



**The Romanian People's Advocate**



## **Activity report for 2004**

**Bucharest  
2005**

## ***Chapter 1. Strengthening the institution – legal, organizational and functional changes***

### **1.1. The new legal framework for the organization and operation of the institution**

Constitutional and legal changes in 2003 and 2004 favored the institutional strengthening of the People's Advocate, in the exercise of its powers as defender of individuals' rights and freedoms.

The Constitution, revised in 2003, has brought significant organization and functional enhancement. Thus, the appointment of the People's Advocate is made in joint meeting of the Chamber of Deputies and the Senate, for a 5-year mandate, instead of a 4-year mandate. Even the Constitution has set out that, in order to fulfill its constitutional powers, the People's Advocate shall be assisted by deputies specialized on certain fields of activity, which leads to an increased efficiency of the institution's activity, and to the conformity with the laws of other states, where ombudsmen operate.

In addition, powers involving the People's Advocate in the process of constitutional justice enforced by the Constitutional Court have been set out.

Following the revision of the Romanian Constitution, the Law no. 35/1997 on the organization and functioning of the People's Advocate, was amended and completed by Law no. 233/2004.

The Regulations for the organization and functioning of the People's Advocate were also amended, aiming at harmonizing them with the new legal and constitutional regulations.

According to the new legal provisions, the deputies of the People's Advocate perform their duties in the following fields:

- a) human rights, equality of chances between men and women, religious cults and national minorities;
- b) the rights of children, family, youth, retired and disabled persons;
- c) military service, justice, law enforcement, penitentiaries;
- d) property, labor, social security, taxes.

With a view to fulfilling its powers according to the law and easing citizens' access to the institution, the People's Advocate establishes territorial offices.

Another legislative novelty is represented by the assimilation of the institution's personnel with the personnel of the Parliament's specialized structures.

One has to notice that, according to the new legal provisions, through annual budgetary laws, a fund may be approved at the People's Advocate disposal, in order to provide support to persons coming from the country to Bucharest institution's head office, requesting support for the protection of their rights and

freedoms and who are facing material difficulties (retired old persons with very low pensions, disabled persons with very low incomes).

Recently, The Romanian Parliament has passed the Law no. 554/2004 on administrative procedure, which sets forth the powers of the People's Advocate relating to the notification of the administrative courts of law. On the grounds of these legal provisions, the People's Advocate, after conducting a survey, according to the organic law, on the basis of a complaint submitted by an individual, if it considers that the illegality of the act and the excess of power by the administrative authority cannot be removed other than by the interference of a court of law, may notify the competent administrative court having jurisdiction at the complainant's residence. The complainants obtain by law the capacity of plaintiff and they will be summoned in this capacity.

### **1.2. Establishment of new territorial offices in Braşov and Constanţa**

In 2004, two territorial offices of the People's Advocate, one in Braşov and another in Constanţa, were established, besides those already functioning in Bacău and Alba-Iulia. Efforts were made in order to open other territorial offices, as provided for in annex to the Law no. 35/1997, republished, on the organization and functioning of the People's Advocate, which will perform their duties on the territorial area under the jurisdiction of the courts of appeal. The establishment of territorial offices was aimed at increasing awareness with regard to the problems faced by the citizens in the geographical areas where the respective offices were established, at avoiding expensive costs incurred by travelling to the institution's head office, at a better representation of the institution's position and role among the public authorities called to watch over the promotion and observance of individuals' rights and freedoms.

### **1.3. Organization and personnel of the People's Advocate**

The amendments and completions to the Law no. 35/1997 are reflected in the institution's organization chart. The People's Advocate is assisted by deputies specialized on four fields of activity. The Secretary General coordinates the institution's economic and administrative activity. The consultative board is formed of the People's Advocate, his deputies and counselors, the secretary general, as well as other persons appointed through the People's Advocate order.

The Department for the protection of individuals with regard to personal data processing is part of the People's Advocate institution.

The specialized executive staff is formed of experts and counselors. The personnel chart of the institution includes 96 positions.

#### **1.4. Promotion and training of personnel**

In 2004, contests aimed at filling the vacancies within the institution were organized according to the legal provisions. Specialized experts and counselors were selected. The promotion of the institution's specialized personnel was based on criteria such as: professionalism, loyalty, correctness and promptitude in performing their tasks.

Through the Resolution no. 2 of September 22<sup>nd</sup>, 2004 of the Standing Bureaus of the Chamber of Deputies and Senate, at the proposal of the People's Advocate's and with the advice of the Legal Committees of the two Parliament Chambers, two deputies of the People's Advocate were appointed.

In order to improve the personnel's professional training, the institution organized, on a monthly basis, seminars and debates on specific topics.

The experts of the People's Advocate experts attended professional trainings in the field of human rights protection, held by *Raoul Wallenberg Institute* in Sweden and the Sweden International Agency for Development (Simina Popescu, expert and Denisa Ionea, expert). These workshops contributed to a better knowledge of the international issues relating to human rights protection and international legal instruments applicable thereto.

In addition, in 2004, the counselors and experts of the People's Advocate attended reunions, public debates and meetings referring to the protection of the individuals' rights and freedoms. The scientific workshop "The Citizen and the Press" held by the People's Advocate in cooperation with the Law Faculty of the Bucharest University had a major significance. As a conclusion to the debates, it was noted that the People's Advocate influence on the society is based on the public opinion and implicitly, on the press role as means of information and formation of opinion.

#### **1.5. Working conditions**

In 2004, the People's Advocate carried out its activity at the head office in Str. Eugeniu Carada no. 3, as well as at the territorial offices across the country. The working conditions were improved by providing the technical equipment necessary to a proper carrying out of the activity. Subsequently, the quality of the works performed by the institution's counselors and experts increased in terms of shape, quickness and efficiency.

In order to allow the carrying out of internal training workshops and the organization of conferences and symposiums, a suitable location was arranged and equipped with the appropriate office furniture. The location hosts also the institution's information point where the employees may read specialized books and publications.

## *Chapter 2. The People's Advocate activity per area of expertise*

### **2.1. General volume of activity**

#### *a) Settlement of complaints*

In 2004, the People's Advocate and its territorial offices registered **4621 complaints** submitted by individuals from Romania and abroad. (Annex no. 1, Annex no. 3, Annex no. 4).

#### *b) Activity carried out during hearings*

In 2004, the People's Advocate and its territorial offices held **5971 hearings** during which violations of the individuals' rights were invoked and 575 complaints were retained for settlement (Annex no. 1).

#### *c) Answering telephone requests*

Individuals, mainly those residing far from the institution's head office and individuals not able to travel contacted the institution by telephone. **1956 telephone calls** were answered at the reception desk. **349 telephone calls** were received at the territorial offices. Overall, **2305 telephone calls** were received (Annex no. 1)

#### *d) Subject of the complaints submitted to the People's Advocate*

The complaints submitted to the People's Advocate referred to violations of citizens' rights and freedoms, as well as to abuses by public authorities. The complaints were examined according to the People's Advocate areas of expertise (Annex no 2).

#### *e) Comparative analysis on the percentage of complaints per area of expertise*

The overall number of complaints relating to the violation of individuals' rights or freedoms was **4621**. In the field of human rights, equality of chances between men and women, religious cults and national minorities, **36.74% complaints** were received. **30.55% complaints** referred to property, labor, social security, taxes and income taxes. In the field of the rights of children, family, youth, retired and disabled persons, **20.21%** complaints were received, while in the field of military service, justice, police and penitentiaries, **12.5% complaints** were received.

#### *f) Activity relating to the individuals' protection with regard to personal data processing*

In 2004, **1341** individuals and legal persons registered with the People's Advocate as personal data controllers (Annex no. 1). In the same field, **1079** notifications regarding personal data processing were drafted and **943** advice were made to personal data controllers. (Annex no. 1).

*g) The People's Advocate activity with regard to the constitutional review of laws and ordinances*

In 2004, **621** opinions with regard to exceptions of unconstitutionality of laws and ordinances referring to individuals' rights and freedoms were communicated to the Constitutional Court. In addition, the institution notified the Constitutional Court of the unconstitutionality objection referring to the Law on administrative procedure, objection rejected by the Constitutional Court (Annex no. 1)

*h) Activity carried out for the information of citizens with regard to the protection of the individuals' rights and freedoms and for media awareness in respect of the People's Advocate role*

The People's Advocate is well aware of the fact that the key aspect of its activity is the information of individuals with regard to their rights and freedoms, including to right to submit complaints to the People's Advocate.

