

ACT
of 6 January 2000
on the Ombudsman for Children
(uniform text: Journal of Laws of 2023, item 292)

Article 1. [Basic tasks of the Ombudsman for Children; qualifications required of the Ombudsman for Children]

1. The Ombudsman for Children is established.
2. The Ombudsman for Children, hereinafter referred to as the Ombudsman, upholds the rights of the child as set forth in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other laws, respecting the responsibilities, rights and duties of parents.
3. In exercising their powers, the Ombudsman is guided by the welfare of the child and takes into account that the natural environment for the child's development is the family.
4. An Ombudsman can be a person who:
 - 1) is a Polish citizen;
 - 2) has full capacity for entering into legal transactions and enjoys full public rights;
 - 3) has not been convicted of an intentional crime by a final judgement;
 - 4) has completed higher education and obtained a master's degree or an equivalent degree;
 - 5) has at least five years of experience working with or for children;
 - 6) is of impeccable character and is distinguished by high authority for moral qualities and social sensitivity.

Article 2. [Child as defined by the Act]

1. Under the Act, a child is any human being from conception to the age of majority.
2. The attainment of the age of majority is determined by separate regulations.

Article 3. [Tasks of the Ombudsman for Children]

1. The Ombudsman, in the manner prescribed by this Act, takes measures to ensure the full and harmonious development of the child, respecting the child's dignity and subjectivity.
2. The Ombudsman works to protect the rights of the child, in particular:
 - 1) the right to life and health protection;
 - 2) the right to upbringing in a family;
 - 3) the right to decent social conditions;
 - 4) the right to education.

3. The Ombudsman takes action to protect the child from violence, cruelty, exploitation, demoralisation, neglect and other ill-treatment.
4. The Ombudsman provides children with disabilities with special care and assistance.
5. The Ombudsman promotes children's rights and methods of protecting them.

Article 4. [Appointment of the Ombudsman for Children]

1. The Ombudsman is appointed by the Sejm, with the consent of the Senate, upon the request of the Speaker of the Sejm, the Speaker of the Senate, a group of at least 35 deputies or at least 15 senators.
2. The detailed procedure for nominating candidates for Ombudsman is determined by a resolution of the Sejm.
3. The resolution of the Sejm on the appointment of the Ombudsman is sent immediately by the Speaker of the Sejm to the Speaker of the Senate.
4. The Senate adopts a resolution on consenting to the appointment of the Ombudsman within one month from the date of receipt of the resolution of the Sejm referred to in paragraph 3. Failure of the Senate to pass a resolution within a month constitutes consent.
5. If the Senate does not approve the appointment of the Ombudsman, the Sejm appoints another person to the position. The provisions of paragraphs 1-4 apply accordingly.
6. The former Ombudsman shall perform their duties until the new Ombudsman takes the oath of office, subject to Article 8 paragraph 1.

Article 5. [The oath]

Before assuming their duties, the Ombudsman shall take the following oath before the Sejm:

“I solemnly swear that in carrying out the duties entrusted to me as Ombudsman for Children I will remain faithful to the Constitution of the Republic of Poland, I will uphold the rights of the child, guided by the laws, the welfare of the child and the welfare of the family. I swear that I will perform the duties entrusted to me impartially, with the utmost conscientiousness and diligence, that I will uphold the dignity of the position entrusted to me, and that I will keep legally protected secrets.”

The oath may be taken with the addition of the phrase “So help me God.”

Article 6. [Term of office of the Ombudsman for Children]

1. The term of office of the Ombudsman is 5 years, starting from the date of taking the oath of office before the Sejm.
2. The term of office of the Ombudsman expires in the event of their death or dismissal.
3. The same person cannot be Ombudsman for more than two consecutive terms.

Article 7. [Immunity of the Ombudsman for Children]

1. The Ombudsman is independent of other state bodies in the Ombudsman's activities and is accountable only to the Sejm under the terms set forth in the Act.

2. The Ombudsman shall not be held criminally liable or deprived of liberty without the prior consent of the Sejm, subject to paragraph 2a.

