

MANAGEMENT PROCEDURES FOR REPORTING BY THE OMBUDSPERSONS FOR THE REGIONS AND THE AUTONOMOUS PROVINCES OF TRENTO AND BOLZANO

Approved at the National Conference on the Rights of Children and Adolescents on 17 January 2017

Pursuant to Law 112/2011 “Setting up the Italian Authority for Children and Adolescents” and the various regional and/or provincial laws, the Authority and the Ombudspersons, whatever their title, may receive reports on cases of violation or risk of violation of the rights and interests, both individual and collective, of children and young people present in their respective locations.

In the absence of national reference legislation and considering the differences between the various regional and provincial laws with regard to the practices in the different offices, different procedures have developed in the various areas.

The purpose of this document is to define standard and agreed rules and procedures to guarantee the correct and prompt taking charge of the reporting to clearly define the activities required for each office to manage such reporting, also with respect to Art. 6, Law 12/7/2011 N. 112 and Decree of the President of the Council of Ministers 20/7/2012, N. 168. Art. 10, para. 3 of the latter states that *“a specific memorandum of understanding between the Authority and the regional Ombudspersons shall govern and standardise the reporting procedures.”*

Any procedures providing greater guarantees for the rights of minors set forth in the laws establishing the Ombudspersons shall in any case take precedence.

Procedures after reporting

Procedures may regard individual situations, where the report concerns the violation or risk of violation of the rights of one or more minors (individual reports) as well as general issues (collective reports).

They must contain the following minimum elements:

- Description of the violation or risk of violation regarding the person/s, or if wider interests are violated, description of the circumstances of the problem;
- Personal information for identifying the minor/s involved;
- If available, documentation useful for evaluating the case or overall situation.

The activity of acceptance and management of the reports is divided into 3 phases, corresponding to the need on the part of the Ombudspersons to: know about and analyse the cases brought to their attention; proceed with investigation; come to a resulting definition of the problem with evidence, and activate the measures deemed suitable, thus completing the procedure.

These phases are:

1. Acceptance
2. Investigation
3. Definition.

Phase 1 – Acceptance

1. Save for other procedures providing greater guarantees for the rights of minors set forth in the laws establishing the Ombudspersons and other related provisions, the request shall be submitted in writing to the Ombudsperson.
2. Anonymous reports are in general not accepted.

Phase 2 – Investigation

1. Once the report is accepted, the Ombudsperson will open a file and order the investigations deemed necessary. The Ombudsperson may:
 - a. Request information and news;
 - b. Interview the author of the report and/or the persons mentioned in it;
 - c. Schedule a meeting with the bodies and/or institutions concerned;
 - d. Schedule a meeting with the parties concerned.
2. If information has been requested from other parties, an answer to such requests is expected. If an answer is not received after a reasonable time, a reminder will be sent.
3. In order to be closer to the public, in accordance with the constitutional principle of subsidiarity, cited in the law establishing the Authority (Law 112/2011), the reports on situations taking place in areas where there is an Ombudsperson are taken on by the offices having jurisdiction for that area.
4. If it is shown that the report is not under the jurisdiction of the office to which it has been made, the Ombudsperson will send it to another Ombudsperson, or, in those regions where an Ombudsperson has not been established/appointed, to the Authority. If the case has national relevance it is sent to the Authority.
5. If it is shown that the subject matter of the report is not within the jurisdiction of the Ombudsperson, the latter may orient the reporting person to other offices or services.
6. In case where court proceedings are pending, the Ombudsperson may intervene exclusively within the limits set forth by the relative institutional functions, in accordance with the principle of subsidiarity and the constitutional function attributed to the autonomous and independent jurisdiction. The Ombudsperson may request information from the bodies involved in handling the case, in order to ensure the respect of minor persons.
7. If the report shows a situation of serious prejudice to the minor requiring immediate intervention, the report shall be sent to the Public Prosecutor at the Juvenile Court.
8. When in adult behaviour acts are detected that could potentially be crimes involving automatic prosecution, the report shall also be sent to the Public Prosecutor at the Court having jurisdiction.

Phase 3: Definition

1. Upon completion of the investigation activity, the Ombudsperson makes a motivated evaluation, sending opinions, invitations, recommendations or requests, or, if suitable, dismissing the case.
2. In order to protect the rights and interests of minors, individual and collective, the Ombudsperson may, in particular:
 - a. Report to the branches of the civil service having jurisdiction and/or to the judiciary authorities any situations of risk or prejudice that require social service or judiciary intervention;

- b. Invite the branches of the civil service having jurisdiction to amend measures deemed prejudicial to children and young people;
 - c. Recommend that the branches of the civil service having jurisdiction adopt measures for assistance and support and, in case of omissive behaviour, adopt specific measures;
 - d. Remind the branches of the civil service having jurisdiction and parties involved to consider the rights of minor persons as being the primary concern;
 - e. Intervene in administrative procedures when there are factors involving risks or harm to children or young people, and in the cases set forth in the legislation establishing the Ombudspersons.
3. The file is close with a final act, filed in the records and conserved in a suitable place in such a way that no-one may have access without authorisation by the Ombudsperson, and with a communication in this respect to the party that submitted the report.