

## **THE ACT**

of 6th January 2000

### **on the Ombudsman for Children**

**Article 1.** 1. The Ombudsman for Children is hereby established.

2. The Ombudsman for Children, hereinafter referred to as "the Ombudsman", shall safeguard the rights of children as set forth in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other regulations of law, with respect for the responsibility, rights and obligations of parents.

3. In performing his duties, the Ombudsman shall be guided by the welfare of the child and shall take into consideration that family is the natural environment for the child to develop.

4. A person who:

- 1) is a Polish citizen,
- 2) has the capacity to undertake legal transactions and fully enjoys public rights,
- 3) had not been lawfully convicted for intent crime,
- 4) had graduated from a university and received the title of master or an equivalent one,
- 5) has at least five year experience in working with or for children,
- 6) is a person of immaculate character and high prestige due to moral values and social sensitivity, may become an Ombudsman.

**Article 2.** 1. Within the meaning of the Act, a child is every person from the moment of conception until the age of majority.

2. The age of majority is set forth in separate regulations.

**Article 3.** The Ombudsman shall take measures to provide the child with full, harmonious development, respecting the dignity and subjectivity of the child, on terms set forth in this Act.

2. The Ombudsman acts for the rights of the child, in particular:

- 1) the right to life and health protection,
- 2) the right to be raised in a family,
- 3) the right to decent social conditions,
- 4) the right to education.

3. The Ombudsman shall take measures aiming at protection of the child against violence, cruelty, exploitation, demoralisation, neglect and other forms of maltreatment.

4. The Ombudsman shall provide disabled children with special care and help.

5. The Ombudsman shall promote the rights of the child and ways to protect them.

**Article 4.** 1. The Ombudsman shall be appointed by the Sejm upon approval by the Senate, on a motion proposed by the Marshal of the Sejm, Marshal of the Senate or a group of at least 35 Members of Parliament or at least 15 senators.

2. Detailed procedure of nominating candidates for the Ombudsman shall be determined by the resolution of the Sejm.

3. The resolution of the Sejm on the appointment of the Ombudsman shall be promptly conveyed by the Marshal of the Sejm to the Marshal of the Senate.

4. The Senate shall pass a resolution on the approval on appointment of the Ombudsman within one month from the day of receipt of the resolution of the Sejm referred to in paragraph 3. Failure of the Senate to adopt such resolution within one month shall be tantamount to approval.

5. Shall the Senate not give its approval to appoint the Ombudsman, the Sejm shall appoint another person to this office. Provisions of paragraphs 1-4 shall apply respectively.

6. The previous Ombudsman shall perform his duties until the newly appointed Ombudsman makes an oath, subject to Article 8, paragraph 1.

**Article 5.** Prior to taking over his duties, the Ombudsman shall make the following oath before the Sejm:

“I solemnly do swear that in performing the duties of the Ombudsman for Children I shall be entrusted with, I shall keep faith with the Constitution of the Republic of Poland, safeguard the rights of the child, being guided by the regulations of Law, the wellbeing of the child and the family. I do swear that I shall impartially, with utmost diligence and care perform the duties I shall be entrusted with, that I shall protect the dignity of the office I shall be entrusted with and that I shall keep the legally protected matters strictly confidential.”

The oath may be made with a sentence “so help me God” added at the end.

**Article 6.** 1 The term of office of the Ombudsman shall be five years from the day of making the oath before the Sejm.

2. The term of office of the Ombudsman shall expire in case of his death or dismissal.

3. The same person may not be the Ombudsman for more than two terms of office.

**Article 7.** 1. In performing his duties, the Ombudsman shall be independent of other state authorities and shall be held accountable solely before the Sejm as set forth in the Act.

2. Without prior consent of the Sejm, the Ombudsman cannot be held liable to prosecution nor deprived of liberty, subject to paragraph 2a.

2a. The Ombudsman may consent to being held liable to prosecution for offences mentioned in paragraph 2b, under the procedure defined therein.

2b. In case the Ombudsman commits an offence mentioned in Chapter XI of the Act of 20 May 1971, Petty Offence Code (Journal of Laws, Dz. U., of 2015, item 1094), acknowledgement of a penalty ticket or payment of fine, in case of being imposed a fine not in his presence, as defined in Article 98, paragraph 1, item 3 of the Petty Offences Procedure Code (Journal of Laws, Dz. U. of 2013, item 395, with later amendments), constitutes a declaration of consent given to being held liable in this form.

