

## **General comment on children's rights to access to justice and effective remedies**

Written submission by the Provedor de Justiça

(Ombudsman)

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## I. Introduction

The Ombudsman (*Provedor de Justiça*) is an independent constitutional body elected by the Parliament to protect citizens' rights and ensure justice in the exercise of public powers. It was created in 1975 and is accredited since 1999 with “A” status as the National Human Rights Institution<sup>1</sup>. Since 2013, it has been functioning as the National Preventive Mechanism under OPCAT.

The Ombudsman welcomes the Committee on the Rights of the Child's decision to draft a general comment on children's rights to access to justice and effective remedies and the opportunity to submit its contribution.

Drawing from its institutional framework, the Ombudsman highlights the Institution's role as a mechanism of informal justice, the adoption of child-friendly practices, and examples of cooperation with other organizations active in protecting children's rights. Additionally, the Ombudsman addresses the main concerns and challenges identified in this area in Portugal.

## II. The Ombudsman's role as a mechanism of informal justice

The Ombudsman receives complaints on actions or omissions by public authorities. Access to the Ombudsman is universal, informal and free of charge.

The investigation is carried out through expeditious and informal means and is not subject to rules of procedure and evidence<sup>2</sup>. The Ombudsman seeks the best and quickest solution while respecting the fundamental rights of all involved, relying on

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<sup>1</sup> In April 2024, the GANHRI Sub-Committee on Accreditation recommended that the Provedor de Justiça be re-accredited with “A” status. See GANHRI Sub-Committee on Accreditation Report — First Session SCA 2024, 29 April-3 May 2024, available at <https://ganhri.org/wp-content/uploads/2024/06/SCA-Report-First-Session-2024-EN.pdf>.

<sup>2</sup> Article 28 (1) of the Statute of the Ombudsman.

persuasion, dialogue, and the pursuit of fair solutions based on human rights principles, as he/she has no binding powers.

The Ombudsman, besides acting as a complaint mechanism, may act on his/ her initiative to defend and promote individuals' rights, freedoms, and legitimate interests, especially those who are most vulnerable, namely on account of age<sup>3</sup>.

The term “remedy” encompasses processes through which human rights violations can be challenged or repaired without necessarily engaging the formal justice system. In this context, the Ombudsman can indeed have an important role as an effective remedy.

As NPM, the Ombudsman pays special attention to the Educational Centres for juvenile offenders in Portugal for children aged 12 to 16 who have committed acts that could be classified as crimes under criminal law, and were subjected to the application of a protective measure of “admission in an educational centre”<sup>4</sup>. Visits to each Educational Centre in Portugal takes place at least once a year.

The Ombudsman also monitors temporary installation centres and similar spaces in major Portuguese airports (Lisbon, Oporto, and Faro), and has been expressing concerns about the situation of children, whether accompanied or not, in these facilities.

The Ombudsman has underlined the detention of minors on the grounds of either their or their accompanying persons documental situation is contrary to their best interest, emphasizing the need to identify unaccompanied minors at the border and provide appropriate care arrangements and community-based programs.

### **III. Child-friendly practises: children’s hotline**

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<sup>3</sup> Article 4 (1) of the Statute of the Ombudsman.

<sup>4</sup> Articles 1, (4) (1) (i), and 17 of Educational Guardianship Law (Law 166/99, of September 14).

Issues or complaints related to children's rights can be brought to the Ombudsman through a child-friendly service known as the [Children's Hotline](#) specially aimed at dealing with the problems of children and youth at risk or in danger. This toll-free hotline also serves as a remedy, offering support, guidance, and advice informally and promptly<sup>5</sup>.

If justified, cases are referred to the competent authorities depending on the situation, which may include the Children and Young People Protection Commissions (CPCJ)<sup>6</sup>, Social Security Institute, or the Public Prosecutor's Office/Courts. Some cases are referred to the complaints department of the Ombudsman's Office.

The main issues for which support is sought include education and school-related problems, exercising parental responsibilities, neglect, and mistreatment<sup>7</sup>.

#### IV. Cooperation with other organizations

The Ombudsman is committed to monitoring the implementation of the Convention on the Rights of the Child. This includes submitting alternative reports and participating in the Committee's sessions.

At the national level, the Ombudsman works closely with other relevant actors at different levels. Here are some examples:

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<sup>5</sup> This hotline is managed by a specialized structure — the Children, Older Persons, and Persons with Disabilities Unit. A multidisciplinary team consisting of a psychologist, a legal expert, and a social worker is available in this Unit every weekday from 9:30 AM to 5:30 PM. An automatic recorder logs calls outside of these hours.

<sup>6</sup> The Children and Young People Protection Commissions (CPCJ) are “official non-judicial institutions with functional autonomy that aim to promote the rights of children and young people and prevent or put an end to situations that could affect their safety, health, training, education or integral development”. The CPCJ include elements from various sectors, namely, representatives of social security, Ministry of Education, health services, etc. However, the conditions for the teams to function are not always met, due to the lack of availability of some of their members.

<sup>7</sup> See Annual Report to the Parliament 2023 (p. 171), available at: <https://www.provedor-ius.pt/documentos/Relatorio%202023.pdf>.

- Member of the National Commission for the Promotion of the Rights and Protection of Children and Young People, which contributes to the planning of State intervention as well as to the coordination, monitoring and evaluation of the action undertaken by public bodies and the community in promoting the rights of children and young people and in their protection.
- Dialogue with schools, visiting and developing activities with students on the promotion of human rights and the rights of the child.
- Formalized cooperation with the Institute for Child Support to enhance support services through coordinated hotlines and joint activities.
- Participation in awareness raising campaigns such as IJCC European’s “Better Justice for Children in Situations of Domestic Violence”<sup>8</sup>.

## V. Main concerns and challenges

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Several concerns and challenges regarding children's rights to access to justice and effective remedies in Portugal have been identified. These issues are also highlighted in reports and analyses from organizations such as the European Union Agency for Fundamental Rights (FRA<sup>9</sup>).

- Legal framework and implementation. Portugal has a robust legal framework for protecting children's rights, but there is sometimes a gap between the legal provisions and the actual practices, leading to difficulties in ensuring that children's rights are fully protected and accessible.
- Access to legal representation. Many children, especially those from disadvantaged backgrounds, may not have adequate legal representation when

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<sup>8</sup> Two short animated films aimed at children and young people were subtitled and adapted for Portugal, intended as support tools for children in domestic violence situations, directing them to support services, including the Ombudsman's Children's Hotline.

<sup>9</sup> <https://fra.europa.eu/en/publication/2024/mapping-child-protection-systems-eu-update-2023>

they need to navigate the justice system, which can hinder their ability to receive fair treatment and effective remedies.

- Socio-economic barriers. Socio-economic factors continue to be a major barrier to accessing justice for children. Poverty, social exclusion, and lack of awareness among families about their rights and available legal remedies can prevent children from seeking and obtaining justice. The Portuguese Child Guarantee National Action Plan aims to addressing some of these issues by providing free access to mental health services, educational support, and housing assistance for children in poverty.
- Administrative and procedural delays. Delays in legal proceedings and the complexity of legal processes can be particularly detrimental to children, who require timely and decisive interventions. While the Portuguese legal system is open to recognizing new forms of parenthood, there are difficulties *at the administrative/operational level* hindering the effective protection, namely in what regards the tax system and social benefits. Efforts to streamline procedures and reduce delays are critical to improving access to justice for children.
- Children in alternative care. The support and oversight for children in alternative care need strengthening. The current system requires more resources and better coordination to ensure that these children receive appropriate care and protection, which is essential for their well-being and legal rights.