2a. The Ombudsman may agree to be held criminally liable for the petty offences referred to in paragraph 2b, in accordance with the procedure set forth in that provision.

2b. If the Ombudsman commits a petty offence referred to in Chapter XI of the Act of 20 May 1971 – Code of Petty Offences (Journal of Laws of 2022, items 2151, 2311, 2581 and 2600), acceptance by the Ombudsman of a penalty notice or payment of a fine, in the case of punishment with a penalty notice in absentia, as referred to in Article 98 § 1 item 3 of the Act of 24 August 2001 – Code of Procedure in Petty Offence Cases (Journal of Laws of 2022, item 1124), is tantamount to a statement of their consent to being held accountable in this form.

2c. The Ombudsman shall not be detained or arrested, except when apprehended in the act of committing a crime and if their detention is necessary to ensure the proper course of the proceedings. The Speaker of the Sejm shall be immediately notified of the detention, and they may order the immediate release of the detainee.

3.

The Ombudsman cannot:

1) hold any other position, except that of a professor at a higher education institution, or engage in other professional activities;

2) belong to a political party;

3) conduct public activities irreconcilable with the duties and dignity of their office.

4. Upon cessation of their duties, the Ombudsman has the right to return to the position previously held or to be given an equivalent position to the one previously held.

5. In the case referred to in paragraph 4, termination of employment by the employer, with the exception of an elected employment relationship, and a change in the terms and conditions of employment or pay within two years after ceasing to perform the duties of the Ombudsman may be made only with the approval of the Presidium of the Sejm.

Article 7a. [Statute of limitations for an act covered by immunity]

The statute of limitations in criminal proceedings for an act covered by immunity does not run during the period of immunity.

Article 7b. [Submitting a request for consent to hold the Ombudsman for Children criminally liable]

1. A request for consent to hold the Ombudsman criminally liable in a case of a crime prosecuted by public indictment is submitted through the Prosecutor General.

2. A request for consent to hold the Ombudsman criminally liable in a private prosecution case is submitted by the private prosecutor, after the case is brought before the court.

3. The request referred to in paragraph 2 shall be prepared and signed by an attorney or attorney-at-law, except for requests submitted in their cases by judges, prosecutors, advocates, attorneys-at-law, notaries, and professors and habilitated doctors of legal sciences.

4. The requests referred to in paragraphs 1 and 2 shall include:

1) the designation of the applicant and the attorney, if appointed;

2) the full name as well as date and place of birth of the Ombudsman;

3) indication of the legal basis for the request;

4) precise specification of the act to which the application relates, indicating the time, place, manner and circumstances of committing it and its consequences, in particular, the nature of the resulting damage;

5) justification.

Article 7c. [Consideration of a request for consent to hold the Ombudsman for Children criminally liable]

1. A request for consent to hold the Ombudsman criminally liable shall be submitted to the Speaker of the Sejm.

2. If the request does not meet the formal requirements referred to in Article 7b paragraphs 3 or 4, the Speaker of the Sejm shall call on the applicant to correct or supplement the request within 14 days, indicating the necessary scope of correction or supplementation. If the request is not corrected or supplemented within the indicated time and scope, the Speaker of the Sejm shall decide to leave the application unconsidered.

3. If the request meets the formal requirements referred to in Article 7b paragraphs 3 and 4, the Speaker of the Sejm shall refer it to the body competent under the Rules of procedure of the Sejm to consider the request, while notifying the Ombudsman of the contents of the request.

4. The authority competent to consider the request shall notify the Ombudsman of the time-limit for considering the request. There should be at least 7 days between the delivery of the notice and the time-limit for considering the request, unless there is an emergency.

5. At the request of the authority competent to consider the request, the court or the relevant body before which the proceedings against the Ombudsman are pending shall provide access to the records of the proceedings.

6. The Ombudsman shall provide the authority responsible for considering the application with explanations and the Ombudsman's own conclusions on the matter in written or oral form.

7. After considering the case, the body responsible for considering the request shall adopt a report with a proposal to accept or reject the request.

