

**Consideration of the second periodic report of Portugal to the
Committee on the Rights of the Child**

Geneva, 1 October 2001-09-21

Action of the Ombudsman concerning Children

1. The Office of the Ombudsman

The Portuguese Office of the Ombudsman aims at defending and promoting the citizen's rights, freedoms, safeguards and legitimate interests by reviewing, without power of decision, complaints concerning acts or omissions on the part of public bodies and issuing recommendations to the competent organs as are necessary to prevent or make good injustice (Article 23 of the Portuguese Constitution). The actions of the Ombudsman are independent of any acts of grace or legal remedies provided for in the Portuguese legal system.

Being accessible to the whole of society, including children, the Office of the Ombudsman intervenes to ensure that the competent entities take action and adopt the proceedings which best guarantee citizen's rights and fundamental freedoms.

2. Activities undertaken by the Office of the Ombudsman concerning children

The activities of the Office of the Ombudsman concerning children include running a telephone hotline named "Messages from children", through which it receives communications that, if applicable, lead to the opening of formal procedures aimed at ensuring the protection of the rights of the child concerned, as well as issuing recommendations of a general nature addressed to specific entities on the best way to ensure certain rights. The Office also undertakes activities aimed at diffusing the hotline among the general public and, in particular, children.

Children can contact the Office of the Ombudsman through the hotline, but also in writing, through the INTERNET and in person (either at the Office's premises and in activities members of the Office participate in, namely at schools).

3. Telephone hotline "Messages from children"

a) *Main features*

In 1992, the Office of the Ombudsman established a telephone hotline (Green Line "Messages from children") to receive complaints related to children at risk or in a dangerous situation. It is a free of charge hotline which both children and adults on their behalf can have access to.

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It is not an emergency hotline, but rather a hotline which provides technical and human counselling on matters related to the rights of the child and the best ways to guarantee such rights.

The unit serves as an *ad hoc* focal point to matters related to children within the Office of the Ombudsman. According to the specific problem posed by the caller, the professionals who serve the hotline either deal with the case themselves or refer it to another unit with expertise in the area in question (some cases, even involving children, are better dealt with by experts in areas such as labour, urbanism or health care).

In order to achieve the main purposes of the hotline, the Office of the Ombudsman strives at:

1. Diffusing information on the rights of the child as provided for in the Convention on the Rights of the Child as well as in the Constitution of the Portuguese Republic, Portuguese Civil Code, Act on Educational Tutelage, Act on Juveniles at Risk and other legal instruments;
2. Diffusing the hotline "Messages from Children" as means to ensure that children effectively enjoy their rights and are able to lodge complaints of the abuses they are victims of;
3. Guaranteeing a personalized, attentive and efficient service;
4. Contributing to the access to information;
5. Referring the different cases to competent authorities and, if necessary, following the action taken thereon;
6. Preventing violations of the rights of children.

On 27 July 2000 a proposal was adopted to reorganise the hotline services, of which resulted in:

- An extension of the opening hours, which doubled (was from 15:00 to 18:00 on working days and is now from 9:30 to 17:30 also on working days);
- Extension of the staff working time, given the growing number of phone calls and files (began with one person working half term and is now of 2 persons working full time);
- Improvement of the organization and follow-up of each file, with the view to engage the entities to act in an efficient and timely manner, taking into account the need to protect the child in question;
- Rationalisation of the available time with the view to be able to give an answer to the calls received and processes open, but also to study general issues, either following a complaint or at the initiative of the Ombudsman.

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b) *Follow-up activities*

For each situation, the hotline services endeavour to find the best possible solution with the competent services and institutions, in order to ensure that the fundamental rights of children are effectively guaranteed. The Office of the Ombudsman co-operates, inter alia, with the following services and institutions:

- Commissions for the Protection of Minors (CPM);
- Regional Centres of Social Security (CRSS);
- Institute of Social Reinsertion (IRS);
- Municipalities;
- Institute for Child Support (IAC);
- Support project for Family and Children (PAFAC);
- Santa Casa da Misericórdia (SCM);
- Ministry of Education and General Inspection of Education;
- Schools and School Delegations;
- Ministry of Labour;
- Ministry of Justice;
- General Inspection of Labour;
- Institute for Social Development (IDS);
- Courts;
- Office of Family Mediation;
- P.S.P. (Public Safety Police);
- G.N.R. (Guarda Nacional Republicana);
- Adoption services;
- Hospitals;
- Civil Registries;
- Foreigners and Borders Service;
- High Commissioner for Refugees.