In 2004, the activity of informing the citizens and the media continued, mainly through the increase of contacts with the mass media interested in legal and human rights issues.

For a better understanding of the People's Advocate role and powers, a **presentation leaflet** and an **information bulletin** on the institution's activity and with regard to the cases resolved through the intervention of the People's Advocate were published on the institution's expenses. These information materials were distributed free of charge to individuals and local and central public administration authorities (ministries, prefectures, county councils and local administrations).

Some efficient media awareness methods are, in our opinion, radio and television channels. Therefore, in 2004, the cooperation with the Romanian Company of the Radio-Broadcasting continued, the People's Advocate representatives attended on a regular basis the radio broadcast "Audience with the People's Advocate".

## **2.2. The People's Advocate procedures and specific means of action**

The People's Advocate's main goal is to ensure the efficiency of its actions aimed at resolving the complaints. The People's Advocate procedures and specific means of actions are therefore essential.

In 2004, **38 inquiries** were conducted (Annex no. 7):

- **13 inquiries** for the examination of the enforcement of the legal provisions regarding the right to private property, right to work and social security were conducted at the local municipalities of sector 3 and 4 - Bucharest, Bucharest Municipality, the prefecture of Dâmbovița; the local municipality of Constanța; Constanța prefecture; Bucharest thermal power supply company, the Ministry of Foreign Affairs, Bucharest Labor Inspection, The Ministry of Labor, Social Solidarity and Family, The Office for the Migration of Workforce.

- **10 inquiries** regarding possible violations of the right to information, right to petition, the right of the persons aggrieved by a public authority, were conducted at: local councils, local tax and income tax services, financial administrations, unemployment offices, services for children's protection and postal offices of sectors 1 – 6, Bucharest municipality, the national house of pensions and other social security rights, the prosecutor's office by the Tribunal of Bucharest, the prosecutor's office by the Higher Court of Cassation and Justice, Police Station 22 of sector 6 Bucharest, Police Station 11 of sector 3 Bucharest; Road Police Department of Bucharest, Alba-Iulia municipality; the Ministry of Public Finance.
- **9 inquiries** regarding the observance of the retired persons' rights were conducted at: The Ministry of Foreign Affairs, The National House of Pensions and other Social Security Rights, the Pension House in Bucharest.
- **2 inquiries** referring to the observance of the detention conditions were conducted at Giurgiu Penitentiary and Maximum Security Penitentiary in Bucharest-Rahova.
- **1 inquiry** was conducted at the Police Inspectorate of Gorj County regarding the detention conditions in the police arrest.
- **2 inquiries** with regard to the observance of the right to protection of disabled persons were conducted at the Ministry of Transportation, Construction and Tourism and at the local administration of Berești-Bistrița commune, Bacău County.
- **1 inquiry** with regard to the observance of the right to health care was conducted at the Hospital no. 9 „Dr. Obregia”.

In addition, in 2004 **8 draft recommendations** were made (Annex no. 8):

- **3 recommendations** to the Ministry of National Defense, to the National Archives, The Ministry of Labor, Social Solidarity and Family for the enforcement of the Law no. 309/2002 regarding the recognition and granting of rights to persons having performed military service with the General Direction of Labor Service within 1950-1961, amended and completed;
- **1 recommendation** to the Ministry of Public Finance referring to the enforcement of the provisions of Law no. 9/1998 regarding the granting of compensations to Romanian citizens for the assets passed in the property of the Bulgarian State following the enforcement of the Treaty between Romania and Bulgaria, signed in Craiova on September 7<sup>th</sup> 1940;
- **2 recommendations** to Bucharest municipality with regard to the enforcement of the Law no. 10/2001 regarding the legal status of real estates abusively taken by the state within March 6<sup>th</sup> 1945 – December 22<sup>nd</sup> 1989;

- **1 recommendation** to the local municipality of sector 6, referring to the enforcement of the Government Emergency Ordinance no. 5/2003 on the granting of subsidies for the heating of dwelling houses, as well as of other facilities granted to the population for the payment of the thermal power supply.
- **1 recommendation** to Alba-Iulia municipality with regard to the observance of the individuals' right to petition.

In exercising its powers, the People's Advocate drafted in 2004 **two special reports** referring to the enforcement of the Law no. 309/2002 on the recognition and granting of rights to the individuals having performed military service with the General Direction of the Labor Service within 1950-1961, amended and completed, and to the protection of the Romanian citizens working abroad.

These special reports were submitted to the Chamber of Deputies and to the Senate.

### **2.3. Human rights, equality of chances between men and women, religious cults and national minorities**

#### ***A. Equality of chances (art. 16 of the Constitution)***

In 2004, **33 complaints** referring to an alleged violation of the equality of citizens' rights were received. The small number of such complaints may show a decrease in the number of cases relating to discrimination. In addition, statistic data referring to the number of complaints in which the People's Advocate was notified of discrimination shows a possible increase of the citizens' addressability toward the National Council for Combating Discrimination, as specialized body of the central public administration, subordinated to the Government, having responsibility in the implementation of the equality among citizens, finding and sanctioning contraventions provided for by the Government Ordinance no. 137/2000, further amended and completed, on the prevention and sanctioning of all forms of discrimination.

#### ***B. The right to free movement (art. 25 of the Constitution)***

In 2004, the People's Advocate received **17 complaints** regarding an alleged violation of the right to free movement.

From the analysis of the complaints referring to alleged violations of art 25 of the Romanian Constitution, it came out that the People's Advocate was repeatedly notified with regard to the orders given by the Authority on Foreigners' Issues referring to the conditions in which persons may leave the Romanian

territory. The People's Advocate advised the complainants to address to the competent public authorities for the settlement of contestations regarding the orders to leave the territory.

Support was requested to the People's Advocate also for the granting of the refugee status in Romania. This category of complainants was advised to address to the National Office for Refuges within the Ministry of Administration and Home Affairs, or, as the case may be, to its territorial units, in conformity with the Government Ordinance no. 102/2000, further amended and completed, on the status of refugees in Romania.

In addition, the People's Advocate was notified of the maladministration in relation to the issuance of a passport by the Passport Direction within the Ministry of Administration and Home Affairs.

**CASE STUDY** – case resolved through the intervention of the People's Advocate

**File no. 3230/2004.** Alexandru (pseudonym), having Romanian and French citizenship, domiciled in France, submitted a complaint to the People's Advocate with regard to the refusal of the Romanian authorities to release him a new Romanian passport. He submitted an application to the Ministry of Administration and Home Affairs for the issuance of a new Romanian passport. Problems occurred in respect of the orthography of his name in the birth certificate vs. the French identity card where his name and first name were written in French language. The complainant stated that the Romanian authorities had requested him to change his Romanian name with the one in French language; otherwise the issuance of a new passport would not be possible. The complainant underlined that he wanted the issuance of a new passport without changing his civil documents. Following the People's Advocate efforts by the Passport Direction within the Ministry of Administration and Home Affairs, the complainant received a new passport on his Romanian name.

### ***C. Right to petition (art. 51 of the Constitution)***

Examining the content of the complaints submitted to the People's Advocate, it was noticed that, in 2004, the violation of the right to petition was invoked in **495** cases.

Due to the particular nature of this right, such violation is connected in most cases with the violation of one or more rights, i.e. the right to private property, guaranteed by art 44 of the Constitution, the right to a decent living standard, prescribed by art. 47 of the Constitution, the right to information, set forth in art 31 of the Constitution.

Thus, individuals informed the People's Advocate of the fact that they addressed to public authorities by means of applications, complaints, notices, proposals for the settlement of personal issues (settlement of issues relating to pensions, property, taxes and income taxes, subsidies, clarifications with regard to

the status of the notices submitted by the persons concerned, according to the Law no. 10/2001, completed, on the legal status of real estates abusively taken over by the state within March 6<sup>th</sup> 1945 – December 22<sup>nd</sup> 1989, or to the status of the files regarding compensations granted according to the Law no. 9/1998, republished, on the granting of compensations to Romanian citizens for the assets passed to the property of the Bulgarian State following the enforcement of the Treaty between Romania and Bulgaria signed in Craiova on September 7<sup>th</sup>, 1940), but they were faced with cases of maladministration with regard to the registration of applications by the Romanian public authorities.

