

OMBUDSMAN FOR CHILDREN AT EUROPEAN LEVEL

Florin Fainisi¹ and Victor Al. Fainisi²

¹Prof. Dr., Faculty of Law and Public Administration, "Spiru Haret" University, Bucharest, ROMANIA, florin.fainisi@yahoo.com,

² Mr., Faculty of Law and Public Administration, "Spiru Haret" University, Bucharest, ROMANIA, victoral.fainisi@yahoo.com

Abstract

Similar to the Ombudsman, the Ombudsman for Children is a public representative appointed for the interests of children in different countries. On 20 November 1989, the United Nations adopted the Convention on the Rights of the Child, until that time children's rights being included in the broader fundamental rights enshrined in the Universal Declaration of Human Rights. Art. 18 of the Convention stipulates that, for the purpose of guaranteeing and promoting the rights provided by the Convention, states must ensure the creation of childcare institutions, establishments and services. Among European countries that have adopted the specific legislation for setting up independent authorities for the protection of the rights of children are Austria, Denmark, Finland, France, Italy, Netherlands, Norway, Poland, Sweden and Romania. Authorities that defend children's rights can be established at national and/or regional level. Norway was the first country in the world to set up an Ombudsman for Children (1981), while the European Network of Ombudspersons for Children - ENOC was also set up at its initiative, which operates under the supervision of the Council of Europe.

Keywords: child, minor, ombudsman for children, children rights, United Nations Convention on the Rights of the Child, ENOC, comparative law

1. GENERAL CONSIDERATIONS

Ombudsman, term of Swedish origin, meaning "spokesman of grievances", is defined as an independent and objective person who investigates citizens' complaints against various bodies and organizations, both public and private. After a thorough analysis, he decides whether the complaint is justified and makes recommendations to the organization in question, in order to regulate the problem.

Founded in Sweden in 1809, the institution was set up in 1919 in Finland, in 1955 in Denmark and in 1962 in Norway. Since the 60s, the institution was created in different countries of the Commonwealth and Europe. Ombudsman is completely independent of the judiciary. The term "ombudsman" designates an independent, respectable person, empowered by the Parliament or the Government to protect fundamental human rights and freedoms. At the same time, the modern meaning distinguishes an independent and objective person, investigating complaints of people against government bodies or against other public or private organizations.

According to importance, specificity, influence and geographical extension of this institution, in many countries in Europe and beyond, the name of ombudsman has experienced a sinuous and unpredictable

path, moving from the language in which it was established, legal and political, to other areas of the social life, where there is a need to eliminate abuses and mediation. Therefore, currently, the concept of ombudsman is used in universities, in the field of labour, industry, services and financial and banking relations, the term entering as well in the sphere of health, transport, energy, insurance, protection of children's rights, education and consumer protection.

2. INTERNATIONAL LEGAL BASIS

The need to establish the Ombudsman for children and adolescents was inserted in numerous international documents.

On 20 November 1989, the United Nations adopted the Convention on the Rights of the Child, until that time children's rights being included in the broader fundamental rights enshrined in the Universal Declaration of Human Rights. The current text of the Convention is the result of the activity of various countries and bodies, quickly becoming the most widely ratified international instrument, quasi-unanimously adopted by world states. So far, the Convention has been adopted by over 190 member states of the United Nations. Any state that signs the Convention recognizes its content and undertakes to properly observe and apply it.

The Convention has exerted a strong and profound influence on national and international legislations, policies and programs, public and private institutions, families, communities and individuals. The child, as an individual, should enjoy the same rights and freedoms as all human beings, but also special rights and freedoms justified by the vulnerability and peculiarities of the age, should be treated with respect and the state is obliged to ensure him the best conditions for development, as well as the observance of rights; rights contained in the Convention should be applied to all children with no discrimination.

Since 1989 until now there have been significant advances in the field of children's rights and extremely important issues were discussed at international level, such as child labour, violence against children, recruitment of children in armed conflicts, sexual exploitation, etc.¹ Art. 18 of the Convention provides that for the purpose to guarantee and promote the rights under the Convention, the states must ensure the creation of institutions, institutes and services, aimed at protecting the welfare of children.