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c) Statistical data

		1996	1997	1998	1999	2000
Calls received	MATTERS SORTED OUT VIA TELEPHONE (A)		1336 (51%)	740 (60,7%)	904 (29,70%)	1255 (31,19%)
	MATTERS REGISTERED (NON-FORMAL PROCEEDINGS) (B)					135 (3,35%)
	MATTERS WHICH GAVE RISE TO THE OPENING OF A FORMAL PROCEEDING (C)		655 (25%)	165 (13,5%)	720 (23,65%)	262 (6,1%)
	OTHER MATTERS (D)		629 (24%)	314 (25,8%)	1420 (46,65%)	2372 (58,95%)
	DAILY AVERAGE					11
	TOTAL NUMBER OF CALLS	2 700	2620	1219	3038	4024
	RATE OF SUCCESS	80%	80%	85,15%*	79,10%*	75,46%*
Calls made	TO THE CLAIMANTS					557 (26,64%)
	TO THE ENTITIES CONCERNED					1534 (73,36%)
	TOTAL NUMBER OF CALLS					2091

(A) The caller has been informed of his/her rights and referred, preventively, to the competent services, after being informed that the Ombudsman acts only if the Public Administration fails to fulfill its duties or violates the rights of individuals.

(B) The caller has been provided with information in relation to the situation presented, which was registered in an autonomous fact sheet, given that the case could not be solved immediately since it implied mediation with the competent services within the public administration and often the referral to the competent entities.

(C) These communications gave rise to the opening of a formal complaints procedure within the Office of the Ombudsman, given that they required a number of diligences to be undertaken, namely: gathering of information to consubstantiate the complaint; following-up the action of the competent entity; co-operation with such entity with the view to find a solution which takes into account the best interest of the child.

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(D) Diverse phone calls, namely of children who merely wish to talk either about matters of general interest or of their private lives, adults who wish to make a donation for a children's charity and phonecalls with a purely recreational purpose.

* While the rates indicated for the years of 1996 and 1997 concern specifically the hotline "Messages from Children", the values mentioned from 1998 to 2000 relate to the general activity of the Office of the Ombudsman. The hotline's rate of success for this period has not been determined.

**Procedural activity
2000**

<i>Processes open</i>	<i>Pending on 01.01.2000</i>	<i>Entrances</i>	<i>Archived</i>	<i>Pending on 31.12.2000</i>
Formal	109	70	131	48
Non-formal (fact sheets)	0	58	58	0
TOTAL	109	128	189	48

1999

<i>Processes open</i>	<i>Pending on 01.01.1999</i>	<i>Entrances</i>	<i>Archived</i>	<i>Pending on 31.12.1999</i>
Formal	125	85	101	109
Non-formal (fact sheets)	0	42	0	0
TOTAL	125	127	101	109

Statistical data available from 1996 to 1998 concerns the procedural activity of the whole Office of the Ombudsman and not the services dealing with children.

d) Most frequent situations communicated to the hotline services

On 2000, these were the most frequent situations communicated to the Office of the Ombudsman:

- Neglect about the safety, health, alimony and education of children, on the part of those who hold their custody (30);
- Physical and mental abuse (25);
- Regulation of parental custody (22);

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- School problems (14);
- Implementation of measures of protection and tutorship (12);
- Economic deprivation of the family and consequent of support on the part of social services (9);
- Sexual abuse (5);
- Adoption (3);
- Child labour (2);
- Investigation of paternity (2);
- Behavioural problems of the child (2);
- Grandparents' visits;
- Mendicity;
- Review of foreign judgement on adoption;
- Piercing of children;
- Delay of judicial proceedings;
- Run away children;
- Provision of pension due to death of one parent;
- Protection of motherhood and fatherhood.

