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How green are children's rights institutions in the Visegrád countries?*

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Abstract

Environmental damages have already been clearly linked to human rights- and particularly children's rights violations as climate change particularly affects the present (and future) generation of children, undermining the effective exercise of rights enshrined in the UN Convention on the Rights of the Child (UN CRC), including the right to life, survival, and development, health, an adequate standard of living, education, and freedom from violence.

With the almost universal ratification of the UN CRC, states have committed to the obligation to enforce children's rights at all levels of society. In the possible best implementation of the UN CRC, independent human/children's rights institutions (IH/CRIs) can play a vital role. However, many ICRIs still do not confront issues associated with environmental and climate change related to children's rights. My main question was why these institutions are not (or are only barely) addressing these issues. In this paper, I focus on mapping the implementation of children's right to a healthy environment by analyzing the ICRIs in the Visegrád countries: Poland, Hungary, Czech Republic, and Slovakia through descriptive and comparative techniques and a survey sent to dedicated institutions.

Keywords: ombudsman; rights of children; right to a healthy environment; climate change; NHRIs; V4-countries

1 Introduction

Data and research directly link environmental harms to abuses of human rights (McInerney-Lankford et al., 2011; Sinden, 2007; Knox, 2009), and understanding of the close connection of the latter to children's rights is increasingly gaining ground (Bakker, 2020; Nolan, 2021), as climate change particularly affects present-day children and future generations.¹

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¹ There is no consensus about the definition of *future generations* for the purposes of international human rights law; even the normative basis of recognizing the human rights of future generations is still unclear and chal-

The UN Convention on the Rights of the Child (UN CRC) is the most widely ratified human rights treaty in the world, setting out the minimum global standards of protection and promotion of the rights of children and aiming to encourage states to play an active role in ensuring the well-being, welfare and the rights of children. The UN CRC, with its interconnecting 54 articles, represents the ‘whole child’ approach, covering a wide range of human rights of children and taking a holistic view of the child that also informs the work of independent children’s rights institutions.

The main monitoring treaty body of the UN CRC, the UN Committee on the Rights of the Child (CRC Committee), in its General Comment No. 2 (2002) and No. 5. (2003) calls on State Parties to establish ICRIs, highlights the responsibilities of these institutions under Article 4 of the UN CRC, and asserts they are core parts of a state commitment to the application of the UN CRC.

The relevance of these institutions also lies in their special quasi-judicial features, such as how they often ensure that they are easily accessible to people by allowing complaints to be made in writing (also usually via email), orally, and without any formal requirements; this procedure is free of charge; moreover, many institutions reach out to vulnerable groups to assist them in making complaints more easily; they can also use non-judicial tools to make their reports and statements more visible and better known to decision-makers and the public. Moreover, as in most cases, they are constitutional bodies, they have legitimacy, and their recommendations are often widely accepted by the organs they address, despite their soft-law nature (Reif, 2015; 2017; Kucsko-Stadlmayer, 2008; Oosting, 1999; UNICEF, 2012).

Ombuds-institutions with a general mandate, but also in some cases ICRIs, may function as the given country’s national human rights institutions (NHRIs) in accordance with the *UN Paris Principles* (UN, 1993) and *Venice Principles* (Council of Europe, 2019), which represents a preconditioned system (and checklist) for monitoring functioning, independence, credibility, and effectiveness.

Nowadays, ombudsman institutions exist in more than 140 states, at various levels, and with different competences so that

ombuds have become a feature of most countries’ institutional frameworks around the world. They differ however, in their mandate, their role, their relationship to other institutions and the justice system. They all need to be understood in their historical – political – and institutional contexts. In other words, each Ombuds model has its purpose within its setting satisfying specific needs (e.g., enhancing democracy, enhancing human rights, providing a balance between the individual grievance and the state). (Creutzfeldt et al., 2021, p. 7)

Since the adoption of the UN’s CRC around the world, national governments have established specialized ICRIs for the purposes of monitoring and advancing children’s rights (UNICEF, 2012; Lux & Gran, 2022), either as stand-alone institutions or integrated

lenged at present (see, e.g., Cho, 2013; Boston & Stuart, 2015; Tattay, 2016; Könczöl, 2012; 2016; Brännmark, 2016; Lewis, 2018; Unruh, 2016; Arts, 2019; Jakab, 2021; Nolan, 2022; Skogly, 2021; Daly, 2022). The author is working on this issue outside of the scope of the current research but does not seek to take a stand in this paper. Children are disproportionately affected by the changes in their environment due to their age-related vulnerabilities, special developmental needs, and evolving capacities (UNICEF, 2021a; 2021b; Save the Children, 2021).

into broad-based human rights institutions with a legislated child-specific mandate, or as institutions with an integrated child rights office without a mandate based in legislation (UNICEF, 2012).

It is obvious that a 'one-size-fits-all' approach does not exist, and one model will not necessarily lead to a single, efficient solution that works for all; names, mandates, functioning, and activities of ICRI's vary from country to country (Shura & Gran, 2022; Gran, 2021). According to the European Network of Ombudspersons for Children (ENOC)² Standards (2001), 'individual states will need to design a model appropriate to their governmental and legal systems, which takes account of existing institutions and makes the most effective use of available resources.'

Whatever the institutional structure, it is crucial that child rights institutions are able to monitor, promote and protect children's rights independently and effectively (Thomas et al., 2011).

In the last ten years, the CRC Committee has appeared to be committed not only to the holistic monitoring of children's rights in given states but also to systematically addressing relevant climate-change-related phenomena during its work, including in its concluding observations and recommendations to state parties and its latest General Comment No 26. on Children's Rights and the Environment, with a Special Focus on Climate Change (CRC Committee, 2021).

But is this commitment reflected in the work of the ICRI's? Or are other institutions responsible for environmental issues related to children?