In addition, when the application was registered, either the public authorities did not answer within the legal time limit, or delayed the settlement of the issues.

The People's Advocate provided support to the complainants and promptly answered their requests. Thus, the People's Advocate conducted **an inquiry** at Alba Iulia municipality, with the following outcomes:

- the existence of an Information, Press, Communication and Public Relations Department within the Local Council of Alba Iulia, which has the responsibility of keeping a computerized record of all ingoing documents, including petitions, which in turn are not separately recorded;

- the lack of special record for the registration of petitions, as prescribed by art 63 of the Framework Regulations for the functioning and organization of the Local Council at the level of Alba Iulia local municipality. It was noticed that the Local Council of Alba Iulia did not examine each semester the settlement of the petitions, as it was prescribed in the aforementioned Framework Regulations;

- due to the large number of documents registered with the Information, Press, Communication and Public Relations Department, it became impossible to perform the survey with regard to the observance of the time limits for the settlement of petitions.

Pursuant to such findings, the People's Advocate considered that the right of individuals to petition, provided for in art 51 of the Romanian Constitution, was infringed as the respective petitions were not answered within the time limit provided by the law. Consequently, according to the provisions of the Law no. 35/1997, republished, the People's Advocate issued the **recommendation no. 8 of December 6<sup>th</sup>, 2004** referring to the violation of the right to petition.

**CASE STUDY** – cases resolved through the intervention of the People's Advocate

**File no. 301/2004.** Mihai (pseudonym) submitted a complaint to the People's Advocate with regard to the refusal of the National Archives to issue a certificate granting him the capacity of beneficiary according to the provisions of the Law no. 309/2002, amended and completed, on the recognition and granting of rights to the persons having performed military service with the General Direction of Labor Service within 1950 – 1961. The complainant states that, subsequent to the answer received from the Military Unit 02405 Pitesti, he addressed to the National

Archives, for the issuance of the document proving the performance of the military service with the labor departments of the General Direction of Labor Service. Pursuant to the People's Advocate efforts by the National Archives, the complainant received the certificate requested.

**File no. 2218/2004.** Cristina (pseudonym) submitted a complaint to the People's Advocate with regard to the failure of the Administration of Real Estate Fund in Bucharest to answer her application within the legal time limit. The complainant addressed to the Administration of Real Estate Fund in Bucharest requesting the issuance of a copy, corresponding to the original, of the lease contract for the building in which she had lived until the dissolution of her marriage. Following the People's Advocate efforts, the complaint was resolved and the document was issued.

**File no. 3893/2004.** Ioana (pseudonym) submitted a complaint to the People's Advocate with regard to the delay of the Municipality of sector 5 Bucharest to solve the petitions whereby she requested the granting of subsidies in relation to the minimum state-guaranteed income. Pursuant to the People's Advocate efforts, the Municipality of sector 5 resolved the complainant's request. The aforementioned public authority informed the complainant that the subsidy was made available to her at the pay desk of the General Social Security Direction.

**File no. 4236/2004.** Emilia (pseudonym) submitted a complaint to the People's Advocate with regard to the fact that she had lodged applications with the National House of Pensions and other Social Security Rights in order to receive a new retirement decision and differences in the payment of the pension she was entitled to according to the legal provisions, but she received no answer. Pursuant to the People's Advocate efforts, the National House of Pensions and other Social Security Rights answered the complainant's request and she received the differences in payment for January 1<sup>st</sup> 2004 – September 31<sup>st</sup> 2004, as of September 23<sup>rd</sup> 2004.

**File no 48/2004.** Maria (pseudonym) submitted a complaint to the People's Advocate territorial office in Bacău with regard to the delay of the local administration of Măxineni commune, Brăila County, to solve the application whereby she requested the release of an excerpt of her father's civil status certificate. Pursuant to the efforts of the territorial office in Bacău, the administration of Măxineni, Brăila County, solved the application, releasing the excerpt requested.

**File no. 44/2004.** Emilia (pseudonym) submitted a complaint to the People's Advocate territorial office in Bacău with regard to the delay of the local administration of Oncești commune, Bacău County, to solve the application requesting the issuance of a copy of her father's death certificate. Pursuant to the efforts of the territorial office in Bacău, the administration of Oncești, Bacău County, solved the application, releasing the copy requested.

**File no. 13/2004.** Vasile (pseudonym) submitted a complaint to the People's Advocate territorial office in Constanța with regard to the delay of the local administration of Independența commune, Constanța County, to solve the

application requesting the issuance of the title over the land for which his property right was acknowledged. Pursuant to the efforts of the territorial office Constanța, the competent public authority proceeded to the issuance of the complainant's title.

#### ***D. The right to information (art. 31 of the Constitution)***

In 2004, the People's Advocate received **403 complaints** with regard to the violation of the right to information. The main aspects alleged refer to: request of information relating to the issuance of the necessary certificates according to the Law no. 309/2002 on the recognition and granting of rights to persons having performed military service with the General Direction of Labor Service within 1950-1961, information relating to the enforcement of Law no. 290/2003 on the granting of compensations to Romanian citizens for the property seized, retained or remained in Basarabia, Bucovina de Nord and Herța County after the War and the enforcement of the Peace Treaty between Romanian and the Allies.

After examining such complaints, it is outlined that there are some public authorities and institutions which do not comply with the obligation, prescribed by the Constitution, of providing applicants with the information requested, according to the Law no. 544/2001 regarding free access to public interest information.

The People's Advocate acted promptly, notifying local administrations, prefectures, the National Archives, the territorial pension houses not having complied with their obligation of answering the applicants' requests with regard to public issues and personal interest issues.

**CASE STUDY** - cases settled through the interventions of the People's Advocate

**File no. 8327/2004.** Ion (pseudonym) submitted a complaint to the People's Advocate with regard to the refusal of Bucharest Municipality to inform him of the status of the settlement of applications referring to the granting of compensations according to the provisions of the Law no. 10/2001 on the legal status of real estates abusively taken over by the state within March 6<sup>th</sup> 1945 – December 22<sup>nd</sup> 1989. Pursuant to the People's Advocate efforts by the administration of Bucharest, the complainant was notified with regard to the documents he had to submit in order to complete his file referring to the granting of compensations according to the provisions of the Law no. 10/2001.

#### ***E. The right to a healthy environment (art. 35 of the Constitution)***

In 2004, **8 complaints** referred to the violation of the right to a healthy environment, provided for by art. 35 of the Constitution. The aspects notified thereby referred to the pollution of the environment and observance of the legal provisions regarding a healthy and ecologically-balanced environment.

The People's Advocate notified the public authorities in charge thereof according to the law on environment protection and improvement. Thus, the People's Advocate acted at its own initiative in one case of environment pollution in Bacău and interceded with the county police station Bacău, with the National Environment Police and with the local administration of Helegiu, Bacău County.

**CASE STUDY**- case settled through the intervention of the People's Advocate

**File no. 204/2004.** Following the publication in the newspaper "Monitorul de Bacău" of the announcement called "The administrator's negligence almost to cause an ecological disaster", the People's Advocate acted at its own initiative with regard to an alleged violation of the art 35 of the Constitution, regarding the right to a healthy environment. Pursuant to the efforts of the People's Advocate territorial office in Bacău, the county Commissioner's Office of Bacău within the National Environment Guard conducted investigations at Tazlău river bed (Râpa Gâtului area) and found significant deposits of wood shavings and domestic wastes. In addition, the company manufacturing arch bricks and having deposited the wood shavings and domestic wastes in the area was identified. The company was operating without environment authorization; therefore the county Commissioner's Office applied administrative sanctions. In addition, a statement of accounts was drafted at the offices of the administration in Helegiu commune, Bacău County, whereby the local public administration was put in charge of taking action to stop the aforementioned deposit of wastes. Referring to the measures enforced, the administration of Helegiu, Bacău County, informed the People's Advocate territorial office in Bacău that the respective area was cleaned through the incineration of the wood shavings and domestic wastes, and warning signs were displayed, forbidding the disposal of wastes in the aforementioned area, under the sanction of fines.

***F. The right of the person aggrieved by a public authority (art 52 of the Constitution)***

In 2004, the right of a person aggrieved by a public authority was invoked in **256 complaints**.