2c. The Ombudsman cannot be detained or arrested unless he is caught in the Act and the detention is necessary to safeguard proper course of proceedings. The Marshal of the Sejm shall be promptly informed on the detention and may order immediate release of the detained person.

3. The Ombudsman may not:

- 1) take other office except for the post of a university professor nor perform any other professional Activities,
- 2) belong to a political party,
- 3) run public Activity that cannot be reconciled with the duties and the dignity of his office.

4. After his duties are completed, the Ombudsman shall have the right to resume his previously occupied position or be offered a position equivalent to the position previously occupied.

5. In case referred to in paragraph 4, dissolution of employment relationship by the employer, except for the employment relationship based on election, and change of conditions of the work or payment within two years after completion of the duties of the Ombudsman may only take place upon consent of the Presidium of the Sejm.

**Art. 8** 1. Upon consent of the Senate, the Sejm shall discharge the Ombudsman before his term of office ends if:

- 1) he waives the office,
- 2) he has become permanently incapable of performing his duties in result of a disease or loss of powers, as confirmed by medical examination,
- 3) he breaks the promises of the oath he had taken,
- 4) he is lawfully convicted for intentional crime.

2. The Sejm shall pass a resolution on discharging the Ombudsman on a motion proposed by the Marshal of the Sejm, Marshal of the Senate or a group of at least 35 Members of Parliament or at least 15 senators.

3. The resolution of the Sejm on discharging the Ombudsman shall be promptly conveyed by the Marshal of the Sejm to the Marshal of the Senate.

4. The Senate shall pass a resolution on the approval on discharging the Ombudsman within one month from the day of receipt of the resolution of the Sejm referred to in paragraph 3. Failure of the Senate to adopt such resolution within one month shall be tantamount to approval.

**Art. 9.** 1. The Ombudsman shall take measures under the Act on his own initiative, considering particularly the information submitted by citizens or their organisations indicating infringement of the rights of the child or violation of the wellbeing of the child.

2. The Ombudsman shall give notice to the person or organisation who reported the infringement of rights or violation of the wellbeing of the child on his position on that matter and in case measures are taken – on effects of such measures.

**Art. 10.** 1. The Ombudsman may:

- 1) examine each case on the spot even without prior notice,
- 2) require public authorities, organisations or institutions to submit explanation or give information as well as to disclose relevant files and documents, including those containing personal data, also available for view upon request at the Office of Ombudsman for Children.
- 2a) enter into proceedings before the Constitutional Tribunal instituted on the basis of an application submitted by the Human Rights Defender or in cases of constitutional claims concerning the rights of the child and participate in such proceedings,
- 2b) request the Supreme Court to adjudicate cases of divergence in law interpretation with regard to regulations of law concerning the rights of the child,
- 2c) lodge complaint in cassation or appeal against legally valid sentence on terms and under rules governed by separate regulations,
  - 3) require that proceedings be instituted in civil cases and enter into a proceeding being already in course with rights enjoyed by the prosecutor,
- 3a) enter into proceeding already in course in cases involving minors – with rights enjoyed by the prosecutor,
  - 4) require that preparatory proceedings be instituted by a competent prosecutor in cases of crime,
  - 5) ask for instituting administrative proceedings, lodge complaints to the administrative court and participate in those proceedings with the rights enjoyed by the prosecutor,
  - 6) file an application on punishment in proceedings in cases of offences on terms and under rules governed by separate regulations,
  - 7) order examinations and preparation of expert opinions and evaluations.

2. The Ombudsman may refuse, also to the public authority, to disclose personal data of a person from whom he obtained the information on infringement of rights or violation of wellbeing of the child, as well as of a person whom the infringement concerns, shall the Ombudsman deem it necessary, to protect liberties, rights and best interest of a person.

**Article 10a.** 1. The Ombudsman may also ask competent authorities, organisations or institutions to take measures aiming at protection of the child within the scope of responsibilities of those entities.

2. Authorities, organisations and institutions referred to in paragraph 1 shall investigate matters submitted by the Ombudsman.