Since at least the UN Conference on Environment and Development in 1992, various proposals have been made for the establishment of some form of watchdog institutions for future generations. But for now, the right to a healthy environment is usually monitored by the existing NHRIs or general ombudspersons, and only some countries have established a specialized body aimed at protecting the interests of future generations.

Based on the preliminary assumption that ICRI's can shape the political, legislative, and public discourse agenda and recognized good practices – e.g., the Irish Ombudsman for Children has achieved legislative reform and system change across a wide variety of areas through the effective use of its statutory powers (Kilkelly & Logan, 2021), and the task of incorporating the UNCRC into domestic Scots law was a priority of the Children and Young People's Commissioner Scotland (CYPCS) since the beginning, leading to the Scottish Parliament unanimously passing a law for this purpose in 2021 (Adamson, 2022) – the relevance of ICRI's in addressing climate issues can be clearly seen.

My hypotheses were as follows:

- There are other burning issues on the ICRI's agenda (such as addressing poverty, lack of access to various basic services, child abuse, etc.) rather than environmental issues.
- They do not have the capacity or competence to deal with climate issues.

² By 2022 ENOC had 44 member institutions in 34 countries within the Council of Europe, 22 of which were EU countries. Membership is limited to institutions in the 46 member states of the Council of Europe. <https://enoc.eu/who-we-are/enoc-members/>

- No complaints are submitted to them, so the institutions do not see climate change as a factor triggering child-rights problems.

The narrower scope of the research focuses only on the Central-Eastern-European political-historical alliance of the ‘Visegrád Group’ (V4) launched in 1991 (Pakulski, 2016), which consists of countries with different historical/cultural/linguistic backgrounds but usually serves as a field of comparison for various themes, from economics to politics. Consequently, whether their human rights institutions that have a mandate to defend children’s rights can also be examined. Moreover, cooperation and regular meetings have been held among the V4 ombuds-institutions since 2004.

2 Main goals and methodology

This paper aims to examine the performance, activities, scope, and competences of the ombuds-institutions that have the specific task of defending children’s rights in general and, in particular, children’s right to a healthy environment in the V4 countries. A preliminary task was identifying those institutions in the Visegrád Group which are mandated to protect and promote children’s rights. I have mainly used descriptive techniques for mapping the institutions’ scope and competences of the four countries on a desk research basis. To enable comparison, a survey (‘Children’s Ombudspersons and Environment’) was implemented to collect data about the activities of the ombudspersons related to a healthy environment and children’s rights. This was sent to the members of ENOC at the end of 2022. However, the aim of this survey³ was initially to later contribute to a wider study with a geographically broader perspective, which I have narrowed to the V4 (the Czech Republic has no ENOC membership, so that office was contacted directly). Data was collected via Google Forms. Most questions were associated with open-ended responses, as the key objective was not to gather quantitative data but to gain insight and gather examples. Also, some semi-structured interviews were organized and implemented with professionals of the identified institutions in April 2023.

3 Institutions with a mandate to protect children’s rights in the Visegrád countries

To draw the constitutional frame, between 1990 and 1997, almost every post-socialist state adopted a new democratic constitution (Ludwikowski, 1993; Arato, 1994; Titel, 1994; Gönenç, 2002), and from the V4-countries the Czech Republic and Slovakia in 1992 and Poland in 1997. In Hungary, a new constitutional amendment was adopted in 1989 instead of a new constitution, and the period of the region’s constitutionalizing process ended with the adoption of the new Hungarian Fundamental Law in 2011.

³ The structure of the survey was developed jointly with Prof. Brian Gran (Case Western Reserve University).

Hungary and Poland ratified the UN CRC quite early in 1991, and the Czech Republic and Slovakia in 1993, as clear evidence of political commitment to Western international human rights regimes,

Usually, the leading constitutional, non-, or extra-judicial actor with a special mandate to protect (and promote) fundamental rights (and children's rights) is the ombudsman, commissioner, or public defender of rights.

3.1 Hungary

Through a constitutional amendment in 1989, the ombudsman institution was set up by Act LIX of 1993 on the Parliamentary Commissioner for Citizens' Rights, which was responsible for all fundamental rights (including the rights of children), while the Commissioner for Data Protection and the Commissioner for Minority Rights acted as specialized ombudspersons. The need for a separate Ombudsman for Future Generations was accepted by parliament in 2007. The first Commissioner for Future Generations (CFG), often called the 'Green Ombudsman' (Lukács, 2012), was a noted institution worldwide (Fülöp, 2014). Good practice was exemplified by the establishment of this office, whose constitutional mandate aimed at safeguarding (1) the rights and interests of future generations by safeguarding natural resources, (2) the fundamental right to a healthy environment, and (3) the right to health.

On 1 January 2012, the former ombudsman act was replaced by Act 111 of 2011 on the Commissioner for Fundamental Rights (CFR, *alapvető jogok biztosa*). This new act and Article 30 of the new Constitution (Fundamental Law) opted for an integrated institution, making the three independent ombudspersons into deputies – a move which was strongly criticized by environmental advocacy groups and experts (Levegő Munkacsoport, 2011) – and changed how specific fundamental rights could be represented.

As children's rights have not really been reflected in the complaints submitted to the office, inquiries *ex officio* have commenced. The trend has continued until the present time: of all the cases received, only a small fraction of those completed can be defined as related to 'children's rights.' Complaints that come directly from children are exceptional – the office receives approximately 10–20 such complaints per year (Lux, 2022).

After 2012, the Commissioner's main task remained investigating issues related to constitutional rights and initiating general or specific measures to remedy them. Anyone, including children, may initiate proceedings, but the former may also act at their own initiative ('*ex officio*') to investigate suspected constitutional irregularities. The Commissioner (and their deputies) are elected for one renewable six-year term by a two-thirds majority vote of parliament. The candidates (the commissioner and deputies) are nominated by the president.

According to case statistics, the CFR receives around 7,300–8,000 complaints per year,⁴ a significant number of which are rejected, with the complainant being informed that the decision is due to jurisdictional limits.