In respect of the rights invoked by individuals in relation to public authorities, the complaints referred to the violation of lawful rights and interests by the breach of legal rights such as: the right to pension, social subsidies provided for by the Law no 416/2001 regarding minimum state-guaranteed income, failure to issue property titles, according to the provisions of the Law 18/1991 on the land fund or of the Law no. 10/2001 on the legal status of real estates abusively taken over by the state within March 6th 1945 – December 22nd 1989, amended and completed.

## **CASE STUDY - case settled through the intervention of the People's Advocate**

**File no 247/2004.** Nicoleta (pseudonym) submitted a complaint to the People's Advocate territorial office in Bacău with regard to the failure of the local council of Văleni commune, Neamț county, to solve the application whereby she, as specialized family doctor, requested the concession of the location needed to the establishment of the medical office, in accordance with the provisions of the Government Resolution no. 884/2004 on the concession of locations for the establishment of medical offices. Pursuant the intervention of the People's Advocate territorial office in Bacău, the local administration of Văleni, Neamț County, solved the complainant's request, approving the concession of a surface area of 57 sq.m where the commune's medical office was established.

**File no. 6444/2004.** Ioana (pseudonym) submitted a complaint to the People's Advocate with regard to the failure of the administrator of the building where she lived, to perform his duties, aspects that she also notified to the local municipality of sector 3 Bucharest. Pursuant to the People's Advocate efforts, the local administration of sector 3 Bucharest solved the complainant's request, appointing a new authorized administrator, changing the format of the lists containing the tariffs of utilities and cleaning of green areas.

**File no. 260/2004.** Mihai (pseudonym) submitted a complaint to the People's Advocate territorial office in Bacău with regard to the refusal of the local council of Răcăciuni commune, Bacău County, to reimburse the public transportation expenses he incurred in traveling from and to the place of work, according to the provisions of the Law no. 128/1997 amended and completed, regarding the status of the teaching staff. Following the action of the territorial office in Bacău, the local administration of Răcăciuni informed that the necessary amounts for the reimbursement of the travel expenses were allotted, following to pay such amounts starting with November 12<sup>th</sup> 2004.

### **2.4. The rights of children, family, youth, retired persons and disabled persons**

#### ***A. Protection of youth and children (art. 49 of the Constitution)***

On the grounds of the provisions of the Law no. 35/1997, individuals, including children, may address to the People's Advocate either directly or by legal representative, when their rights are violated through the action or inaction of public administration authorities.

In 2004, the People's Advocate received **15 complaints** with regard to the problems of children and youth, referring to the following categories of rights: the right to a decent living standard (art. 47 of the Romanian Constitution), the right to health care (art. 34 of the Romanian Constitution), the right to life and to physical and mental integrity (art. 22 of the Constitution) the right to special protection of disabled persons (art. 50 of the Constitution), the right to education (art. 32 of the Constitution).

Young people aged 18 years old and having left placement centers addressed to the People's Advocate, claiming that the current protection system for institutionalized children is defective and not able to provide, in all cases, integration in the society after the age of 18.

In addition, the complainants underlined the difficulties in obtaining financial support on the basis of the Government Resolution no. 1488/2004 regarding the approval of the eligibility criteria and financial support to be granted to students within the Program "High School Money".

Referring to the aspects found, the People's Advocate interceded with the county directions for children protection, county school inspectorates, the Ministry of Education and Research.

Pursuant to the interventions of the People's Advocate, the public authorities communicated the settlement of the complainants' problems and took the legal measures required. In addition, the complainants were informed and advised to take the necessary legal actions for the settlement of the problems they faced.

#### **CASE STUDY - case settled through the intervention of the People's Advocate**

**File no. 4620/2004.** Mihaela (pseudonym) submitted a complaint to the People's Advocate with regard to the family status and difficult financial conditions she faced. In this respect, the complainant informed us that she faced financial difficulties in raising her five children. Pursuant to the People's Advocate efforts by the County Direction for the Children Protection in Neamț, the granting of a financial subsidy to the complainant, consisting in clothing for her children, was ordered.

**File no. 5182/2004.** Ioana (pseudonym) submitted a complaint to the People's Advocate with regard to the abusive behavior of her daughter's classmates. From the content of the petition, it came out that the underage girl, student of the National College "Carol I", was repeatedly beaten, threatened and humiliated. In addition, the complainant expressed her dissatisfaction vs. the modality in which the management of the aforementioned education unit settled this dispute. Therefore, Ioana addressed to the County School Inspectorate in Dolj but her efforts had no results. Pursuant to the intervention of the People's Advocate, both the management of the National College "Carol I" in Craiova and the County School Inspectorate Dolj informed that they acted with a view to solving the conflict between the complainant's daughter and her classmates. In this respect and starting from the idea of consensus and amiable resolution of alleged conflicts, the aforementioned public authorities invited to dialogue all the factors involved: the complainant's daughter, her classmates, their parents, the coordinator professor and class professors.

**File no. 4386/2004.** George (pseudonym) submitted a complaint to the People's Advocate with regard to the abusive behavior of a social assistant employed with the family placement centre in Bârlad, where he was institutionalized. The

complainant showed his discontent toward the center's decision to de-institutionalize him at 18 years of age, although he was attending the courses of an education institution. Pursuant to the People's Advocate efforts by the Children Protection Direction in Vaslui, the complainant's problem was solved, and based on the reassessment of the social-family and school situation, he remained at the family placement centre in Bârlad.

**File no 3568/2004.** Adriana (pseudonym) submitted a complaint to the People's Advocate with regard to the difficult financial condition which she faced in raising her two children. As to the issues notified, the People's Advocate addressed to the local municipality of Vulcan, Hunedoara County and to the County Direction for the Protection of Children's Rights Hunedoara. Following the People's Advocate efforts, public authorities took measures to grant subsidies for the single-parent family, according to the provisions of the Government Emergency Ordinance no. 105/2003 on additional family allowances and subsidies granted to single-parent families. In addition, according to the Law no. 519/1999 for the approval of the Government Emergency Ordinance no. 102/1999 on special protection and employment of disabled persons, the file for the granting of a 100% subsidy for one of the applicant's daughters registered with serious disabilities was drafted.

### ***B. The right to a decent living standard (art. 47 of the Constitution)***

In 2004, the People's Advocate received **859 complaints** referring to the rights of retired persons and of other categories of individuals, in the context of alleged violations of the right to a decent living standard.

The main aspects notified in the complaints submitted to the People's Advocate referred to the low amount of the pension for those registered with the pension fund before the entrance in force of the Law no. 19/2000 on the public pension system and other social security rights, further amended and completed, to the errors in the calculation of the subscription index, to the incorrect enforcement of the legal provisions on the indexing and re-correlation of pensions, delays in the payment of pensions and in the transferal of retirement files.

For the settlement of these complaints, the People's Advocate notified the territorial pension houses and conducted investigations at the offices of such public authorities.

Following the surveys conducted by the People's Advocate, the territorial pension houses proceeded to the repair of the damages by issuing new pension decisions, returning the amounts unreasonably retained etc.

In some cases, the People's Advocate did not receive the information requested from the local or county pension houses such as: the local pension house of sector 1, the local pension house of sector 2, the local Pension House of sector 3, the local Pension House of sector 5, the local Pension House of Bucharest, the county pension house of Argeş. Therefore, the People's Advocate addressed to the National House of Pensions and other Social Security Rights. Similar to the previous year, the most prompt reaction came from the National House of

Pensions and Other Social Security Rights, which, in all the situations, answered within the legal time-limit and requested the local pension houses to comply with the requests of the People's Advocate.

In some cases, the complainants either did not bring evidence of the delay or of the public administration's refusal to settle the application, or their applications fell inside the exclusive competence of the courts of law, situation when the necessary advice was given to the complainants.

**CASE STUDY-** cases settled through the intervention of the People's Advocate

**File no. 4349/2004.** Claudiu (pseudonym) complained about the lack of answer to his application lodged with the Local Pension House of sector 1, whereby he argued against the amount of his pension. Following the People's Advocate efforts by the Local Pension House of sector 1, the latter issued a decision for the revision of the pension, applicable starting with February 1<sup>st</sup>, 2001.