Documents of the special session of the UN General Assembly dedicated to children - which took place in New York from 8 to 10 May 2002 – stipulates that governments of participating states should take measures to implement actions aimed at creating or strengthening national fora, such as an independent ombudsman for children.

With regard to European documents, Recommendation 1121 of the Parliamentary Assembly of the Council of Europe adopted on 1 February 1990 on the rights of children, and Resolution A3-314/91 of the European Parliament on the problems of children in the European Union are documents which reflect the complex issue of children's rights.

European Parliament resolution regarding a European Charter on the Rights of the Child (A3-0172/92 of 8 July 1992) requires Member States in Art. 6 to establish an ombudsman for children's rights to protect their rights and interests, to receive their requests and complaints and monitor the implementation of the laws by which the provisions of the Charter are observed and to inform and guide the action of public bodies in favour of observing the rights of children. In the Resolution A4-0393/96 of 12 January 1996 on measures for children's protection (Art. 24), the European Parliament calls on Member States to encourage social involvement of children, especially by appointing an ombudsman for children – after the Norwegian model or in another form which has proved its efficiency. The resolution states that, in this context, it is important to have institutions and organizations which would independently, impartially and efficiently supervise the observance of legislation on child rights.

Recommendation no. 1286/1996 of the Council of Europe on a European strategy for children, provides (Art. 7) that the Committee of Ministers should launch the call to member states to appoint an ombudsman for children or another structure offering guarantees of independence and responsibility required for improving children's life, institution accessible to people interested, through the local services.

Recommendation no. 1460/2000 paragraph 8 of the Council of Europe, invites through the Committee of Ministers, that Member States which have not yet appointed an ombudsman for children should do so as soon as possible, and the Recommendation no. 1551/2002 paragraph 4, formulated the call to promote and strengthen the rights of children and to monitor their observance. Paragraph 5 of Recommendation no. 1551/2002 proposes to establish a European Ombudsman for Children, with the right of initiative on children's rights.

Art. 12 of the European Convention on the exercise of children's rights, signed in Strasbourg on 25 January 1996, provides that States should encourage the promotion and exercise of children's rights through

¹ <http://www.oscis.ro/ro/mai-multe-informatii/despre/conven%C8%9Bia-onu/>

bodies which have, among others, the following duties: to make proposals for better implementation of the law on the exercise of children's rights; to formulate opinions on the draft laws on children's rights; to provide the public, competent authorities and the media, general information on the exercise of children's rights; to know the views of the children; to provide relevant information in the field.

Promotion and protection of children's rights is one of the objectives of the EU to which the Treaty of Lisbon conferred an increased importance. In particular, Article 3, paragraph 3 of the Treaty on European Union explicitly obliges the EU to promote the protection of children's rights. Moreover, children's rights are enshrined in the Charter of Fundamental Rights of the European Union. Article 24 of the Charter recognizes children as holders of rights, independent and autonomous. Also, it considers the best interests of the child as paramount in the relations with public authorities and private institutions.

Promoting children's rights is also a result of international commitments. All Member States of the U.E. have ratified the UN Convention on the Rights of the Child. The rules and principles of the UN Convention must continue to guide EU policies and actions which have an impact on children's rights. In 2006, the Commission established a basis for promoting and protecting children's rights in its internal and external policies with its Communication "Towards an EU Strategy on the Rights of the Child". Therefore, the Commission has created a number of structures to strengthen the capacity of EU institutions to manage child rights issues, thus creating the conditions to develop evidence-based policies, increasing the interaction with stakeholders.

The Europe 2020 Strategy sets out a vision of a Europe of the 21st century in which children will get a better education, better access to services and resources they need to grow and one day, lead Europe into the 22nd century. The European Commission advocates "An EU agenda for children's rights"². Its purpose is to reaffirm the strong commitment of all EU institutions and all Member States to promote, protect and observe the rights of the child in all relevant EU policies and materialize this commitment into concrete results. In the future, Europe 2020 Strategy stipulates that EU policies which directly or indirectly affect children should be designed, implemented in practice and monitored taking into account the principle of the best interests of the child enshrined in the EU Charter of Fundamental Rights and the UN Convention on the Rights of the Child.