⁴ <http://www.ajbh.hu/ugyekhez-kapcsolodo-statisztikai-adatbazis>

Following 2011, the CFR was NHRI classified as ‘A’ status, but recently (based on a recommendation made in 2021 by the Sub-Committee on Accreditation of Global Alliance of National Human Rights Institutions [SCA GANHRI]), it was downgraded to status ‘B,’ as it is only partially compliant with the Paris Principles. The latter stated that ‘the SCA is of the view that the CFR has not effectively engaged [in] and publicly addressed all human rights issues.’ (2021 pp. 12–13) The CFR’s ‘reserved’ or even ‘silent’ attitude, especially since 2013 (and even more since 2019), is a cause of the downgrading of the CFR and a point of criticism from the perspective of the defense of human rights. The CFR tried to act as a quasi-ombudsman for children, becoming an associate member of the ENOC and, within the framework of annual projects on children’s rights between 2018–2013, initiating many ex officio investigations and turning to the constitutional court. In Hungary, the CFR is still an associate – but increasingly less active – member of ENOC, and the Deputy for Future Generations is not involved in the network.

With the new Ombudsman Act, the defense of children’s rights has become written into law (Art 1(2)a) of the Act on CFR) and is thus one of the main legal obligations of the ombudsman, but unfortunately, no deputy was assigned to this task, nor was a department dedicated to dealing with children’s rights (along with other social-rights-related) cases.

The work in the unified institution also has consequences for case management, as it means that in the case of the violation of children’s rights to a healthy environment/climate, the competence is divided between the CFR and their Deputy for Future Generations.

In recent years the number of extra tasks the office has a mandate for has been inflated: For example, it has been the National Preventive Mechanism of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT NPM) since 2015. The Equal Treatment Authority merged with the CFR in 2021. Since 1 January 2023, the Ombudsman has been undertaking the tasks – setting up a Disability Directorate with a seat in the city of Debrecen – associated with the independent mechanism of the UN Convention on the Rights of Persons with Disabilities (CRPD) too.

While the topic of children’s rights falls under the mandate of the CFR, the latter’s DFG deals with the right to a healthy environment. The DFG’s work has a general environment and nature protection agenda (incl. climate change) and does not specifically target children’s rights, ‘although the beneficiaries of the work would indeed be today’s children and generations not born yet’ (Interview 1). Despite this understanding, there is no sign of focusing more on child-related issues.

The DFG has worked on a number of environment-related topics (e.g., nature conservation, noise, and air pollution) not only as investigations but also in advisory roles and in preparing legislative proposals (e.g., on topics like environmental liability, nature conservation, ecosystem services, and indoor air pollution).

On the basis of its special responsibility to promote the needs of future generations as outlined in the Report of the UN Secretary-General, the DFG organized a conference in 2014 to bring together national institutions entitled Model Institutions for a Sustainable Future. This was aimed at improving cooperation in the implementation of sustainable development and intergenerational solidarity at the national level. As a consequence, the Network of Institutions for Future Generations was established.⁵

⁵ <https://futureroundtable.org/en/web/network-of-institutions-for-future-generations/about>

Neither the CFR nor the DFG has received any complaints about children's healthy environment in the last five years (or prior to this).

The CFR dedicated the last children's rights project year in 2013 to issues related to children's fundamental right to a healthy environment, and two comprehensive reports have been completed: one on environmental education (report no. AJB-676/2013) and the other one jointly with the DFG (report no. AJB-677/2013) on specific issues related to providing access to healthy drinking water. The CFR comprehensively examined the conditions for providing a healthy start to life for children (report no. AJB-1356/2013), saying that the quality of the environment of the expectant mother and the unborn child and toddler is decisive for later health and that this is a particular challenge for deprived households (see also report no. AJB-2050/2013, which focuses on the rights of Roma children).

Unfortunately, since this dedicated year in 2013, neither the CFR nor the DFG has had a special focus on children and the environment regarding investigations, advocacy, or awareness-raising.

No institutionalized form of child participation in the Office of CFR can be identified. Also, no separate report has been submitted to the CRC Committee yet (however, the DFG has sent a comment on the consultation to the committee on the draft of upcoming GC No. 26).

3.2 Poland

The role of the NHRI in Poland has been fulfilled by the Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*)⁶ since 2014, a body established in 1987 in line with the democratization process. A simple majority of the Lower House of Parliament (Sejm) elects the Commissioner and (up to three) deputies, and the Senate must accept the vote. The term of office is five years (renewable once). The Commissioner for Human Rights as NHRI was re-accredited with 'A' status in November 2017.

The Commissioner works independently and shall annually inform the parliament about their activities. The latter can turn to the relevant bodies (the Constitutional Tribunal and the Supreme Court) to issue resolutions.

The mandate of the Commissioner seems to be very broad (Stern, 2008b) even in comparison with other ombudsman institutions. Particularly notable in this regard is the entitlement to participate in legal proceedings, which is rather unusual, but unfortunately, this opportunity is very rarely used (CoE, 2011).

The Commissioner was given more tasks in recent years, such as the mandate of the OPCAT NPM since 2005 and the equality body since 2011. In spite of this considerable extension of the mandate, its funding has not been increased, making it challenging to implement its tasks adequately – although in 2021, the Commissioner received over 74,000 petitions (Annual report, 2021).

