

Children's Ombudsman: other help (special powers)

This leaflet will summarise the Children's Ombudsman's responsibilities and explain when and how he can use his special powers.

The document occasionally refers to leaflets issued by the Public Defender of Rights (Ombudsman). You can find them at www.ochrance.cz in the section titled [I am not sure how to deal with a difficult life situation](#).

What does the Children's Ombudsman normally do?

The Children's Ombudsman protects **the rights of children (people under 18 years of age)**:

- **in the cases of individual children**, he inquires into the procedure of authorities, facilities and various institutions and persons exercising public authority; and
- **generally** (systematically), he monitors and promotes children's rights under the [Convention on the Rights of the Child](#) and other international treaties.

For more details, see the leaflet [Children's Ombudsman/Defender of Children's Rights: what he does and does not do?](#)

What is the purpose of the special powers and what exactly can the Children's Ombudsman do?

The Children's Ombudsman can use his special powers if he encounters gaps in legislation, serious maladministration on the part of a public authority that puts a child at risk, or general problems with official procedures.

The Children's Ombudsman can:

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| 1 | recommend the enactment , amendment or repealing of a legal or internal regulation and the ratification of an international treaty | under Section 22 (1) of the Public Defender of Rights and Defender of Children's Rights Act | → |
| 2 | petition the Constitutional Court to abolish a secondary legal regulation or intervene in proceedings held before the Constitutional Court on the abolition of a legal regulation | pursuant to Section 64 (2)(f) of the Constitutional Court Act | →→ |
| 3 | intervene in or initiate certain legal proceedings concerning the child | pursuant to Section 69 (3) of the Constitutional Court Act | →→ |
| 4 | bring an administrative action to protect public interest | pursuant to Section 8a of the Special Court Proceedings Act | →→ |
| 5 | petition the court to annul a measure of general nature | pursuant to Section 66 (3) of the Code of Administrative Justice | →→→ |
| | | pursuant to Section 101a (3) of the Code of Administrative Justice | →→→ |

- 1 Recommendation to enact, amend or repeal legislation or an internal regulation and to ratify an international treaty
- ✓ The Children's Ombudsman **makes recommendations** when he identifies **fundamental flaws in the legislation** that need to be rectified. If he considers a piece of legislation "merely" **inappropriate, insufficient** or **ambiguous**, he will recommend an amendment if **he knows of a better solution**.
- ✗ The Children's Ombudsman **avoids making recommendations** concerning issues of policy (e.g. tax rates, the amount of welfare benefits or subsidy rules) and matters where he lacks data to make valid conclusions.

Laws

The Children's Ombudsman makes recommendations to enact, amend or repeal legislation to **the Government**.

He presents his recommendations to **the Chamber of Deputies** in his [annual report](#). **However, he cannot directly introduce a bill** – he does not have the right of legislative initiative. Only individual deputies (MPs), a group of deputies, the Senate, the Government or a Regional Assembly can do this.

Secondary legislation and internal regulations

A recommendation to enact, amend or repeal

- a secondary regulation (e.g. ministerial decree, Government regulation) or
- an internal regulation (e.g. methodological guidance of a public authority, internal instruction by the head of a public authority)

is given by the Children's Ombudsman to **the person who issued** (or could have issued) **the given regulation**.

Measures of general nature

A measure of general nature is something in between an official decision and a legal regulation (for example when a Regional Authority draws school districts [when the compulsory school attendance of certain children is at risk](#); or special rules for the holding of entrance or final examinations [during restrictions limiting the presence of children, pupils and students in schools](#); traffic regulations on local roads; [conditions for the distribution, prescription and dispensation of medicines](#) set by the Ministry of Health; a municipal spatial (zoning) plan; or a protective measure enacted by the Ministry of Health under the [Protection of Public Health Act](#)). If the Children's Ombudsman finds that an administrative authority has made an error in a measure of general nature, he may propose its review and amendment pursuant to [Section 19 \(a\) of the Public Defender of Rights and Defender of Children's Rights Act](#). If he fails to achieve a change, he can ask the court to annul the problematic measure (see part [5](#)).