This EU agenda on the rights of the child is based on the views expressed within a broad public consultation and on the needs and concerns expressed by children in all EU Member States during a separate consultation on this topic. Also, it takes into account the preliminary results of an evaluation of the impact of EU instruments affecting the rights of the child. The European Parliament, Committee of the Regions, Economic and Social Committee and the Council of Europe, as well as key stakeholders, such as UNICEF, Ombudsman for Children in the Member States and civil society have contributed to the development of such communication, including through the works of the European Forum on the Rights of the Child.

EU agenda on the rights of the child presents the general principles that should guarantee the exemplary character of EU actions for ensuring the observance of the Charter of Fundamental Rights of the EU and the UN Convention on the Rights of the Child. Moreover, it focuses on a series of concrete actions in areas where the EU can bring real added value, such as justice to the best interest of the child, protection of children in vulnerable situations and fighting violence against children, both within the EU and beyond its borders.

3. NATIONAL REGULATIONS

On August 6, 1992, **Austria** ratified the UN Convention on the Rights of the Child, and on September 5, 1992 (30 days after ratification), the ratification law came into force. For Austria, this was translated into the requirement for the Provincial Assemblies and the National Assembly to adopt the legislation in accordance with the provisions of the Convention³.

Art. 6 of the Federal Law on the welfare of children and young people⁴ requires the 9 lands (a corresponding law exists in every land) to establish offices of the Ombudsman for Children for advising children and young people, their parents or legal representatives. Thus, between 1989 and 1995, offices were set up in every land and in 1991 the Federal Ombudsman was established, all financed from the state budget. The staff of an office includes approximately 20 members that are lawyers, psychologists,

² Communication from the Commission to the European Parliament, Council, European Economic and Social Committee and the Committee of the Regions of February 15, 2011, entitled "An EU Agenda for the Rights of the Child" (COM(2011) 60 final) (http://ec.europa.eu/justice/policies/children/docs/com_2011_60_en.pdf)

³ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#EndDec

⁴ Youth Welfare Act 1989 (https://www.crin.org/docs/Youth_Welfare_Act-National.pdf)

psychotherapists and social workers⁵.

Ombudsmen are appointed for a term of 5 years, with the possibility of renewal, by the governments of the lands and cannot be influenced in any way by politicians or authorities. Ombudsmen are required to submit an annual activity report to the provincial government activity. Cooperation with NGOs is very important and constructive and there are many ongoing projects.

The Ombudsman activity involves the processing of each individual case, legal and psychological counselling, mediation, mediation proposals and complaints to authorities, as well as the general representation of the interests and rights of children and youth in social relations. The institution plays an active role in combating the sexual exploitation of children, supporting them in the event of divorce/separation of the parents, protection of minor immigrants, promoting children's participation in political decision-making and implementation of the Convention on the Rights of the Child. In practice, the Ombudsman for Children and Young People is determined to promote the rights of the child and firmly request cooperation with social services/agencies, since, most often, they play an "administrator" role, and are not real defenders of the interests and rights of the child. At national level, the Standing Conference of Ombudsmen for Children and Young People was established.

Denmark ratified the UN Convention on the Rights of the Child on 19 July 1991. The National Council for Children⁶ was established under section 88 of Law no.453/1997⁷ under the direct coordination of the Ministry of Social Affairs by Order no. 458/2006. The role of the National Council for Children is to protect children's rights and to provide information on the living conditions of children in society. The Council offers expertise to public authorities on children and ensures that the provisions of the UN Convention on the rights of children are observed in Denmark. The National Council for Children promotes the cause of children based on the UN Convention on the Rights of the Child, by its main principles – the so-called three "p":

- protection – children are a vulnerable group and have the right to special protection;
- provision – children are entitled to care and to their interests being promoted;
- participation – children are members of the society with individual rights.