⁶ <https://bip.brpo.gov.pl/pl>

As Gliszczyńska-Grabias & Sękowska-Kozłowska state,

The Polish Ombudsman deserves praise for its readiness to take [on] difficult and sensitive issues, such as safeguarding LGBT rights, excessive instruments of state control over [...] citizens or [...] anti-hate speech laws, etc. The willingness to solve the most acute social and legal problems proves that the Ombudsman understands well the role and responsibility entrusted to them... Notwithstanding all those positive aspects, the Ombudsman faces problems and challenges, such as insufficient funding and human resources, especially in the context of the Ombudsman acting as the NPM and equality body. (2012, p. 22)

As in the case of Hungary, the institution of the Commissioner was inspired by the Swedish ombudsman model, which shows a clear commitment to adopting Western human rights and political standards and institutions. It played an important role in the process of improving human rights standards – for example, by promoting Poland's accession to international human rights treaties. As Gliszczyńska-Grabias & Sękowska-Kozłowska claim,

[...] as a typical single-person body, it also profited from the image of persons holding this office who were usually outstanding legal experts... Undoubtedly one of the strongest points of the Commissioner is its positive, well-established image built throughout the 25 years of its history. In this context, its stable institutional framework is accompanied by the equally important influence of the personalities of individuals holding the office, as they draw [on] the large scope of autonomy in deciding on their priorities and interventions. (2012, p. 25)

Based on the Act on the Commissioner (Art 1. para. 2(a)), in any case concerning children, the Commissioner shall also cooperate with the Ombudsman for Children and inform the latter about the fact that they will turn to the Constitutional Tribunal if the motions are related to children's rights.

The Ombudsman for Children (*Rzecznik Praw Dziecka*)⁷ was established by the Act on the Ombudsman for Children, passed on 6 January 2000, implementing Article 72(4) of the Polish Constitution. It is among the few children's rights institutions in Europe that are stand-alone ones, with quite a strong mandate (e.g., it may request competent bodies to take action, participate in proceedings before the Constitutional Tribunal, bring motions to the Supreme Court [*Sąd Najwyższy*]; take part in any civil proceedings involving juveniles; request that the prosecutor institute pre-trial proceedings in cases involving offenses; lodge complaints with the administrative court, and take part in these proceedings; start motions for penalties in cases involving minor offenses).

As Rogalska-Piechota have stated, the institution 'was primarily modeled on its Norwegian equivalent [and] is being perceived as one of the most effective ICRI[s] with [a wide] scope of powers, which can possibly even be extended by the Parliament' (2009, p. 391). The Ombudsman can receive individual complaints and is competent to initiate investigations on its own motion. The latter has been a very active and full ENOC member and has already chaired the network twice: in 2005 and 2011. The ENOC Spring Seminar was also hosted in Warsaw in 2022 (where the topic was the burning humanitarian situation in Ukraine and the climate crisis).

⁷ <https://brpd.gov.pl>

The Ombudsman for Children believes that advocacy work is also crucial and has built collaborations with various ministries in the field of education and health care; it also operates a free 24-hour helpline for children.

The Convention on the Rights of the Child owes much to Poland. The Convention's vision of the child as a subject of rights is inspired by the writings, work and life of Janus Korczak, a Polish pediatrician, educator and writer who reminded the world that children are not people to be, but people of today with rights and dignity, conscience, feelings, reason and opinions. It was Poland that on the occasion of the International Year of the Child (1979) proposed the drafting of the UN Convention, which was led by Polish lawyer Adam Lopatka. (UN SRVAC, 2014)

This quote also reminds us that Poland has a crucial historical role when it comes to the UN CRC. This is why it is perhaps not too surprising that not only the Ombudsman for Children provided a separate report to the UN CRC Committee but also the NHRI (which submitted a long document with a specific focus on various discriminatory issues and OPCAT-related cases) to the combined fifth and sixth periodic reports submitted by Poland in 2020 (UN CRC Committee, 2020). This 'high profile' activity and engagement in the international children's rights monitoring mechanism shows that children's rights are awarded high importance on the agenda of both institutions.

The Ombudsman for Children has received one complaint about the right to a healthy environment in the last five years, about air pollution and children's outdoor activities. As a consequence, the latter addressed the Minister of Climate and Environment. Handling complaints related to a healthy environment is within the field of competence of the Commissioner for Human Rights.

The Ombudsman for Children and the Minister of Climate and Environment signed an agreement in June 2020 to establish a Youth Environmental Council comprising 32 young people. Polish young people also took part in the ENOC young advisors project (ENYA) involving 18 countries/regions, where the main topic was the challenges and advantages of the digital environment in 2019–2020, and they also participated in the project in 2022 on the climate crisis.

3.3 Czech Republic

The institution and competences of the Public Defender of Rights (*Veřejný ochránce práv*)⁸ are not regulated by the Constitution but by the Act on the Public Defender of Rights (*Zákon o Veřejném ochránci práv 349/1999*, as amended by 342/2006). The Office was set up in 2000 with the 'traditional' role of an ombudsman to monitor public administration and handle citizens' complaints against state authorities and public service providers. The Defender may conduct independent inquiries and request remedies. The Defender may also write legislative recommendations and issue reports and publications. It also has liti-

⁸ <https://vop.gov.sk/en/the-ombudsman-2/>

gative power (e.g., challenging laws and intervening as a party before the constitutional court and challenging the decisions of administrative bodies before administrative courts). As Stern noted, the complaint submitted to the Defender is not subsidiary but it must include documentary proof that an unsuccessful appeal was made to the relevant authority to rectify the matter (2008a, p. 149).

The Public Defender and their deputy are elected by the Chamber of Deputies (the lower chamber of the Czech Parliament) from two candidates each, nominated by the President and the Senate. The once-renewable term lasts six years. The Ombudsman may delegate some competences to the Deputy (the children's rights issue currently belongs to the Deputy). There is broad scope of authority based on the Act: equal treatment and discrimination, family, healthcare and labor, judicial matters, migration, finance, monitoring of rights of people with disabilities, public order, rules of construction procedure, social security, and supervision of restrictions of personal freedom.

This traditional type of ombuds-work has been gradually expanded in recent years to include the defense of specific areas of human rights, as the Ombudsman has acted as an OPCAT NPM since 2006. The Defender has also been mandated to monitor activities related to forced returns under the EU Return Directive Art. 8(6) and based on the CRPD. Since 2009, the Defender has also been the national equality body. During this work, the representative deals with approximately eight thousand submissions annually, of which approximately four hundred are determined to contain a discriminatory element, and around 300 are related to children's issues.