**File no 45/2004.** Constantin (pseudonym) submitted a complaint to the People's Advocate with regard to the refusal of the Local Pension House of sector 3, Bucharest, to inform him of the modality of determining the right to pension, the period of time concerned when determining the pension, the modality of determining the new pension, as well as the social security measures he benefits of. Following the People's Advocate efforts, the Local Pension House of sector 3 resolved the complaint and issued the complainant another decision rectifying the date of the registration of the right to pension.

**File no. 214/2004.** Vasile (pseudonym) submitted a complaint to the People's Advocate with regard to the refusal of the County Pension House Teleorman to process his application whereby he requested the change of classification from: pension for 3<sup>rd</sup> degree work incapacity, to pension for years of work and age limit. Following the People's Advocate efforts, the County Pension House Teleorman resolved the application, changing the complainant's pension from the category: pension for 3<sup>rd</sup> degree work incapacity to pension for years of work and age limit. Therefore, starting with March 1<sup>st</sup>, 2001, the complainant's pension amounted to 1.235.185 lei, instead of 607.185 lei.

**File no. 6843/2004.** Alexandru (pseudonym) submitted a complaint to the People's Advocate with regard to the refusal of the Local Pension House of sector 6 to answer his applications for the calculation and payment of his pension. The People's Advocate addressed to the Local Pension House of sector 6 requiring information relating to the complainant's situation. Following the People's Advocate efforts, the complainant's pension file was reexamined and a decision for the registration of the right to pension was issued. At the same time, the complainant was granted the differences in payment for a 3-month period before the date when the aforementioned decision was issued.

**File no. 8055/2004.** Marin (pseudonym) submitted a complaint to the People's Advocate as he was dissatisfied with his pension determined by the County Pension House Teleorman. Following the People's Advocate efforts, the County Pension House Teleorman reexamined all the documents in the complainant's

pension file and issued the decision to review the pension, increasing it from 749.627 lei to 3.304.812 lei.

**File no. 7513/2004.** Ioana (pseudonym) submitted a complaint to the People's Advocate with regard to the failure of the County Pension House Dambovița to give answer to her application, whereby she requested the return of the amounts unreasonably retained from her pension. Following the People's Advocate efforts, the County Pension House Dambovița ordered the return of the amounts retained from the complainant's pension within July – October 2004.

**File no. 252/2004.** Mihai (pseudonym) submitted a complaint to the People's Advocate territorial office in Bacău with regard to the failure of the County Pension House Bacău to pay his pension for June-September 2004. Following the efforts of the People's Advocate territorial office in Bacău, the County Pension House Bacău informed that it had not performed payment immediately after the registration of the right to pension as it had mistakenly waited for the termination of the complainant's employment contract, although the complainant retired without having an employment contract. In this case, the payment was ordered, the complainant receiving the pension and the difference for the previous months, amounting to 10.918.106 lei.

**File no. 4/2004.** George (pseudonym) submitted a complaint to the People's Advocate territorial office in Alba Iulia with regard to the refusal of the County Pension House Alba to resolve his application for the recalculation of the pension, application submitted in 2003. Following the efforts of the People's Advocate territorial office in Alba Iulia, the County Pension House Alba informed that the application for recalculation was resolved, a decision being issued thereof, according to which the registration of the years of work was modified by taking into account the subscription phases not originally calculated when his pension was determined.

**File no. 50/2004.** Ion (pseudonym) submitted a complaint to the People's Advocate territorial office with regard to the refusal of the County Pension House Alba to resolve his application for the recalculation of the pension. Following the efforts of the People's Advocate territorial office in Alba Iulia, the County Pension House Alba resolved the application, a decision of transferal from anticipative pension to full age limit pension being issued.

### ***C. Protection of Disabled Persons (art. 50 of the Constitution)***

In respect of alleged violations of the rights of disabled persons, the People's Advocate received **60 complaints** in 2004, which mainly referred to: the classification or failure to classify the complainant within a lower degree of disability than the previous one, the reassessment of the disability degree, lack of funds for the payment of personal nurses, delay in the issuance of disability certificates, failure to abide by the time-limits for establishing accessibility platforms to disabled persons.

In order to resolve such issues, the People's Advocate addressed to local administrative authorities in charge of the protection of disabled persons, to the state inspectorates in the construction industry and to the Ministry of Transportation, Construction and Tourism.

Following the surveys conducted at the aforementioned public authorities, it was noticed the lack of funds to the local budget for the payment of personal nurses (although such funds include separately the expenses relating to the right of children and adults with serious disabilities to a personal nurse), the delay in resolving the applications and the lack of objectivity of the social surveys performed.

In addition, it was found out that the reorganization of the National Authority for Disabled, as well as the issuance of new regulatory acts in the field of protection of disabled, setting forth the duties both for the central administrative authorities and for the local public authorities, led to delays with regard to the issuance of the new certificates for the classification within a disability degree at the expiry of the former ones, lack of continuity in granting the rights provided for by the law to disabled persons.

Following investigations conducted by the People's Advocate, it was noticed that, although the law gap on the competences of public authorities to enforce sanctions for the failure to abide by the time limits set for establishing the accessibility platforms to disabled persons was covered, the problems of this social category were not solved yet. In addition, the representatives of the Ministry of Transportation, Construction and Tourism expressed their openness with regard to the identification of some alternatives for establishing the accessibility platforms.

In order to regulate this case, we would consider appropriate, as dealt with before in the case of funds from the state budget specially intended to expenses regarding the right of children and adults with serious disabilities to a personal nurse, to allot separate amounts for establishing the accessibility platforms, from the local budget.

**CASE STUDIES** – cases settled through the intervention of the People's Advocate

**File no. 1503/2004.** Maria (pseudonym) submitted a complaint to the People's Advocate with regard to the following facts: her mother had a serious disability and therefore, she was entitled to a personal nurse. Although the complainant repeatedly requested the mayor of Brădeanu commune, Buzău County, to employ a personal nurse for her mother, her application was rejected. The reason invoked by the mayor was that the social survey did not justify the need for a personal nurse. Following the People's Advocate efforts by the mayor of Brădeanu commune, Buzău County, the complaint was resolved, the mayors' decision setting forth that the complainant's mother would benefit of a monthly subsidy according to the law.

**File no. 255/2004.** Maria (pseudonym) submitted a complaint to the People's Advocate territorial office in Bacău with regard to the measures taken by the administration of Parava commune, Bacău county, to employ a personal nurse for

her daughter having 1<sup>st</sup> degree disability. From the complaint and documents attached thereto it came out that the disability certificate, issued on September 1<sup>st</sup> 2004, provided that her daughter should benefit of a personal nurse, which the municipality of Parava refused to employ, reasoning that there were not enough funds for the payment of the nurse's salary. Following the efforts of the territorial office Bacău, the municipality of Parava informed that, by mayor's order, the complainant was employed as personal nurse for her daughter, starting with November 1<sup>st</sup> 2004.

## **2.5. Military service, justice, police and penitentiaries**

### ***A. Military service***

In 2004, complaints drafted by retired soldiers were submitted to the People's Advocate; the complainants were dissatisfied with the evolution of their military pension, set before the entrance in force of the Law no. 164/2001, amended, on state military pensions. In these cases, the People's Advocate addressed to the Ministry of Administration and Home Affairs and to the Ministry of National Defense.

The Ministry of National Defense, with which the People's Advocate cooperated very well in the settlement of other complaints submitted by individuals, informed us that, pursuant to the update of the state military pensions, starting with October 1<sup>st</sup>, 2004, the differences occurred between the pensions determined based on the new law and the ones already subject to payment at the date of the entrance into force of the new law will disappear.

In addition, the People's Advocate continued to receive complaints from the persons having performed military service in the labor units of the General Direction of Labor Service, thus, besides the inquiries in this field performed in 2003, another **inquiry** was conducted in 2004. In the same time, it issued 3 recommendations and drafted a special report referring to the enforcement of the provisions of the Law no. 309/2002 amended and completed, on the recognition and granting of rights to persons having performed military service with the General Direction of Labor Service within 1950 – 1961.

Therefore, with regard to the investigations performed, the People's Advocate noticed a series of problems in the enforcement of the Law no. 309/2002, as follows:

- failure of the Military Unit 02405 Pitești and of the National Archives to solve within the legal time limit the petitions submitted by the applicants, with regard to the delay in sending the answers and to the request to pay the value of the services provided in exchange of the issuance of authorizations.