According to the Executive Order No. 1367/2012 (entered into force on 1 January 2013) for the amendment of Order no. 458/2006⁸, the Council, as the advocate of children, has the following responsibilities:

- gathers information on the conditions and situation of children, involving the views of children, for example, by requesting to visit institutions where children live or by requiring public authorities to describe their political decisions and administrative practices in the respective areas;
- assesses and identifies factors in the development of society, which may have an impact on children's rights and opportunities for child development in the light of the provisions of the UN Convention on the Rights of the Child and other international conventions in the field;
- communicates information about the conditions and circumstances of the children;
- National Council for Children must be consulted regarding the legislative initiatives or any other types of initiatives related to the issue of raising children;
- National Council for Children must make the voice of children be clearly heard among the general public;
- National Council for Children must permanently have on the agenda the debate of current issues of opportunities for development and rights of the children;
- National Council for Children shall notify the Folketing (Danish Parliament), Government and state authorities on all matters of general issues that are important for the situation of children in society, in order to protect the rights, needs and interests of children.

The National Council for Children is an independent and interdisciplinary institution, whose broad spectrum of activity relates to child growth and development, education and health of children, legal status of children, as well as that of those with special needs.

The Council is headed by a president and six members appointed for a period of 3 years proposed by the Ministry of Social Affairs and organizations specializing in the field of children, which have the right to nominate one representative to the general assembly of the institution; the Ministry of Social Affairs is responsible for choosing the member organizations of the National Council for Children. Members of the Council are entitled to elect an alternate president from among their own. The Council organizes an annual

⁵ <http://www2.ombudsnet.org/Ombudsmen/Austria/austria.htm>

⁶ The National Council for Children (<http://www.boerneraadet.dk/english>)

⁷ Danish Act on Legal Protection and Administration in Social Matters (<http://sm.dk/en/files/consolidation-act-on-legal-protection-and-administration-in-social-matters.pdf>)

⁸ Executive Order No. 1367 of 20 December 2012 (<http://www.boerneraadet.dk/english/legal-basis>)

meeting involving organizations and associations in the industry, as well as the authorities in whose area of activity the minors fall; as well, the Council submits them an annual activity report.

Finland has ratified the UN Convention on the Rights of the Child in 1991. On 1 March 2003, the Ministry of Social Affairs and Health established the Committee on the Rights of the Child. Based on the recommendations of this committee, the ministry submitted a draft law to Parliament for the establishment of the institution of Ombudsman.

The legal framework is Law nr.1221/2004 on Ombudsman for Children⁹, entered into force on 1 September 2005 and Government Decision of 21 April 2005, which established eligibility criteria for appointment of the Ombudsman for Children, but also other details, as well.

Ombudsman for Children in conjunction with the Ministry of Social Affairs and Health shall ensure that the situation and rights of children are taken into account in the national legislation and in all decision-making processes.

Ombudsman is appointed by the Government for a term of 5 years, renewable only once (the same person may hold no more than 2 terms), based on two criteria being met, higher education and an extensive experience in the field. The other members and staff are employed by the Ministry of Social Affairs and Health, at the proposal of the Ombudsman. Also at his proposal, the Government shall appoint an Advisory Committee on the child issues, for a term of 5 years, comprised of President (Ombudsman), vice president and no more than 14 members (from different related areas, at different levels).

The duties of the Advisory Committee are to assist the Ombudsman in: developing recommendations and taking decisions; promoting the cooperation of various national and international actors on the rights of the child; monitoring and assessing the national and international progress in matters concerning children; strengthening the status of the child in society and influencing attitudes in society in the sense of promoting the status and rights of the child; participation in any other assignments proposed by the Ombudsman.

Duties of the Ombudsman for Children, under the law, are: assessing the implementation of children's rights and interests and monitoring the living conditions of children and adolescents; monitoring the legislation and decision makers of civil society and assessing their impact on the general welfare of the child; developing initiatives and consultations in the civil society and promoting the interests of children in society; maintaining contact with children and adolescents and informing them on the decisions adopted; developing the forms of cooperation between different actors; transmitting information of interest to children also to sectors working with children; promoting the implementation of the UN Convention on the Rights of the Child in various ways.

Ombudsman for Children is entitled to receive from other authorities any information it needs to perform its duties. Annually, the Ombudsman shall submit to the Government, an activity report which shall include, among other things, the assessment regarding implementation of the rights of the child, the situation of the child and possible legislative projects.