3. The authority, organisation or institution addressed by the Ombudsman with regard to measures to be taken to protect the child's welfare shall be obliged to inform the Ombudsman promptly and not later than within 30 days on measures or position they had taken.

4. In case the authority, organisation or institution referred to in paragraph 1 do not inform the Ombudsman on measures or position taken or in case the Ombudsman does not agree with their position, the Ombudsman may address a request to a competent superior entity to take relevant measures.

5. In case the Ombudsman finds that the measures taken by the authority, organisation or institution referred to in paragraph 1 infringe the rights or violate the wellbeing of the child, he may require that disciplinary proceedings be instituted or official sanctions be imposed.

**Article 10b.** The authority, organisation or institution addressed by the Ombudsman shall be obliged to cooperate and support him, in particular:

- 1) by providing access to files and documents of the investigated case,
- 2) by giving the Ombudsman the information and explanations he requires,
- 3) by giving explanations concerning legal and factual basis of their decisions.

**Article 10c.** The Ombudsman may process any information, including personal data, as set forth in Article 27, paragraph 1 of the Act of 29 August 1997 on personal data protection (Journal of Laws, Dz. U. of 2014, item 1182 and 1662), as necessary for performance of his statutory duties.

**Article 11.** 1. The Ombudsman shall submit evaluations and conclusions to relevant public authorities, organisations and institutions so as to provide effective protection of rights and wellbeing of the child and to improve the procedure of solving cases in that matter.

2. The Ombudsman may also apply to competent authorities for legislative initiative or for issue or amendment of other legal Acts.

3. The authorities, institutions and organisations approached by the Ombudsman as set forth in paragraph 1 and 2 shall be obliged to take a position with regard to those applications within 30 days from the day they receive those applications.

**Article 11a.** The Ombudsman shall cooperate with associations, civil initiatives and other voluntary unions and foundations that Act to protect the rights of the child.

**Article 12.** 1. The Ombudsman shall annually and not later than until 31 March present a report on his Activity and comments on the observance of the rights of the child to the Sejm and the Senate.

2. The information submitted by the Ombudsman shall be made public.

**Article 13.** 1. The Ombudsman shall perform the duties of the Ombudsman with assistance of the Office of the Ombudsman for Children.

2. The Ombudsman shall by order confer a statute that determines the organisation of the Office.

3. The Ombudsman may appoint a deputy of the Ombudsman. The Ombudsman shall dismiss the deputy of the Ombudsman.

4. The Ombudsman determines the scope of responsibilities of the deputy of the Ombudsman.

**Article 14.** Expenses incurred in connection with the Activity of the Ombudsman shall be set forth in the State Budget Act and covered by the state budget.

**Article 15.** In the Act on the remuneration of persons holding executive positions in state institutions of 31st July 1981 (Journal of Laws Dz. U. 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, subparagraph 2, after the words: "the Defender of the Human Rights" the words: "the Ombudsman for Children," shall be added.

**Article 16.** In the Act on employees of government offices of 16th September 1982 (Journal of Laws Dz. U. 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, Item 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, Item 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), the following amendments are made: (amendments omitted).

**Article 17.** In the Act on the Defender of Human Rights of 15th July 1987 (Journal of Laws Dz. U. of 1991 No 109, Item 471, of 1998 No. 106, Item 668, and of 1999 No. 49, Item 483), the following amendments are made: (amendments omitted).

**Article 18.** In the Act on development of means for remuneration in the state budgetary sphere of 23<sup>rd</sup> December 1994 (Journal of Laws Dz. U. 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, Item 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, in subparagraph 1, after the words: “The Office of the Defender of the Human Rights” the words: “The Office of the Ombudsman for Children,” shall be added.

**Article 19.** In the Act on discharging the duties of Sejm Members of Parliament and senators of 9th May 1996 (Journal of Laws Dz. U. 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, Item 527 and 528) in Article 30 paragraph 1, after the words: “In the Office of the Defender of the Human Rights” the words: “In the Office of the Ombudsman for Children,” shall be added.

**Article 20.** In the Public Finance Law of 26th November 1998 (Journal of Laws Dz. U. 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: “the Defender of the Human Rights” the words: “the Ombudsman for Children” shall be added.

**Article 21.** The Act shall enter into force on 1 January 2000.