8. During the Sejm's consideration of the report referred to in paragraph 7, the Ombudsman has the right to speak.

9. The Sejm consents to holding the Ombudsman criminally liable by a resolution adopted by an absolute majority of the statutory number of deputies. Failure to obtain the required majority of votes means the adoption of a resolution not to approve holding the Ombudsman criminally liable.

Article 7d. [Request for consent to the detention or arrest of the Ombudsman for Children]

1. The prohibition of detention referred to in Article 7 paragraph 2c includes any form of deprivation or restriction of the Ombudsman's personal liberty by authorities exercising coercive means.

2. A request for approval of the Ombudsman's detention or arrest shall be submitted through the Attorney General.

3. The request referred to in paragraph 2 shall include in particular:

- 1) designation of the applicant;
- 2) the full name as well as date and place of birth of the Ombudsman;
- 3) the precise specification of the act and its legal qualification;
- 4) the legal basis for the application of a particular measure;
- 5) justification, indicating in particular the necessity of applying a particular measure.

4. The provisions of Article 7c paragraphs 1-8 shall apply *mutatis mutandis* to the processing of a request for consent to detention or arrest of the Ombudsman.

5. The Sejm approves the detention or arrest of the Ombudsman by a resolution adopted by an absolute majority of the statutory number of deputies. Failure to obtain the required majority of votes means the adoption of a resolution not to approve the detention or arrest of the Ombudsman.

6. The requirement to obtain the approval of the Sejm does not apply to the execution of a penalty of imprisonment imposed by a final court judgement.

Article 7e. [Resolution of the Sejm on consent to hold the Ombudsman for Children criminally liable or to detain or arrest them]

1. The Speaker of the Sejm shall immediately send the applicant the resolution referred to in Article 7c paragraph 9 and Article 7d paragraph 5.

2. The resolutions referred to in paragraph 1 are subject to publication in the Official Journal of the Republic of Poland "Monitor Polski".

Article 7f. [Liability of the Ombudsman for Children for petty offences]

The provisions of the Act regarding the Ombudsman's criminal liability shall apply *mutatis mutandis* to liability for petty offences.

Article 7g. [Detailed procedure for giving consent to holding the Ombudsman for Children criminally liable or to their arrest or detention]

The detailed procedure for handling the cases referred to in Articles 7a-7f is specified in the Rules of procedure of the Sejm.

Article 8. [Dismissal of the Ombudsman for Children before the end of their term]

1. The Sejm, with the consent of the Senate, dismisses the Ombudsman before the expiration of their term if:

- 1) they have relinquished office;
- 2) they became permanently incapable of performing their duties as a result of illness or loss of strength, as determined by a medical certificate;
- 3) they have breached their oath;
- 4) they have been convicted of an intentional crime by a final judgement.

2. The Sejm passes a resolution to dismiss the Ombudsman at the request of the Speaker of the Sejm, the Speaker of the Senate, a group of at least 35 deputies or at least 15 senators.

3. The Sejm's resolution on the dismissal of the Ombudsman is immediately sent by the Speaker of the Sejm to the Speaker of the Senate.

4. The Senate adopts a resolution on consenting to the dismissal of the Ombudsman within one month from the date of receipt of the Sejm's resolution referred to in paragraph 3. Failure of the Senate to pass a resolution within a month constitutes consent.

Article 9. [Procedure for taking action by the Ombudsman for Children]

1. The Ombudsman takes the actions provided for by the Act on their own initiative, taking into account, in particular, information from citizens or their organisations indicating violations of the rights or welfare of the child.

2. The Ombudsman notifies the person or organisation that reported the information about the violation of the rights or welfare of the child of the position the Ombudsman has taken and, if action has been taken, of its effects.

