on the rights of the child (2010-2014); the right of participation; and how to make Justice more Child-Friendly.
- In November 2010, the Deputy Ombudsperson for the Rights of the Child attended the celebration of the 21st Anniversary of the Convention on the Rights of the Child, promoted by the National Commission for the Protection of Children and Young People at Risk, in partnership with other entities, which took place in the facilities of the Parliament. The event included the active participation of groups of children and young persons, who spoke about their perspectives and experiences concerning the rights of the child. A presentation was made of the poster created by Portuguese students that received the first prize in the European Poster Competition "20th Anniversary of the Convention on the Rights of the Child".
- In April 2011, the Deputy Ombudsperson for the Rights of the Child participated in the Council of Europe / European Commission's 3rd Thematic Workshop on the Role of National Human Rights Structures in the Protection and Promotion of the Rights of Children in Care, in Tallinn, Estonia.
- In addition to being represented in the meetings of the National Commission for the Protection of Children and Young People at Risk and of its Working Group on Mental Health of Children Placed in Institutions, in July 2011 the Ombudsman personally attended the National Meeting for the Evaluation of the Activity of Protection Commissions in 2010, where he made an oral address.
- In May 2011, the Ombudsman participated in 5th European Conference on Missing and Sexually Exploited Children, which was organised in Lisbon by the Institute for Child Support (a Portuguese NGO that is member of Missing Children Europe).