- failure to solve within the legal time limit the applications for the granting of the capacity of beneficiary under the Law no. 309/2002 by the Commissions for the enforcement of the provisions of the Government Ordinance no. 105/1999 on the granting of rights to the persons oppressed by the political regimes in Romania between September 6<sup>th</sup> 1940 and March 6<sup>th</sup> 1945 due to ethnical reasons, approved with amendments by Law no 189/2000, further amended and completed, Commissions that operate within the pension houses in the territory and in Bucharest and that also enforce the rights provided for by the Law no 309/2002;
- lack of a centralized record relating to the personnel of the labor units within the General Direction of Labor Service and to the periods of time when such personnel worked;
- gaps relating to the Law no. 309/2002 and to the Government Resolution no. 1114/2002 on the approval of Methodological Norms for the enforcement of the provisions of Law no 309/2002, referring to the possibility of the National Archives within the Ministry of Administration and Home Affairs to issue certificates regarding the performance of military service with the military units of the Labor Service General Directions;
- lack of a unitary practice in enforcing the provisions of the Law no. 309/2002 by the Commissions within the pension houses in the territory and in Bucharest.

In respect of the issues listed above, the People's Advocate made **three recommendations** to the *Ministry of National Defense* (for the Military Unit 02405 Pitești), *the National Archives within the Ministry of Administration and Home Affairs* and *The Ministry of Labor, Social Solidarity and Family* (for the Commissions within the pension houses in the territory and in Bucharest) (Annex no. 8)

The respective public authorities were advised as follows:

- to examine the situation occurred due to the fact the answers to the petitions whereby applicants requested the issuance of certificates proving the performance of military service with the labor units within the Labor Service General Directions were not communicated within the legal time limit;
- to cooperate in order to keep a centralized and complete record of the personnel of the labor units within the Labor Service General Directions;
- to observe the provisions of the Law no. 428/2003 for supplementing the art 6 of the Law no. 309/2002, according to which no taxes are to be paid for the issuance of the documents necessary to prove the applicability to the applicants of the provisions of art.1, Law no. 309/2002;
- to further set out an organizational framework for the settlement within the legal time limits of the applications received and for the inclusion of the notices contained by the minutes of the National House of Pensions and other Social Security Rights issued for the unitary enforcement of the Law no. 309/2002.

The modality in which the National Archives, the Ministry of National Defense and the Ministry of Labor, Social Solidarity and Family applied the People's Advocate recommendations is further underlined:

In order to remove malfunctions occurred in the enforcement of the Law no. 309/2002, **the National Archives in cooperation with the National House of Pensions and other Social Security Rights** outlined the need of the following measures:

- evidence of the performance of the military service within the Labor Service General Direction will be made through **witnesses** in the absence of the official documents

- the military record shall be accepted, taking into account that it represents the main documentary evidence for the person having performed military service

- "service provision certificates", issued by the Ministry of Transportation, Construction and Tourism and the Labor Service, kept by the applicants shall be accepted in order to determine the capacity of beneficiary under the Law no 309/2002.

Pursuant to the People's Advocate recommendations, the **Ministry of National Defense** took the following measures:

- increasing the number of personnel within the Military Unit 02405 Pitești;
- providing the unit with the calculation and multiplication equipment, as well as with the financial resources above the original budgetary allowances;

- cooperating with specialists in the field of military archives, in order to draft a report regarding the personnel of the labor units within the Labor Service General Direction;

- starting the process of amending and completing the Law no. 309/2002, in cooperation with the other ministries concerned, in order to simplify and easily implement the procedure by which the persons benefiting of this law will be able to accomplish their rights.

With a view to unitarily enforcing the Law no 309/2002, **The Ministry of Labor, Social Solidarity and Family** provided the following:

- the passing by the Commissions within the territorial pension houses of the measures necessary to the observance of the notices issued through the minutes of the National House of Pensions and other Social Security Rights;

- contacting the Ministry of Administration and Home Affairs – the National Archives and the Ministry of National Defense for the drafting of a centralized and complete record with regard to the units within the Labor Service General Direction;

- examining the possibility of drawing up a draft law for the amendment and completion of Law no. 309/2002, so as to pass regulatory addenda aimed at giving the Commissions the possibility to enforce more easily this law.

The People's Advocate **special report** referred to the main issues and malfunctions occurred in the enforcement of the provisions of the Law no. 309/2002, found by the People's Advocate from the analysis of complaints,

inquiries performed and answers to the recommendations sent to the public administration authorities concerned.

In addition, the special report included the People's Advocate proposal for the improvement of the laws referring to the recognition and granting of rights to persons having performed military service within the Labor Service General Direction within 1950-1961, respectively:

1. Completion of art 6 para. (2) of the Law no 309/2002 and of art 6 para. (1) of the Government Resolution no. 1114/2002 regarding the approval of methodological norms for the enforcement of the provisions of Law no. 309/2002 on the recognition and granting of rights to persons having performed military service within the Labor Service General Direction within 1950-1961 with provisions referring to:

- a) the possibility of proving the performance of the military service with the labor units of the Labor Service General Direction within 1950-1961 with certificates issued by the National Archives .
- b) the possibility of proving by witness the performance of the military service within the labor units, when the complainants cannot prove otherwise that they performed military service in the labor units of the Labor Service General Direction within 1950-1961.

2. Amendment of the provisions of the Law no. 309/2002, with the provisions included in the minutes no. 4087/2002 and no. 2784/2003 of the National House of Pensions and other Social Security Rights

3. Keeping a centralized record of all the personnel in the labor units of the Labor Service General Direction, eventually by legislative measures.

Referring to the People's Advocate special report, we have to mention that, although it was submitted to the Parliament Chambers in March 2004, no measures have been taken until now for the amendment of the Law no. 309/2002, amended and completed, on the recognition and granting of rights to persons having performed military service within the Labor Service General Direction within 1950-1961.

**CASE STUDY** – cases resolved through the intervention of the People's Advocate

**File no. 2395/2004.** Mihai (pseudonym) submitted a complaint to the People's Advocate, stating that he addressed to the Military Unit 02405 Pitești, for the issuance of a certificate referring to the military service performed, with a view to benefiting of the capacity provided for by the Law no. 309/2002 amended and completed, on the recognition and granting of rights to persons having performed military service within the General Direction of the Labor Service within 1950-1961. In addition, the complainant showed that, for the settlement of such situation, the Military Unit 02405 Pitești recommended him to address to the National Archives, which he did twice but received no answer. Following the People's Advocate intervention, the National Archives issued the certificate

requested as of which it comes out that he performed military service within the labor directions.

**File no. 4824/2004.** Ion (pseudonym) submitted a complaint to the People's Advocate with regard to the fact he did not receive the amounts to which he was entitled in capacity of beneficiary of the Law no. 309/2002, amended and completed. In addition, the complainant stated that he had not received any decision for the recalculation of his pension although his pension had been reduced. In such circumstance, the People's Advocate addressed to the local pension house of sector 3 Bucharest, to the pension house of Bucharest and to the National House of Pensions and other Social Security Rights. Following the People's Advocate interventions, the local pension house of sector 3 reviewed his pension file, correcting the date of the registration of the right to pension and the pension. In addition, the pension house of Bucharest added that the complainant's pension was recalculated and the payment of the arrears to which the complainant was entitled according to the Law no. 309/2002 was made on the pension note of June 2004.

### ***B. Justice***

In the context of the provisions of art 21 of the Romanian Constitution referring to the free access to justice, the **521 complaints** submitted to the People's Advocate referred mainly to: procedural faults in lawsuits before the courts, contestations regarding judgments pronounced by the courts, contestation of resolutions pronounced by the Prosecutor's Office, infringement of the parties' right to a fair trial and settlement of cases in due time.

Generally, such complaints were submitted to the courts of law.

In situations when the courts of law delayed the settlement of complaints, the enforcement of definitive and irrevocable judgments and the settlement of criminal complaints addressed to the Prosecutor's Office, the People's Advocate informed thereof the minister of justice, the ministry of home affairs, the presidents of the courts, as applicable, according to art 18 of the Law no 35/1997, republished.

**CASE STUDY** – case resolved through the People's Advocate intervention

**File no. 4639/2004.** Alexandru (pseudonym) submitted a complaint to the People's Advocate with regard to the fact that he was not informed of the status of its criminal complaint lodged with the Military Prosecutor's Office in Bucharest. Following the People's Advocate efforts, the Prosecutor General by the Higher Court of Cassation and Justice informed the complainant that the file to which he referred was undergoing settlement with the Prosecutor's Office by the Court of sector 1 Bucharest and was sent for resolution to the Commandment of the Garrison Bucharest for further investigation.