Article 10. [Powers of the Ombudsman for Children]

1. The Ombudsman can:

- 1) investigate, even without notice, every case on the spot;
 - 2) demand from public authorities, organisations or institutions to provide explanations, information or access to files and documents, including those containing personal data, also for inspection at the Office of the Ombudsman for Children;
- 2a) report participation and participate in proceedings before the Constitutional Court initiated on the basis of a request of the Commissioner for Human Rights or in constitutional complaint cases involving the rights of the child;
 - 2b) submit requests to the Supreme Court to resolve discrepancies in the interpretation of the law in the area of legal provisions on children's rights;

- 2c) file a cassation or a cassation complaint against a final ruling, in accordance with the procedure and rules set forth in separate regulations;
- 3) demand the initiation of civil proceedings and participate in proceedings already pending – with the rights of a prosecutor;
- 3a) take part in already pending juvenile proceedings – with the rights of a prosecutor;
- 4) demand the initiation of pre-trial proceedings by an authorised prosecutor in criminal cases;
- 5) request the initiation of administrative proceedings, file complaints with the administrative court, as well as participate in these proceedings – with the rights of a prosecutor;
- 6) file a request for punishment in petty offence proceedings, in accordance with the procedure and rules set forth in separate regulations;
- 7) commission studies and the preparation of expert reports and opinions.

1a. The Ombudsman, guided by the welfare of the child and reasons indicating the impossibility of providing children with family foster care, issues the opinion referred to in Article 106(4)(2)(j) of the Law of 9 June 2011 on family support and the foster care system (Journal of Laws of 2022, item 447, 1700 and 2140).

2. The Ombudsman may refuse to disclose the personal data of the person from whom they obtained information indicating a violation of the rights or welfare of a child, and the person affected by the violation, as well as the documentation collected in the course of investigating the case, including to public authorities, if they deem it necessary to protect the freedoms, rights and interests of an individual.

Article 10a. [Requesting authorities, organisations or institutions to take action for the child]

1. The Ombudsman may also request the competent authorities, organisations or institutions to take action for the benefit of the child within their scope of competence.
2. The bodies, organisations and institutions referred to in paragraph 1 shall take up cases referred by the Ombudsman.
3. The body, organisation or institution which the Ombudsman has requested to take action for the child is obliged to inform the Ombudsman immediately, but no later than within 30 days, of the actions taken or the position taken.
4. If the body, organisation or institution referred to in paragraph 1 fails to inform the Ombudsman of the actions taken or the position taken, or if the Ombudsman does not share their position, the Ombudsman may request the relevant superior body to take appropriate action.
5. If the Ombudsman finds a violation of the rights or welfare of the child in the activities of a body, organisation or institution referred to in paragraph 1, they may demand the initiation of disciplinary proceedings or the application of official sanctions.

Article 10b. [Duty to cooperate with and assist the Ombudsman for Children]

The body, organisation or institution approached by the Ombudsman is obliged to cooperate with them and provide them with assistance, in particular:

- 1) provide access to the files and documents of the case under investigation;
- 2) provide the Ombudsman with information and explanations requested by them;
- 3) provide explanations of the factual and legal basis for its decisions.

Article 10c. [Information Processing by the Ombudsman for Children]

1. The Ombudsman may process any information, including personal data, necessary to carry out their statutory tasks.
2. The Ombudsman may process personal data referred to in Article 9(1) and Article 10 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (Official Journal EU L 119, 04.05.2016, p. 1, as amended), solely for the purpose of protecting human and civil rights and freedoms in carrying out its statutory tasks.
3. The Ombudsman allows persons with written authorisation to process personal data. The condition for granting the authorisation is a written commitment by the authorised person to keep the processed personal data confidential.

Article 11. [Evaluations and conclusions presented by the Ombudsman for Children]

1. The Ombudsman shall submit to the relevant public authorities, organisations and institutions assessments and proposals aimed at ensuring effective protection of the rights and welfare of the child and improving the handling of cases in this regard.
2. The Ombudsman may also apply to the competent authorities for a legislative initiative or for the issuance or amendment of other legal acts.
3. The bodies, institutions and organisations to which the Ombudsman addressed the requests specified in paragraphs 1 and 2 are obliged to respond to these requests within 30 days from the date of their receipt.

Article 11a. [Cooperation of the Ombudsman for Children with other entities]

The Ombudsman cooperates with associations, civic movements and other voluntary associations and foundations working for the protection of children's rights.

Article 12. [Informing the Parliament about the work of the Ombudsman for Children]

1. The Ombudsman submits to the Sejm and the Senate, annually, no later than by 31 March, information on their activities and comments on the state of observance of children's rights.
2. The Ombudsman's information is made public.