In the Czech Republic, no separate children's rights institution exists, and no ENOC member can be identified yet.

However, other citizens, including children, may approach the Public Defender in different ways: by letter, using an interactive form, by email, or in person at the office in Brno. A dedicated website and email box for children were established in 2012. If a children-related complaint arrives, the competent Department of Family, Healthcare, and Labour decides about the appropriate way of proceeding. Children's complaints are given priority and are handled in an informal way. Once received, the complaint is assigned to a legal professional, who usually contacts the child within two or three days to discuss the primary avenues of help. In some cases, the child is recommended another entity to approach. Otherwise, the lawyer will agree with the child on how to move forward (CRC/C/CZE/5-6, 15).

Currently, the amendment of the act on the ombudsman is in the drafting phase. It aims to set up an identifiable person responsible for children's rights within the office and another entity that will apply for accreditation as an NHRI (Interview 4). This idea was already mentioned in the State Party report to the CRC Committee submitted in 2019 as follows: 'The Ombudsperson's activities for children are currently [considering whether] to expand her competence or set up a new institution for the protection of the rights of the child' (CRC/C/CZE/5-6, 16). The CRC Committee, in its latest concluding observations to the State Party, noted that the Office of the Public Defender of Rights 'is involved in the protection of children's rights, but the Committee encourages the State Party to continue its efforts to establish an independent ombudsperson for children, who has the mandate to receive and investigate individual complaints with regard to violations of children's rights' (CRC/C/CZE/CO/5-6, 12).

The Defender lacks the resources to cover a broader range of activities with a society-wide impact that aim at promoting systemic changes. After a couple of years, the capacities of the Office started to be strengthened via funding from the Norway Grants, while the Department of Family, Healthcare and Labour was also set up, which deals with the protection of vulnerable children and their families and promoting the rights of children. In the frame of the project to strengthen the Office's human rights activities, the content of the UN CRC was uploaded in a form suitable for young readers in 2022; also, in June of that year, as part of an educational initiative aimed at children, they organized the first-ever conference intended for children.

However, there is no competence to directly deal with cases related to children's rights or to a healthy environment at a system level until this affects the performance of a public body; the former deals with individual cases, among which are also petitions submitted by children and young people related to their environment. A case of a young adult is currently pending who has complained about a food processing factory that has recently been built in their neighborhood that produces fumes, creates a lot of noise, and has intense lights that disturb people living nearby at night. The Defender is investigating whether the state authorities followed the law (mainly in terms of properly assessing possible environmental impacts) when they permitted the factory construction (Interview 4).

Recently, a competition was launched that encourages high school pupils to submit projects aimed at changing their surroundings in a positive manner. The winners attended a workshop to discuss the implementation of their projects with professionals (Interview 4).

In an average year, the Office receives 6,000–8,000 complaints. Most of these are related to issues of social security; in around fifth place are complaints related to the rights of children, youth, and families; and there are more than a hundred cases related to environmental protection.

3.4 Slovakia

The position and competences of the Public Defender of Rights (*Verejná ochrankyňa práv*)⁹ are specified by the Constitution and by Act No. 564/2001 on Public Defender of Rights (amended by Act 122/2006).

According to Art. 151a (sect. 1) of the Constitution, the Public Defender is an independent body that, in the scope and manner laid down by law, protects the constitutional fundamental rights and freedoms of natural persons and legal entities in proceedings before public bodies if the activities, decision making or inactivity of the bodies are inconsistent with the legal order. In some cases, the Public Defender can participate in holding persons acting in public bodies responsible if the persons have violated fundamental rights. All public power bodies shall comply with the Public Defender by engaging in the required collaboration.

⁹ <https://vop.gov.sk/en/the-ombudsman-2/>

Any person who believes that their fundamental rights have been infringed by a public body can turn to the Public Defender, who may also investigate ex officio and turn to the constitutional court (Stern, 2008c, p. 390).

The Office has been challenged for a long time due to the lack of an appropriate financial and human resource base. 'Over the years, the PDOR has grown into an institution that is certainly seen, but one that still lacks respect' (Dlhopolec, 2022).

In Slovakia, there are currently two ENOC members: the Commissioner for Children, a full member, and the Office of Public Defender of Rights, an associate member.

Before the separate Commissioner for Children (*Komisára pre deti*)¹⁰ was set up in 2015, children's-rights related cases were handled by a department of the Office of the Public Defender, which is also the reason why the Public Defender is still an associate member of the ENOC. Cooperation is ongoing; if the Defender receives a child-rights complaint or case, they will transfer it to the Commissioner for Children.

The Commissioner for Children is a standalone institution that can receive individual complaints and has the competence to initiate ex officio investigations and intervene in judicial proceedings. These powers were mainly used by the previous Commissioner, usually in custody and divorce cases (Interview 3).

The Office is a single-person body, so it is a determining factor that the current Commissioner is a professor of social work and has a strong NGO background with a history of working with vulnerable children in care and leads the office constructively and actively in terms of the visible promotion and protection of children's rights and advocacy, including in the field of youth participation. The office is making renewed efforts to make the office more accessible to children, especially to the most vulnerable (e.g., children in care, in closed institutions, and children belonging to any kind of minority). The ombudsman regularly visits institutions and communities of children nationwide (Interview 3).

Encouraging children's participation has become a more visible part of the Commissioner's work; two types of involvement can be identified. On the one hand, children and young people can participate in the various ENYA projects (especially since 2020). Moreover, members of the Slovakian Children and Youth Parliament are permanent advisors of the Commissioner and have regular meetings (every six months) to inform the Commissioner and influence his agenda.

The former was active in ENYA in 2022 concerning the topic of climate justice when they took part in several activities with experts in their home countries organized around sub-topics related to climate justice. This culminated in the drafting of recommendations (ENOC-ENYA, 2022), which they presented at the Annual ENOC Conference held in Reykjavik 2022.