The International Convention on the Rights of the Child was ratified by **France** in August 1990¹⁰, and by the Organic Law no. 333 of 29 March 2011¹¹ the institution of the Human Rights Defender (des droits Défenseur) was established, an independent authority of constitutional rank. The Defender of Children's Rights is one of the deputies of the Human Rights Defender, proposed by the latter and appointed by the prime minister, based on his knowledge and experience in the field.

Functions of the Human Rights Defender and those of his deputies are incompatible with those of: Member of the Government, of the Constitutional Council, of the Superior Council of Magistracy, of the Economic, Social and Environmental Council, as well as with any other elective position. Such positions are also incompatible with any other public function and professional activity, as well as with the position of chairman or member of a board of directors, executive committee, supervisory board and director in any company, firm or institution.

Article 4 of the Organic Law no. 333 of 29 March 2011, entrusted to the established authority the mission to protect and promote not only children's rights enshrined in national legislation and international treaties ratified by France, but also the implementation of the principle of the best interests of the child. This principle, provided in Article 3 of the UN Convention on the Rights of the Child is recognized by the Council of State and Court of Cassation to be directly applicable. The principle is not defined in any national or international text, but it is specified by the Committee on the Rights of the Child in the General Comment no. 14 (2013) as a dynamic concept, which should clarify, exist and inspire all rules, policies and decisions of authorities which

⁹ Law on the Ombudsman for Children 21.12.2004/1221 (http://www.lapsiasia.fi/en/overv/statutes/law_on_the_ombudsman)

¹⁰ <http://www.defenseurdesdroits.fr/connaitre-son-action/la-defense-des-droits-de-lenfant/presentation>

¹¹ Loi organique n° 2011-333 du 29 mars 2011 relative au Défenseur des droits (<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id>)

must be adapted to each situation, geographical and cultural environment of the child.

Under the law, Defenders of Child Rights may be referred to by medical services, social services, children and young people aged up to 21 years, parents, legal representatives, family members, associations for children's rights (registered for at least 5 years) or may act *ex officio*. Referral is free and does not interrupt or suspend the limitation periods of actions in civil, administrative or criminal matter, or those relating to judicial remedies by administrative or contentious proceedings.

The institution relies on a network of 450 delegates, all volunteers, distributed throughout the national territory, in places such as prefectures, sub-prefectures, courts or tribunals, public services, etc. These delegates are available to citizens for advice and information, free of charge, and confidentially, in relation to public service users' rights, children's rights, combating discrimination or violations of personal security ethics.

As part of the mission of defending the rights of children, the local network of delegates is completed by a network of 32 Young Ambassadors of Children's Rights (Jeunes Ambassadeurs des Droits des Enfants - JADE). These young people go throughout the whole school year in schools, centres of leisure and specialized structures (homes, institutes, closed educational centres, psychiatric services), for advice and information.

Law of 29 March 2011 grants the Defender of Children's Rights several means of intervention: requesting information, explanations or documents; hearing of any interested party; notifying competent authorities; spot checks; presentation of views before courts of law; establishing individual or general recommendations (in special circumstances, receives advice from specialists) that are enforceable.

Human rights defenders cannot challenge any court judgment. The civil, administrative and criminal courts may, *ex officio* or at the request of the parties, invite the defender to submit written or oral observations. The defender himself may request the courts that its comments be heard, in this case the hearing being at law. According to Art. 35 of the law, child rights defenders notify the competent local authorities of any element susceptible to justify the intervention of child protection services.

In **Italy**, the National Authority for Child's Rights was established by the Parliament through Law no.112 of 12 July 2011¹². The main task of the Authority is, on the one hand, to implement Article no. 31 of the Constitution on the protection of maternity, children and young people and support institutions that carry out these goals and, on the other hand, of the international provisions on children's rights, respectively, the UN Convention on the Rights of the Child, ratified by Italy through Law no. 176/1991.