Article 13. [Office of the Ombudsman for Children and Deputy Ombudsman for Children]

1. The Ombudsman performs their tasks with the help of the Office of the Ombudsman for Children.
2. The Ombudsman shall grant, by order, a statute that defines the organisation of the Office.

3. The Ombudsman may appoint a Deputy Ombudsman. The Ombudsman dismisses the Deputy Ombudsman.

4. The Ombudsman determines the terms of reference of the Deputy Ombudsman.

Article 14. [Covering expenses related to the functioning of the Ombudsman for Children]

Expenses related to the functioning of the Ombudsman are included in the Budget Act and covered by the state budget.

Article 15.

In the Act of 31 July 1981 on the remuneration of persons holding executive state positions (Journal of Laws No. 20, item 101, of 1982 No. 31, item 214, of 1985 No. 22, item 98 and No. 50, item 262, of 1987 No. 21, item 123, of 1989. No. 34, item 178, of 1991 No. 100, item 443, of 1993 No. 1, item 1, of 1995 No. 34, item 163 and No. 142, item 701, of 1996 No. 73, item 350, No. 89, item 402, No. 106, item 496 and No. 139, item 647, of 1997 No. 75, item. 469 and No. 133, item 883, of 1998 No. 155, item 1016 and No. 160, item 1065, and of 1999 No. 110, item 1255) in Article 2, item 2, after the words “Commissioner for Human Rights”, the words “Ombudsman for Children’s Rights”, shall be added.

Article 16.

The Act of 16 September 1982 on employees of state offices (Journal of Laws No. 31, item 214, of 1984 No. 35, item 187, of 1988 No. 19, item 132, of 1989. No. 4, item 24 and No. 34, items 178 and 182, of 1990 No. 20, item 121, of 1991 No. 55, item 234, No. 88, item 400 and No. 95, item 425, of 1992 No. 54, item 254 and No. 90, item 451, of 1994 No. 136, item 704, of 1995 No. 132, item 640, of 1996 No. 89, item. 402 and No. 106, item 496, of 1997 No. 98, item 604, No. 133, items 882 and 883, and No. 141, item 943, of 1998 No. 131, item 860, No. 155, item 1016, and No. 162, item 1118, and of 1999 No. 49, item 483 and No. 70, item 778) shall be amendeded as follows: (amendments omitted).

Article 17.

The Act of 15 July 1987 on the Commissioner for Human Rights (Journal of Laws of 1991 No. 109, item 471, of 1998 No. 106, item 668, and of 1999 No. 49, item 483) shall be amended as follows: (amendments omitted).

Article 18.

In the Act of 23 December 1994 on the formation of funds for remuneration in the state budget sphere (Journal of Laws of 1995, No. 34, item 163, of 1996, No. 106, item 496 and No. 139, item 647, of 1997, No. 133, item 883, of 1998, No. 117, item 756, No. 155, items 1014 and 1016, and No. 160, item. 1059, and of 1999 No. 62, item 684 and No. 72, item 802) in Article 2, paragraph 2, item 1, after the words “Office of the Commissioner for Human Rights”, the words “Office of the Ombudsman for Children” shall be added.

Article 19.

In the Act of 9 May 1996 on the exercise of the mandate of deputy and senator (Journal of Laws No. 73, item 350 and No. 137, item 638, of 1997 No. 28, item 153, No. 98, item 604, No. 106, item 679, No. 121, item 770, and No. 160, item 1080, of 1998 No. 162, item 1118, and of 1999 No. 52, items 527 and 528) in Article 30, paragraph 1, after the words “in the

Office of the Commissioner for Human Rights”, the words “in the Office of the Ombudsman for Children” shall be added.

Article 20.

In the Act of 26 November 1998 on public finance (Journal of Laws No. 155, item 1014, and of 1999 No. 38, item 360, No. 49, item 485, No. 70, item 778, and No. 110, item 1255) in Article 83 paragraph 2, after the words “Commissioner for Human Rights”, the words “Ombudsman for Children” shall be added.

Article 21.

The Act enters into force on 1 January 2000.