The Office has recently built up pro bono partnerships with a research agency (among others), which carried out a representative survey among young people to gain insight into their interests and problems.

It can be said that climate issues are not on the daily agenda of the Commissioner, as they are not reflected in complaints and cases submitted to the office, nor are raised as im-

¹⁰ <https://komisarpredeti.sk>

portant for the children they have surveyed, except for the work done and carried out in relation to ENOC and ENYA in 2022.

However, the Office has started cooperating with the Slovak Environmental Agency: one of the main scopes of action is environmental education.

One report may be mentioned here in which children's rights and environmental aspects were also dealt with: this concerns access to clean water in marginalized Roma communities. During this work, the Commissioner cooperated with NGOs and local municipalities to resolve the issue by supporting the creation of a project that secures access to clean water and reduces pollution in water courses.

The Commissioner for Children did not participate in the UN CRC monitoring process in 2016. In its latest recommendation, the CRC Committee regretted that the criterion of political independence has not been enshrined in the Act on the Commissioner for Children and was not upheld – along with adequate professionalism – in the election of the first commissioner (CRC/C/CVK/CO/3-5/, 12.a)- d)).

The following summary table includes an overview of the competences and additional roles of the institutions dealing with children's rights.

Table 1 Comparison of V4 countries based on competences, scope and activities

	Poland		Hungary	Slovakia		Czech Republic
Type of structure (year of establishment)	Standalone Commissioner for Human Rights (1987)	Standalone Ombudsman for Children (2000)	General commissioner Commissioner for Fundamental Rights (1993, 2011)	Stand-alone Public Defender of Rights (2001)	Standalone Commissioner for Children (2015)	General commissioner Public Defender of Rights (2000)
Accreditation as NHRI	NHRI ('A')	–	NHRI ('B')	–	–	–
Competence to handle individual complaints	Yes	Yes	Yes	Yes	Yes	Yes
Competence to initiate ex officio inquiries	Yes	Yes	Yes	Yes	Yes	Yes
Competence to turn to constitutional court (or similar body)	Yes	Yes	Yes	Yes	Yes	Yes

Table 1 (continued)

	Poland		Hungary	Slovakia		Czech Republic
Competence to intervene in judicial proceedings	Yes	Yes	–	–	Yes	Yes
Competence to review draft laws	Yes	Yes	Yes	Yes	Yes	Yes
Extra roles (e.g., OPCAT NPM, CRPD NPM)	OPCAT NPM (2005) Equality body (2011)	–	OPCAT NPM (2015) CRPD NPM (2021) Equality body (2023)	–	–	CRPD NPM (2018) OPCAT NPM (2006) Equality body (2009)
Complaints received related to children's healthy environment	–	Yes	–	–	Yes	Yes
Ex officio inquiries initiated related to healthy environment	–	Yes	–	–	–	–
Project/proactive measures that are initiated related to children's healthy environment,	N/A	Yes	–	–	–	Yes
children and youth participation	N/A	–	–	–	Yes (advisory board)	–
ENOC membership (incl. ENYA)	–	Full member (ENYA: yes)	Associate member (ENYA: no)	Associate member (ENYA: no)	Full member (ENYA: yes)	–
Participation in international monitoring (e.g., CRC committee reporting)	Yes	Yes	–	–	–	Yes

Source: Table based on information collected by the Author.

3.5 Importance awarded to means of advancing children’s rights to a healthy environment and children’s rights in general in the ICRI’s work as defined in a survey sent to the institutions from the V4 countries

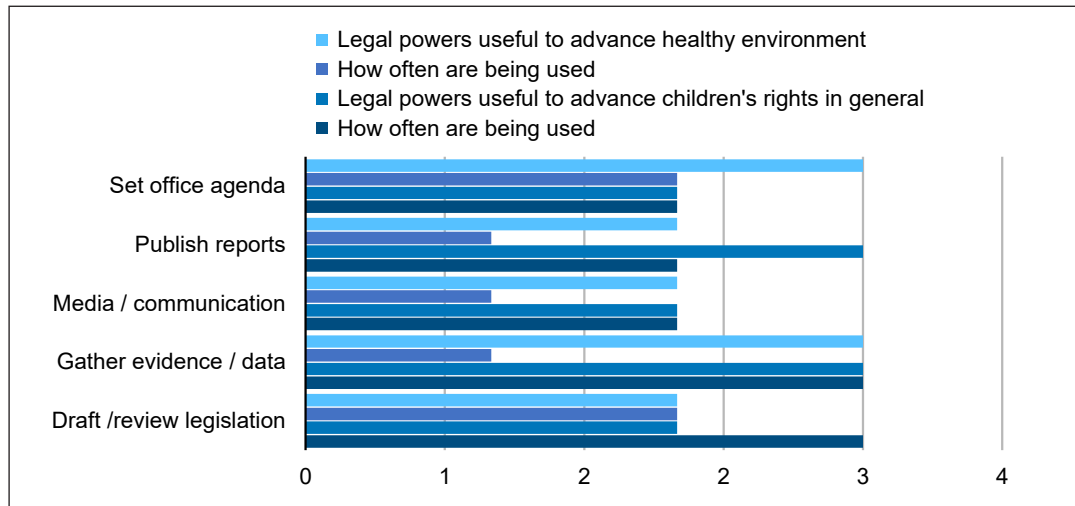


Diagram 1 Responses from Slovakia

Source: Diagram based on information collected by the author from the survey ‘Children’s ombudspersons and environment,’ December 2022.

Note: Responses on scale of indicator of importance ‘1’: not important, ‘2’: somewhat important, ‘3’: important.