4. *Recommendations issued by the Ombudsman*

The Ombudsman has issued a number of recommendations concerning the implementation and guarantee of the rights of the child, of which we highlight the following:

- A recommendation, addressed to the Regional Director of Solidarity and Social Security regarding the violation of the rules concerning adoption (consubstantiating a situation of sale of children). It was recommended that adoption services ensure that all placements of children are duly justified and communicated to the competent court and social security services, that all placements decided by host institutions are followed by the social services and that the social services staff all situations as soon as possible with the view to facilitate the adoption procedures (Recommendation 20/A/00, of 13 March 2000) - P-13/99 (Aç);
- Regarding the same issue, the Ombudsman recommended to the Ministry of Justice that the Civil Code be amended so that the exhibition of the medical declaration certifying birth be made compulsory for the purpose of registering birth and that, in all situations without exception, the institutions where birth has taken place, or people who have witnessed birth, are obliged to communicate such birth to the civil registry (Recommendation 28/B/99, of 23 July 1999) – P-13/99 (Aç);

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- The Ombudsman recommended to the Minister of Health that compensation be granted to a mother who had suffered injuries giving birth due to medical malpractice (Recommendation 38/A/00, of 9 May 2000) – R-2829/96 (A3);
- Regarding a case of refusal to grant maternity allowance, the Ombudsman recommended to the Minister for Labour and Solidarity that the act of refusal be revoked (Recommendation 29/A/99, of 27 April 1999);
- A recommendation addressed to the Secretary of State for Educational Administration saying that the State should progressively support the expenses of the educational component of pre-school education in all schools (Recommendation 37/A/00, of 18 April 2000) – R-3897/99 (A3);
- A Recommendation, addressed to the Minister of Justice, singling out a shortfall on legislation concerning the deadline for filing court cases on the investigation of paternity and maternity. The Ombudsman has recommended a legislative amendment to provide for the non-aplicability of statutory limitations in the filing of such law suits whenever they aim at purely personal purposes.

5. Diffusion of the hotline

Over the years, the hotline has been diffused and publized, among adults and children, through a number of different means, inter alia:

- Distribution of promotional materials (rulers, stickers), which inform about the existence of the hotline and its operation (2000);
- Interviews to several media (radio, newspapers and magazines);
- The INTERNET: in 2000, the Office of the Ombudsman webpage was updated, to provide the user with information about the hotline purposes, operation schemes and contacts, as well as with the reports of activities of the last three years;
- TV: In 2000, the Office has presented a proposal for a television programme within the commemorations of the Universal Declaration of Human Rights, with the purpose of diffusing those rights which directly relate to children. It aimed at demonstrating, in a way accessible to children, the meaning of such rights, situations in which they are threathened or violated and providing information about the available remedies;
- Participation in several debates, seminars and conferences on children and their families (namely in schools – see also below).

6. Other activities

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The Ombudsman is a member of the National Commission for the Protection of Children and Juveniles at Risk since the establishment of this Commission in 1998 and the co-ordinator of the hotline services participates in the monthly meetings of this Commission on his behalf.

The Ombudsman is a member of ENOC (European Network of Ombudsman on Children) since 1997 and the co-ordinator of the hotline services participates in ENOC annual meetings on his behalf.

The Ombudsman and members of his Office have also participated, and continue to do so, in a number of seminars, congresses and meetings on issues relating to children, namely adoption, juvenile justice, social work, child labour and children victims of sexual abuse.

At the international level, we highlight the participation in the ENOC annual meetings, as well as in a training course for Ombudsman assistants (with special focus on techniques for the protection of the rights of the child) (Guatemala, 25 September to 8 October 1999) and II Meeting on the Protection of Minors in Iberoamerica (Madrid, 11 and 12 November 1999).

7. A children's Ombudsman

In 1998, a bill was introduced in Parliament to create a Children's Ombudsman (pursuant to recommendation 1286 of the Parliamentary Assembly of the Council of Europe). However, the bill was defeated with votes against of all opposition. The following arguments were used:

1. The child must not be considered isolated, but rather integrated in the whole of society, and it was felt that creating a specific Ombudsman could be counterproductive in this regard;
2. There are enough institutions dealing with the rights of children and creating a new one would only reinforce bureaucracy – it was considered that the most important thing was to increase the effectiveness of existing mechanisms, rather than creating new ones;
3. The existing Office of the Ombudsman already undertakes a valuable work in the field of the rights of children and it is important to reinforce its competences in this field (which was done in 1999), rather than extinguishing them;
4. The proliferation of Ombudsmen would result in a depreciation of the mandate itself;
5. The bill was considered to have major deficiencies, for example, it put more emphasis on the the privileges and honours of the Ombudsman than on its competences; it had no provisions on procedure or on confidentiality and independence of the Children's Ombudsman.

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