Draft legislation (commentary procedure)

The Children's Ombudsman also comments on bills and other draft regulations within what is called the "inter-ministerial commentary procedure". Comments that do not relate solely to the proposed text of the bill/regulation (for example, a proposal to add a new section) may be rejected by the sponsor as "comments beyond the scope of the draft".

International treaties and agreements

The Children's Ombudsman makes recommendations to **the Government** to ratify international treaties/agreements concerning the protection of fundamental rights and freedoms.

2 Children's Ombudsman and the Constitutional Court

Laws

The Children's Ombudsman **cannot petition the Constitutional Court to annul a law.**

If **someone else initiates** proceedings to annul a law, the Children's Ombudsman **may intervene in the proceedings and comment** on the proposal.

Regulations (secondary)

The Children's Ombudsman may **petition the Constitutional Court to annul a secondary regulation** (a Government regulation, ministerial decree, generally binding decree, municipal or regional regulation or a Government decision under the [Crisis Act](#)) if it contravenes the law or constitutional order.

If **someone else initiates** proceedings to annul a [secondary regulation], the Children's Ombudsman **may intervene in the proceedings and comment** on the proposal.

Constitutional complaints – the Ombudsman as *amicus curiae* (friend of the court)

The Constitutional Court may ask the Children's Ombudsman for an opinion when deciding on a constitutional complaint (on an individual case). The Children's Ombudsman then presents his findings to the Court (on the matter at hand or on the general practice of administrative authorities) and provides support to one of the parties with his arguments.

It is solely up to the Constitutional Court to decide on the matter.

3 Children's Ombudsman in civil court proceedings concerning a child



The Children's Ombudsman will **exceptionally** use the power to intervene in proceedings or to initiate proceedings; for example, if he finds that the child's rights are at risk because the body for social and legal protection of children representing the child in the proceedings as a guardian *ad litem* has made an error and refuses to rectify it.

Intervention in court proceedings

The Children's Ombudsman **may intervene** in proceedings in the following cases:

- **consent to an interference with the child's integrity:** the court authorises interference (medical or other intervention) e.g. if a child over the age of 14 is at odds with his or her parents (parents agree with an intervention while the child does not, and vice versa) or if the intervention in the case of a very young child may have permanent and serious consequences or may seriously endanger his or her life or health (this does not apply to urgent medical interventions to protect the child's health);
- **protection against domestic violence:** a court can order a person who has hurt someone domestically to leave home for a time and prohibit the perpetrator from going near the person he or she has hurt;
- **establishing or denying paternity:** the court determines who is or is not the child's true father;
- **judicial care for minor children:** the court decides matters such as which parent will care for the child, the conditions under which the child will see the other parent, child support, parental responsibility, guardianship or custody, institutional upbringing etc. (see [Section 466](#) of the Special Court Proceedings Act);
- **permissibility of admission or holding of the child in a healthcare institution:** the court examines whether the hospital or treatment facility can admit the child despite the child's or the parent's opposition, and whether the child should stay there;

- **inadmissibility of holding of the child in a social services facility:** the court decides whether a social services facility, such as a home for people with disabilities, must release the child;
- **adoption:** the court decides on the adoption of the child.

Application to initiate court proceedings

In cases where a child could do the same, the Children's Ombudsman can apply to initiate proceedings on:

- **permissibility of admission or holding of the child in a healthcare institution,** and
- **inadmissibility of holding of the child in a social services facility.**

4 Action to Protect Public Interest

The Children's Ombudsman may bring an administrative action **against a decision of an administrative authority** within **3 years** of its legal force.

He must demonstrate **a compelling public interest** in bringing the action. Therefore, the action should protect not only the child affected by the particular administrative decision but also provide broader protection in cases where there is no one to defend the public interest in the proceedings.

5 Petition for the annulment of a measure of general nature

The Children's Ombudsman may **petition the administrative court to annul a measure of general nature** **within 3 years** from the date when it came into force.

He must demonstrate **a compelling public interest** in bringing the petition.

Where can I find an overview of the use of special powers?

You will find the cases where the **Children's Ombudsman** used his special powers in the [Ombudsman's Opinions Register \(ESO\)](#) at www.ochrance.cz.