In accordance with its legislative prerogatives, the National Authority for Child's Rights cannot hold its own lucrative personnel and has the following types of activities:

- organizing the National Conference for ensuring children's rights (under Article 3, para. 7 of law no.112/2011) by which it seeks to coordinate the joint activity of the regional ombudsmen, exchange of experience and examples of good practice and research in the field;
- promoting legislative projects in order to improve the general legislative framework on children's issues, with a particular focus on the issue of granting Italian citizenship to foreign children, adoption, as well as custody and legislation on youth;
- participation in Parliamentary Committee hearings responsible for the problems of children and adolescents, in order to implement regulations on custody and adoption; contribution in adopting the legislation on recognizing children;
- membership and participation as a full member of the European Network of Ombudspersons (ENOC);
- solving complaints received from minors or adults, associations and organizations; cooperation with regional authorities on child protection, social services and courts of law;
- establishing a mechanism for consultation with representatives of public institutions, such as judges, prosecutors, social workers, psychologists, lawyers and paediatricians.

Other tasks arising from the Law no. 112/2011 are: monitoring the implementation of the UN Convention on the Rights of the Child; reporting to the competent authorities any form of violation of children's rights; ensuring equal opportunities for minors in accessing rights; alerting the Government and regional and local authorities on all initiatives meant to support the promotion of the rights of children and youth.

In the current institutional setting in Italy, social policies are mainly under the legislative and administrative responsibility of the regions – Art. 117 and Art. 118 of the Constitution – falling under the authority of local government bodies.

State powers are maintained in education, in accordance with Art. 33 of the Constitution, ensuring the autonomy of educational institutions. Other social policies, however, are transferred to regions.

The State retains, however, important powers in the field, in terms of legislation, establishing the basic

¹² http://www.garanteinfanzia.org/sites/default/files/documenti/legge_112-2011.pdf

level of services to be provided in relation to social and civil rights and which must be guaranteed at national level – Art. 117, paragraph 2, letter m of the Constitution.

The state can ensure that the regional level, the basic level of service be guaranteed to all citizens, especially to the most vulnerable groups, such as children and adolescents. Nevertheless, the management of social policies involving children and adolescents, falls on the local government.

However, the protection of children's rights, as individuals, falls under the state power, being linked to the provisions of Art. 117 of the Constitution, paragraph 2, and also in relation to public order and security, and international relations of the state.

In 18 regions, specific bodies were created with the role of defending the rights of children, as well as in the autonomous provinces of Bolzano and Trento¹³. To ensure maximum cooperation at national level between regional bodies, law no.112/2011 provides the establishment of the National Conference for ensuring children's rights.

Although bearing different names, people representing the institution of the regional Ombudsman are elected by qualified majority by the Regional Council and may be removed from office only by this Council – with the same type of majority. Clear cases of incompatibility are provided, precisely for ensuring independence – for example, with offices of parliamentary, regional counsellor, members of the leadership of political parties or trade unions, administrators of public companies. Commissioners in this field have a 5-year term, in some cases are represented in the Regional Government (Veneto and Marche) or in the Regional Council (Lazio).

In **Netherlands**, the UN Convention on the Rights of the Child was ratified on 6 February 1995. The law on the setting up of the Ombudsman for Children was adopted in June 2010 and in April 2011 the institution started to function¹⁴. The Ombudsman for Children is an institution subordinated to the National Ombudsman of the Netherlands. Both institutions have an independent and impartial character, reporting to Parliament.

Under the law, the Ombudsman for Children must promote the rights of children by both public authorities and private organizations who work in the field of education, childcare and youth, and health system. The Ombudsman for Children has the following duties:

- providing information and advice on children's rights;
- providing professional assistance on request or on its own initiative to the Government or Parliament on the legislation or policies affecting children's rights;
- investigation of observing children's rights on its own initiative or upon submission of complaints;
- monitoring the way in which complaints submitted by children or their legal representatives are handled by the competent authorities other than the National Ombudsman.

In accordance with Article 12 of the Convention on the Rights of the Child, the Ombudsman for Children in the Netherlands must consider the views and interests of children.

According to his duties, the Ombudsman for Children must respond to complaints on violation of children's rights; complaints may concern an individual case or may indicate structural problems; in case of individual complaints, the institution may issue judgements/decisions, whereas in the case of general issues, the Ombudsman for Children can trigger a broad investigation, which in turn can result in sending a point of view to the government or the institutions involved.

The Ombudsman for Children must investigate complaints against public authorities, as well as those against private organizations and institutions whose fields relate to the care of children and youth, their health and education.

Norway has ratified the UN Convention on the Rights of the Child on 8 January 1991.