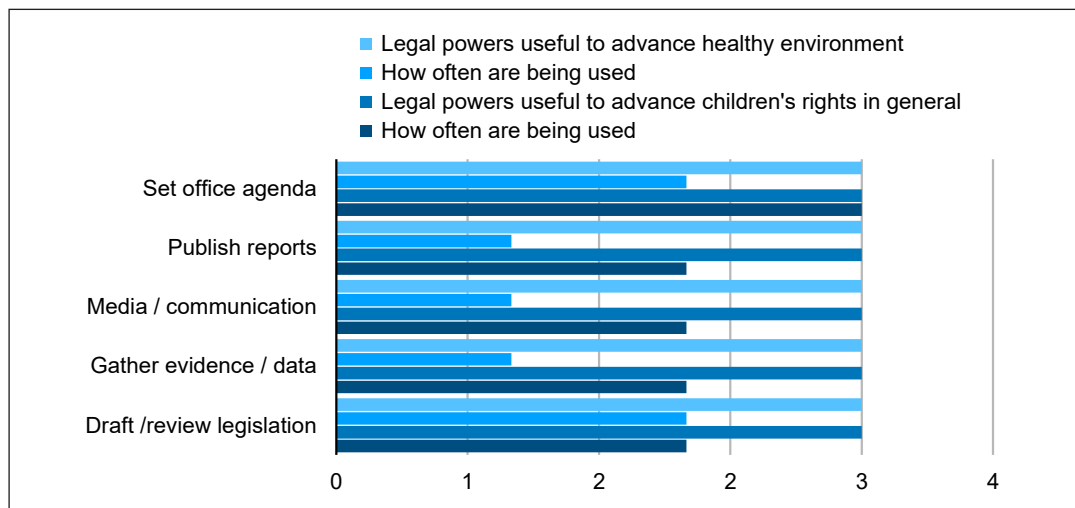


Diagram 2 Responses from Poland

Source: Diagram based on information collected by the author from the survey ‘Children’s ombudspersons and environment,’ December 2022.

Note: Responses on scale of indicator of importance ‘1’: not important, ‘2’: somewhat important, ‘3’: important.

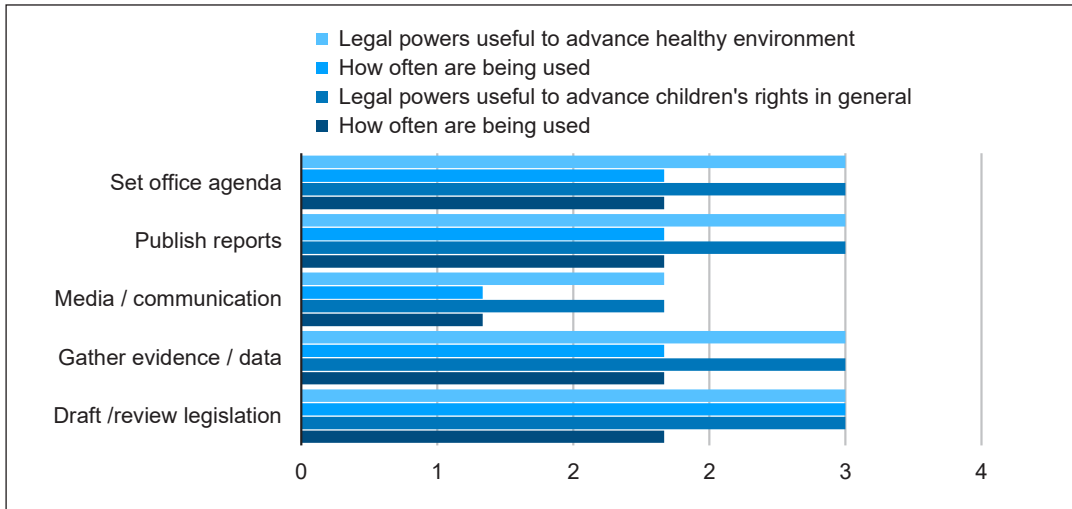


Diagram 3 Responses from Hungary

Source: Diagram based on information collected by the author from the survey ‘Children’s ombudspersons and environment,’ December 2022.

Note: Responses on scale of indicator of importance ‘1’: not important, ‘2’: somewhat important, ‘3’: important.

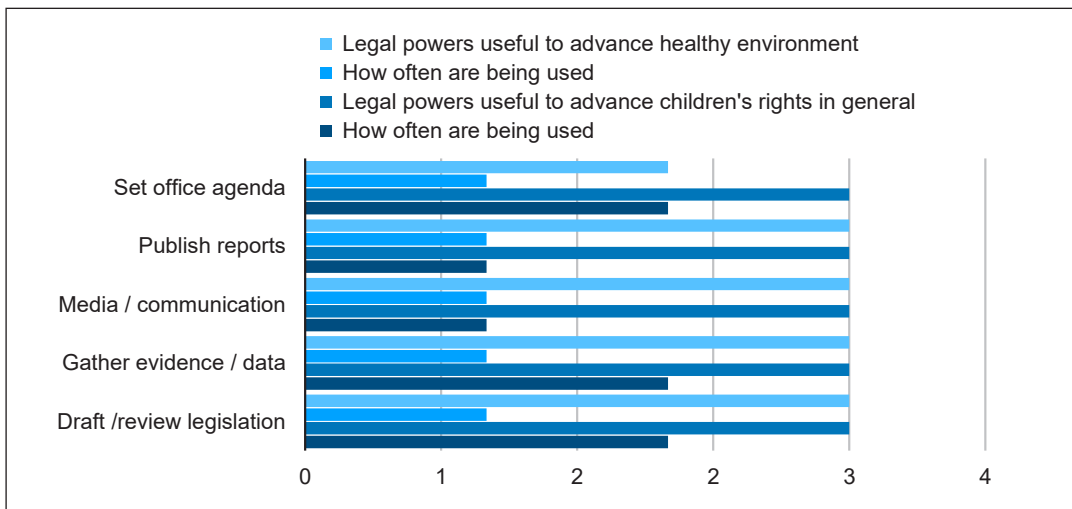


Diagram 4 Responses from the Czech Republic

Source: Diagram based on information collected by the author from the survey ‘Children’s ombudspersons and environment,’ May 2023.

