

# Legal status of a minor and the Children's Ombudsman in civil proceedings

## Abstract

As the title may indicate, the main author's purpose is to address specific aspects of participation of a minor in civil proceedings, to highlight complications related to procedural (in)capacity of minors and to suggest solutions for the major issues, which the author sees especially in unsatisfactory representation of a minor and in disregard for the child's right to participation. Using concrete examples, it is demonstrated that current law does not need to be modified fundamentally in order to significantly improve position of minors as parties to civil proceedings.

On top of that, in pursuit of livening up this frequent topic, the thesis provides a critical analysis of the Children's Ombudsman bill that may give rise to an entirely new office of the Children's Ombudsman, which already exists in almost all EU member states, however, Czech Republic is not one of them. Therefore, a brief comparative study of several European legislations on Children's Ombudsman will be conducted.

According to the bill, the potential Children's Ombudsman's authority should apply, *inter alia*, to some civil proceedings. Namely, the Children's Ombudsman would be entitled to initiate or participate in vast majority of special court proceedings regarding family matters. He or she could also be appointed as a guardian *ad litem* for a child in such proceedings. In this context, the author poses a question whether the participation of the Children's Ombudsman in civil proceedings is the most suitable means of strengthening the legal position of minors as participants in civil proceedings; alternatively, what are other measures to this effect that may be adopted.

Besides the above-mentioned proceedings concerning family matters the second part of the thesis deals with the topic of child plaintiffs and defendants in civil disputes as well as minors as parties to enforcement proceedings. A phenomenon of child's debts forms an integral part of these chapters.

The final part presents a compact summary of legal instruments of protection of a minor in civil proceedings that are available under the law as it exists (*de lege lata*). At the same time, some intended amendments to relevant current legislation are examined comprehensively. Furthermore, reflections with a view to the future law (*de lege ferenda*) may not be omitted. The author concludes that it is highly desirable to form an independent and impartial body focused solely on the protection of children's rights. Nevertheless, the Children's Ombudsman's involvement in civil proceedings should not be overestimated. It was shown that even minimal but precisely considered changes of the current civil procedure rules and mainly of the common practice might bring

maximum results. The first step is a high-quality and continuous education as well as an effective cooperation of all persons involved.

**Key Words: a minor as a participant in civil proceedings, child's best interest, child participation, Children's Ombudsman**