The Ombudsman for Children¹⁵, in Norway, is an independent institution, politically neutral, created by Law no. 5/1981, as further amended. Ombudsman is appointed by the King (art. 2), for a term of six years. The main duty of the Ombudsman is to promote the interests of children in society and to monitor the living standard of children.

Norway was the first country in the world to set up an Ombudsman for Children (1981), while establishing the European Network of Ombudspersons for Children (ENOC) at its initiative, which operates under the supervision of the Council of Europe and is based in Strasbourg.

Other duties of the Norwegian Ombudsman, under the law, are:

- to propose measures for consolidating the security of children;
- to submit proposals for measures to prevent or resolve possible conflicts or disagreements arising

¹³ <http://www.garanteinfanzia.org/garanti-regionali>

¹⁴ Annual report to ENOC by the Dutch Children's Ombudsman, 2011
(https://www.crin.org/docs/FileManager/enoc/2011_Annual_Update_The_Netherlands.pdf)

¹⁵ <http://barneombudet.no/english/about-the-ombudsman/>

between children and society;

- to ensure dissemination of a large amount of information, addressed to the public and private sectors, on children's rights and the measures required for their observance;
- to ensure that children's rights stipulated in the UN Convention on the Rights of the Child and national legislation are complied with by the Norwegian authorities

Ombudsman decides whether the facts submitted to it are sufficient to initiate appropriate actions. Ombudsman has free access to any public or private institution operating in the field of children's rights. Government authorities and other institutions are obliged to provide the Ombudsman with all the information it needs for the effective exercise of its activity.

The Ombudsman for Children cannot interfere with the decisions taken by other public authorities, such as Social Services, Norwegian Directorate of Immigration, schools and courts of law; Ombudsman cannot get involved in conflicts triggered between parents in establishing custody or in disputes between parents and children.

Moreover, the institution of Ombudsman for Children in Norway performs activities such as:

- conducting specialized seminars for the personnel involved in working with children;
- submitting written views to authorities when children's rights are not properly protected, there is a new legislative framework or changes occur in the existing laws;
- participation in meetings with members of the Government or Parliament;
- expert assistance on all issues related to the rights of children addressed to the online institution, by e-mail or telephone;
- direct communication with children and young people for better transmission of their opinions to decision makers.

Poland ratified the UN Convention on the Rights of the Child on 7 June 1991 and the institution of the Ombudsman for Children was created by Law of 6 January 2000.

Under the law, the Ombudsman is appointed by the Sejm, with the consent of the Senate, at the proposal of the President of the Sejm, at the proposal of the Senate, of a group of minimum 15 deputies or 15 senators. The term of office is of 5 years from the date of taking the oath before the Sejm and may be renewed only once.

Ombudsman is an authority independent of any other state authority and is accountable only to the Sejm. Furthermore, it can be prosecuted, investigated, detained or arrested only with the consent of the Sejm. Ombudsman cannot hold other public office and cannot perform another public or professional activity that prevents the exercise of its duties.

Art. 9 of the law provides that the Ombudsman for Children may request explanations and information, as well as access to archives and documents to any authority, public institution or organization; also, it may request any relevant bodies, institutions, organizations, including the Human Rights Ombudsman, to consider the best interests of the child in the performance of its duties.

Ombudsman presents to public authority agencies, organizations and institutions relevant comments and proposals designed to ensure an effective protection of the rights and interests of the child and lead to streamlining of procedures in solving certain problems. Ombudsman may also request for such authorities to prepare legislative projects or proposals on a specific issue or to amend or supplement other regulatory documents.

Ombudsman shall submit annually to the Sejm and the Senate an activity report that will be made public. The institution is financed from the state budget.

In 1990, the Parliament of **Sweden**¹⁶ has ratified the UN Convention on the Rights of the Child, and in 1993 the legislative proposal on the Ombudsman for Children was adopted. The Ombudsman Act provides that children should participate in public debate, to promote children's interests and positively influence the attitude of policy makers and, in general, of all adults, but without being able to intervene in individual cases.

Ombudsman for Children is appointed by the Government for a fixed term, the first Ombudsman being appointed in July 1993.