Note: Responses on scale of indicator of importance ‘1’: not important, ‘2’: somewhat important, ‘3’: important.

Four institutions participated in the survey: the Office of the Commissioner for Children from Slovakia (Diagram 1), the Office of the Ombudsman for Children from Poland (Diagram 2), the Office of the Deputy for Future Generations of the Commissioner for Fundamental Rights from Hungary (Diagram 3), and the Office of the Public Defender from the Czech Republic (Diagram 4).

Based on their self-evaluation of how important it is to advance *the right to a healthy environment* (from 1 to 5, where five is 'most important'), three respondents (Poland, Hungary, Czech Republic) answered '5', and one (Slovakia) answered '3'. This is highly interesting as it is not entirely in coherence with actual performance, as the Slovakian institution is more active in various ways related to promoting a healthy environment than the other countries, indicating the primary importance of the issue.

The *Slovakian* respondent indicated setting the office's agenda and data gathering as an important task but one less frequently engaged in, and communication and use of media were ranked as not too important regarding the topic of children's right to a healthy environment. Concerning advancing children's rights in general, the most important legal tool which is much used by the office is gathering data and evidence.

The *Polish* respondent reported that all tasks were equally important in promoting a healthy environment and children's rights in general. The differences between the two fields can be identified mainly in the frequency that they engage in these tasks, as all elements received a weaker evaluation in the area of supporting a healthy environment.

The *Hungarian* respondent reported that all legal tools are important concerning promoting a healthy environment and children's rights in general, except for speaking with the media, which was rated as less important in both fields. However, the answers related to the frequency of use of the tools associated with maintaining a healthy environment and children's rights and in general, may be confusing, as all were highly ranked, which does not appear in the publicly accessed sources and interviews.

The *Czech* respondent indicated that all tools are equally important as concerns promoting a healthy environment and children's rights in general, except for setting the office agenda in the field of advancing children's right to a healthy environment, which was evaluated as of less importance. Despite the evaluation of these tools in both fields as important, the *frequency* of their use is evaluated as much weaker or worse.

4 Summary

In sum, the institutions may vary in structure, legal/constitutional foundation, scope, and competence, while promoting the right to a healthy environment and issues related to climate change may not be reflected that much in their work (the institutions mainly understate their relevance). However, the legal tools and space for promotion, awareness-raising, and advising, which can also be fulfilled using non-judicial means, are available, and in the survey, all the institutions indicated these issues as important at some level. The reasons for the lack of activity vary among the institutions. While all of them have the competence to handle individual complaints and initiate inquiries independently, they all need more resources. In the Hungarian case, the Deputy for Future Generations does not deal with children's rights cases but with the right to a healthy environment as a funda-

mental right, not a specific children's right. Moreover, the role and activity of the head of the institution and the latter's attitude as a body with a single head clearly determine the entire office's (and deputies') proactivity too. The Slovakian Commissioner deals with issues directly arising from complaints; and set his agenda based on research focusing on questions related to children and young people, which are not climate issues. Despite the high level of activity in general, and also he addressed climate issues in international child participation fora, such as ENYA, there is no sign to deal these questions at this working agenda. There is no separate institution in the Czech Republic, so there is no particular focus on children's rights. However, some highly acceptable efforts (including priority awarded to children's rights cases and a dedicated homepage) have been made to make the office more accessible and known by children, and the published intention to amend the law and set up a separate commissioner is promising. In Poland, however, children's rights are highlighted and have a strong mandate both on the agenda of the NHRI and the Ombudsman for Children, and there is also a history of promoting and protecting them, although the right to a healthy environment in connection with children's rights is not yet in focus.

Thus, when we look at the V4 countries, no single reason explains why the institutions are not dealing much with climate issues. The current research also found that a standalone institution can better guarantee the promotion and protection of the rights of children in general (both in terms of visibility and also accessibility) – for this, see the Ombudsman for Children in Poland and especially the Commissioner for Children in Slovakia, whose contribution to the ENYA 2022 project on climate justice shows us that under the currently active Commissioner, the institutions are even comfortably moving ahead in the field of children's participation, which is a crucial (and in many cases missing or non-sufficiently effective) element of such work (see, e.g., Hungary and the Czech Republic).

Accordingly, I firmly believe that legislators have missed a significant opportunity, as neither a separate specialized ombudsperson nor a deputy for children's rights has been established in Hungary and the Czech Republic thus far. Under the current systems, the focus and the visibility of children's issues can easily be overshadowed. In Hungary, the DFG, with its limited powers, is much weaker than the ombudsman itself, and the current CFR is especially criticized because of its 'reserved' or even negligent attitude. With its general mandate, the CFR is not obliged to speak out on issues of children's rights any more strongly than any other rights which he has a mandate to defend. Because of this structure and the interference among competences, the issues of a healthy environment and children's-rights aspects of climate change fall between the 'two seats' of the two offices. The passivity and lack of productivity of the CFR and their specialized Deputy are especially surprising. However, there are clear space and legal opportunities to present, advocate and highlight many more climate-related issues in connection with children's rights.

The research also reinforced the understanding that these institutions are single-headed ones, so the role, level, field, and quality of activities and tools the leaders choose undoubtedly determine institutional performance in terms of advocacy, child participation, and the promotion and protection of children's rights.

Based on an evaluation of indicators of the importance of the tools employed to advance children's rights, particularly the right to a healthy environment, the preliminary statement that ICRI can play a vital role in supporting the realization of children's rights in relation to the environment is supported here. They are uniquely designed to lead efforts to hold public discussions, initiate inquiries, order research, launch child participation events and direct the spotlight onto what responses are expected considering children's rights and the environment. ICRI have great potential to use their resources and tools, so they should not only recognize the multi-faceted problems of environmental/climate change for children's rights and their responsibilities concerning children's rights and the environment but *must act* to fulfill those obligations by deploying the powers they are expected to possess.

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