### *C. Police*

A part of the complaints submitted to the People's Advocate referred to the complainants' discontent with regard to the police activity. In this respect, the main issue notified to the People's Advocate by the complainants was the delay of the prosecution bodies in the settlement of the criminal complaints submitted. In order to support the complainants, the People's Advocate requested information from the police stations (i.e. Police Station 11 in Bucharest, Police Station 2 in Bucharest, Police Station 14 of Bucharest).

In addition, the People's Advocate was informed of the inadequate conditions in which the persons in the police arrest were treated. In this respect, the People's Advocate conducted **an investigation** at the detention facilities of the County Police Inspectorate in Gorj, following which inadequate conditions were found, as regards the aspect of the location, the reduced number of sanitary groups in relation to the number of convicts and week lightening of the detaining rooms.

In addition, following the investigation performed, the violation of the right of convicts to have their daily walk was noticed, as they did not benefit of such right during Sundays and Saturdays.

The People's Advocate informed the General Police Inspectorate of the aspects found during the investigation.

**CASE STUDY** – case resolved through the People's Advocate intervention

**File no. 6188/2004.** Andreea (pseudonym) submitted a complaint to the People's Advocate with regard to the delay of the Police Station 14 of Bucharest to settle within a reasonable time the criminal file no. 0126/2004. The People's Advocate requested information from the commissar of the Police Station 14 Bucharest, referring to the status of the criminal investigation and measures taken in the aforementioned file. Following the People's Advocate efforts, the police station informed that the prosecution for the offenses provided for in art 242 and 246 of the Criminal Code, in the aforementioned file, was started.

### *D. Penitentiaries*

In 2004, the People's Advocate received **57 complaints** referring to possible violations of the rights of the persons serving convictions in penitentiaries.

The complaints submitted to the People's Advocate referred mainly to: drafting and presenting medical documents to the convicts, with a view to medical examination and disability pensions; failure of the territorial pension houses to pay the amounts to which the convicts were entitled, alleged violations of the convicts' right to a decent living standard. In addition, the complaints submitted by the convicts referred to: access to culture, right to information, right to health care, as well as to the particular rights of such social category: right to nutrition, right to shopping, right to have daily walks.

Referring to the observance by the public authorities of the convicts' rights, the People's Advocate conducted **an investigation** at the Penitentiary in Giurgiu.

Following the investigation, it was found out that, in case of dangerous convicts, the measure of moving the artificial light from the chambers to the halls was excessive. In addition, the number of TV receivers and magazine subscriptions was small due to the budget assigned.

The People's Advocate informed the National Penitentiary Administration thereof, and the latter communicated that, in order to provide artificial lightening in the rooms where dangerous convicts live, the possibility of mounting low-voltage power supplies (12-24V) was to be considered. In addition, measures were taken to increase the number of subscriptions to local and central newspapers and magazines, and, in order to facilitate the convicts' access to culture, the county library was contacted aiming at monthly lending books to the penitentiary.

In respect of the observance of the imprisonment conditions, respective the space, equipment, temperature in the detention room, the right to food and shopping, the People's Advocate representatives conducted **an investigation** to the Maximum Security Penitentiary in Bucharest - Rahova. On the occasion of this investigation, it was found out that the temperature in the detention room corresponded to the season, and the convict had the necessary space. In relation to the quality of food, the National Penitentiary Administration described the menus for breakfast, lunch and dinner. Beside the food distributed inside the penitentiary, probationers may receive packages with goods and fruits, in the amount provided for by the law, and may purchase food according to the Order of the Minister of Justice no. 3131/C/2003, so their nutrition is ensured in conformity with the regulations in force.

Referring to the convict's right to go shopping, it was found that such right was observed, according to the applicable legal provisions.

Consequently, the efforts involved therein led to the conclusion that the statements of the complainant, which served his sentence within the Maximum Security Penitentiary in Bucharest Rahova, were not sustained.

**CASE STUDY** – cases resolved through the People's Advocate intervention

**File no 4155/2004.** Mihai (pseudonym), serving his sentence in Bacău Penitentiary submitted a complaint to the People's Advocate stating that the penitentiary delays the drafting of the documents needed for the medical examination to obtain a disability pension. In addition, the complainant showed that he requested the medical office of the penitentiary to be presented to the committee for medical examination and recovery of work capacity, for medical inspection, but his requests remained unsolved, the penitentiary's personnel delaying the drafting of the medical file and report. Following the People's Advocate intervention, Bacău Penitentiary informed that the medical file and report were drafted and ready to be presented to the medical examination committee.

**File no 6675/2004.** Victor (pseudonym), serving his sentence in Tulcea Penitentiary, submitted a complaint to the People's Advocate requesting support to

obtain the money, representing pension, to which he was entitled. The complainant added that he notified the Local Pension House Onești of the address of penitentiary where he served his sentence and the number of the retirement file, stating that he wanted to receive the money representing pension at his place of conviction. Following the People's Advocate efforts, the complainant received his pension for September 1<sup>st</sup> 2000 – September 30<sup>th</sup> 2003, and afterwards, the pension was to be paid by the county pension house in the territorial area of the penitentiary.

## **2.6. Property, labor, social security, taxes and income taxes**

### ***A. Property***

In 2004, the People's Advocate received **1325 complaints** referring to the observance by the public authorities of the right to private property, guaranteed by art 44 of the Constitution.

The main aspects underlined in the complaints submitted to the People's Advocate referred to the enforcement of the Law no. 18/1991 of the land fund, republished, of the Law no 10/2001, amended and completed, regarding the legal status of some real estates abusively taken over by the state within March 6<sup>th</sup> 1945 – December 22<sup>nd</sup> 1989, and of the Law no. 9/1998 on the granting of compensations to Romanian citizens for the assets transferred to the property of the Bulgarian State following the enforcement of the Treaty between Romania and Bulgaria.

- Thus, with regard to the Law no. 18/1991, republished, the complainants have notified the People's Advocate of the local public authorities' refusal to issue the titles, to enforce definitive and irrevocable judgments by which the cancellation or amendment of the titles issued with the violation of the legal provisions was requested. In this respect, the People's Advocate notified the local commissions responsible of enforcing the Law no. 18/1991, republished.

With regard to the enforcement of the Law no 10/2001 the complainants notified the People's Advocate mainly of the public authorities' and institutions' failure to comply with the time limit set for the resolution of the applications submitted by the persons entitled.

In this respect, the People's Advocate requested information from the local public authorities following which it found that the notices submitted under the Law no. 10/2001 were not settled within the legal time limit of 60 days. Consequently, the failure to settle the files submitted under the Law no. 10/2001 within the legal time limit is considered a delay in setting the indemnities to be awarded to the persons entitled, should the restitution in kind of the real estate not be possible.

At the same time, from the local administrations' or prefectures' answers with regard to the exceeding of the legal term, it was found out that:

- the complainants often submit incomplete evidence with regard to their capacity of entitled person or to the property right
- the complainants do not use legal action against the documents settling the applications, expressly requesting their administrative settlement, reasoned by the lack of financial resources to bear a lawsuit
- at the level of the public authorities and institutions, there are problems with regard to the cooperation between different departments and competent services to settle the applications

In addition, in order to support the complainants and in the absence of answers from the public authorities initially notified, **3 inquiries** were conducted at the local administration of Bucharest, which was involved in the enforcement of the Law no. 10/2004 (Annex no 7). Following the inquiries, it came out that the settlement of the applications under the Law no. 10/2001 as well as of the applications requesting information with regard to the settlement status, was delayed. In such cases, the People's Advocate drafted **two recommendations** (Annex no. 8).

Pursuant to the People's Advocate **recommendations** made to the Administration of Bucharest, the latter informed that it examined the situation and increased the number of personnel within the Service: In Kind Restitutions - Law no. 10/2001 - by 33 employees. In addition, clear responsibilities for each officer were set, measures for an accurate evidence of complaints were taken, trainings relating to the modality in which answers are drafted were carried out and disciplinary measures were taken.

- Complaints referring to the enforcement of the Law no. 9/1998 regarding to the granting of compensations to the Romanian citizens for the goods transferred to the property of the Bulgarian State following the enforcement of the Treaty between Romania and Bulgaria, refer to the delay in the granting of compensations and to the lack of transparency of the commissions responsible for the enforcement of the law.