In 2002, the legislative framework regarding the activity of the Ombudsman for Children in Sweden has changed. The new provisions¹⁷ reinforce the authority and mandate of the Ombudsman, regulating in detail the duties of the institution. These refer to:

- representing the rights and interests of children and young people in accordance with the provisions of the UN Convention on the Rights of the Child;
- submitting to Government proposals for amendments to the existing legislation and compliance with

¹⁶ <http://www.barnombudsmannen.se/om-webbplatsen/english/background/>

¹⁷ <http://www.barnombudsmannen.se/om-webbplatsen/english/the-ombudsman-for-children-act/>

international conventions in the field;

- dissemination of information, formulating views and representing the rights and interests of children in public debates;
- drafting of studies and statistics on the living conditions of children and young people;
- monitoring international developments concerning the application of the UN Convention on the Rights of the Child and its implementation.

Section 5 of the law gives children the Ombudsman for Children the power to request government agencies, municipal and county authorities, information on the activity performed and transposing of the provisions of the UN Convention for the Rights of the Child. If so required by circumstances, the Ombudsman for Children may convene to discussions the aforementioned authorities.

Ombudsman for Children must report without delay to the social services, if referred to, of the existence of a situation of abuse of a minor (Section 7). Moreover, if there are other special circumstances which the social services should be informed about, the Ombudsman has the obligation to report them and to provide them with all the necessary support for investigating the case.

Romania has ratified the UN Convention on the Rights of the Child on 28 September 1990, by Law no. 18/1990, republished in 2001, undertaking to ensure the necessary conditions for the rights of all children in this country and was inspired by it in drafting Law no. 272/2004 on the protection and promotion of children's rights. Although many governmental institutions in Romania have included in their statutes the protection and monitoring of child rights, there is no special institution that operates fully independent, that would take over such duties, as in other European countries.

Currently, in Romania, there is a Deputy Ombudsman encompassing the "rights of children, family, youth, pensioners, persons with disabilities", according to the title on the Ombudsman website. Non-governmental organizations have warned that these powers are too broad and general for its mission to become effective. Since 2011, a draft project was proposed in the Parliament, which establishes the title of Advocate for Children for one of the deputies of the Ombudsman. This would have meant less than similar European laws, where the Ombudsman is generally a separate institution, but still a step forward in Romanian context. Having passed the Chamber of Deputies, the draft project was rejected by the Senate in 2012, after a negative report of the Committee on Legal Affairs.

Committee on the Rights of the Child of the United Nations recommended, in the report on Romania, already since 2009, that our country established an ombudsman for children. Also, in the European Network of Ombudspersons for Children (ENOC), established in 1997, Romania can only participate as an observer, given that we have no separate institution with that mission.

4. CONCLUSIONS

According to the latest information, over 40 countries have ombudsmen for children, with slightly different titles, such as that of "Commissioner for Children", "Child Advocate", "Defender of the Rights for Children", etc. UNICEF and the Committee on the Rights of the Child introduced the term "independent institutions for the protection of the rights of the child". It was designed as a generic term that allows different institutional settings. Ombudsmen are included in a European network of such ENOC type institutions, working under the tutelage of the Council of Europe and are based in Strasbourg.

Usually, the Ombudsman for Children has a term that is established by a national law and requires personnel to assist it in fulfilling its mandate. In ordinary language, the term ombudsman refers not just to the person appointed to that position, but also to its office.

With functions similar to the Ombudsman, the Ombudsman for Children deals exclusively with children's rights, freedoms and protection of children. For example, it can intervene, expressing its opinions, in legislative draft projects concerning children, and it may also call to account other state institutions on the measures taken.

The Ombudsman for Children concept was originally developed in the Scandinavian countries, the first Ombudsman for Children appointed by a government, through national legislation adopted by Parliament, beginning its operation in Norway in 1981. Normally, the Ombudsman for Children has an office or a secretariat that supports it. When we refer to the Ombudsman for Children, we refer both to the person who is officially appointed to this position and the office or institution of Ombudsman for Children. Some countries have National Commissions for Human Rights or an Ombudsman with a general mandate for human rights. Some of them have offices, branches or departments that function as Ombudsman for Children. These are also included in the concept of the Ombudsman for children.