In 2004, a significant number of individuals informed the People's Advocate of the fact that their files submitted to the central commission for the enforcement of the Law no. 9/1998 were not solved. In addition, the complainants informed the People's Advocate of the fact that they submitted applications to the Central Commission for the enforcement of the Law no. 9/1998 and to the Ministry of Public Finance, whereby they requested to be informed of the status of their files, requests that received no answers within the legal time limit.

The People's Advocate informed the Central Commission for the enforcement of Law no. 9/1998 of the aspects found, and requested the communication of the date and number of registration of the complainants' files with this authority and a report on their status. Information on the work modality of the Central Commission for the enforcement of the Law no. 9/1998 was also requested.

As the commission had no reaction to the People's Advocate notifications, the situation was communicated to the Ministry of Public Finance.

Following the People's Advocate efforts, the Central Commission for the enforcement of the Law no. 9/1998 answered that the files were examined according to the order of their reception and registration with the Ministry of Public Finance, on a pro rata basis for each county. The validation/invalidation activity conducted by the Central commission for the enforcement of the Law no. 9/1998 was delayed due to the large number of files received from the county commissions, to the fact that commission's members meet only once a month, as well as to the fact that most resolutions of the county commissions were invalidated by the Central Commission.

In such a situation, the People's Advocate conducted an inquiry at the Ministry of Public Finance. Thus, it found out that, in the spring of 2004, when the establishment of a new specialized body for the enforcement of the Law no. 9/1998 was debated, the Central Commission became inoperative. The only activity carried out by the commission within April – September 2004 was that of packing and preparing the files received, in order to transfer them to the new body following to be established.

With the occasion of this inquiry, the People's Advocate found out that, until September 2004, the Commission had 400 files unsolved of the ones submitted by the complainants until the end of 2000.

The People's Advocate made a **recommendation** to the Ministry of Public Finance concerning the survey of the situations occurred due to the failure to settle, within a reasonable time, the files submitted under the Law no. 9/1998 and to resolve within the legal time limit the individuals' applications requesting information thereof. Moreover, the People's Advocate recommended measures to increase the communication process between the Central Commission and the citizens, allowing individuals to obtain, in the shortest time possible, information relating to the status of their files (Annex no 8).

Pursuant to such recommendation and in order to increase the efficiency in solving the applications, through Government Resolution no. 1643/2004 on the approval of Methodological Norms for the enforcement of the Government Ordinance no. 94/2004 on the implementation of financial measures referring to measures for the completion of the enforcement of the Law no. 9/ 1998 republished, the duties of the former Central Commission within the Ministry of Finance were taken over by the Department for the enforcement of the Law no. 9/1998 within the Prime Minister's Cabinet.

**CASE STUDIES** – cases resolved through the People's Advocate intervention

**File no. 3635/2004.** Elena (pseudonym) submitted a complaint to the People's Advocate with regard to the failure of the Prefect of Bucharest to answer her application whereby she requested the amendment of the title that contained drafting errors. Following the People's Advocate efforts, the complainant received the answer requested whereby she was informed that, by a resolution of the

Bucharest Commission for the enforcement of the law on land fund, the proposal for the amendment of the title incorrectly drafted was validated.

**File no. 79/2004.** Marin (pseudonym) submitted a complaint to the People's Advocate territorial office in Bacău with regard to the refusal of the local administration of Tamași commune, Bacău County, to abide by the provisions of a definitive and irrevocable court judgment. The court judgment obliged the local administration of Tamași to deepen the water drainage culvert near the communal road, to avoid damages caused by flooding to the complainant's land. The local administration of Tamași refused to execute the court judgment, therefore, every time abundant rain fell, the complainant's land was flooded and the complainant incurred significant material damages. Following the efforts of the People's Advocate territorial office Bacău by the aforementioned administrative authority, the local administration of Tamași, Bacău County, resolved the complainant's application and executed its obligations stated in the court judgment.

**File no. 139/2004.** Anghel (pseudonym) submitted a complaint to the People's Advocate territorial office Bacău with regard to the delay of the Local Land Commission of Bogdănești, Bacău County, to solve his application, whereby he requested the return into his possession of the land for which his title was reconstituted. Following the efforts of the People's Advocate territorial office Bacău, the local administration of Bogdănești, Bacău County, resolved the complainant's application, returning the land for which the title was reconstituted into the complainant's possession.

**File no. 30/2004.** Mihai and Ioana (pseudonyms) submitted a complaint to the People's Advocate territorial office in Alba Iulia with regard to the refusal of the Communal Commission of Cricău, Alba County, to establish their right to the private property over the lands, and to return such to their possession, according to the definitive and executory judgment. In addition, the complainants stated that the public authority refused to answer to a complaint whereby they requested the return of the property into their possession. Following the actions taken by the People's Advocate territorial office in Alba Iulia, the local administration of Cricău, Alba County, informed that the complainants regained possession over their property, the title following to be issued in the shortest time possible.

**File no. 71/2004.** Letiția (pseudonym) submitted a complaint to the People's Advocate territorial office Alba Iulia with regard to the failure of the local administration of Rîmeș commune, Alba County, to resolve the application for the reconstitution of the title over a surface area of 1.80 ha of forests. Following the efforts of the People's Advocate territorial office Alba Iulia, the local administration of Rîmeș informed that, by resolution of Alba County committee for the establishment of the private title over the land, the proposal for the reconstitution of the private property right for the surface area of 1.80 ha of forests was approved, the complainant following to regain possession over the land.

**File no. 154/2004.** Victor (pseudonym) submitted a complaint to the People's Advocate territorial office in Alba Iulia with regard to the refusal of the local administration of Ocna Mureș, Alba County, to resolve the application whereby he requested the granting of an interment lot according to the law. Following the

efforts of the territorial office Alba Iulia, the local administration of Ocna Mureș, Alba County, informed that the complainant was granted an interment lot within the central churchyard of Ocna Mureș.

**File no 7584/2004.** Elena (pseudonym) submitted a complaint to the People's Advocate with regard to the fact she lodged two notifications with the Administration of Bucharest, whereby she requested, according to the provisions of the Law no. 10/2001, the return into her property of a building located in Bucharest. In addition, the complainant repeatedly addressed to the aforementioned public authority in order to be informed of the status of her notifications, but received no answer. The People's Advocate conducted an investigation at this public authority, following which it noticed the delay in the settlement of notifications submitted under the Law no. 10/2001 and made a recommendation to the General Mayor of Bucharest. Following the People's Advocate efforts, the complainant was informed of the status of the settlement of her file and she was requested to submit a series of additional documents needed for the completion of her file. Following such notice, the complainant submitted the documents required, and she was ensured in writing that her file was completed and submitted to the Commission for the enforcement of the Law no. 10/2001.

**File no. 174/2004.** Mihaela (pseudonym) submitted a complaint to the People's Advocate territorial office in Bacău with regard to the delay of the Authority for the Valorization of State Ownership (AVAS) to resolve the application submitted under the Law no. 10/2001. From the complaint and documents attached thereto, it came out that she submitted an application whereby she requested compensation for the land abusively taken by the state, but the Authority for the Valorization of State Ownership (AVAS) did not issue a reasoned decision for the settlement of the application within the 60-day time limit. Following the efforts of the People's Advocate territorial office in Bacău, the Authority for the Valorization of State Ownership (AVAS) resolved the application submitted by the complainant, issuing the decision no. 32/2004 for the granting of the compensations.

### ***B. Labor and social security***

In 2004, the People's Advocate received **87 petitions** referring to the failure of the public authorities to observe the right to labor and social security, stated in art 41 of the Constitution. Thus, the People's Advocate was notified of the employers' abuses related to employment, dismissal procedure, request of information regarding reintegration on the job or granting of money rights.

Teachers – educators within a placement centre for institutionalized children claimed violations of their right to work, stating that they were not allowed by the county school inspectorate to register to the pre-transferral and transferral session for teaching staff, as provided by art 10 of the Law no. 128/1997 amended and completed, on the status of the teaching staff. In other complaints, teachers requested the People's Advocate support as in their case, the provisions

of the Teaching Staff Schedule, approved by Order of the Minister of Education and Research no. 4926/2002 regarding the teaching staff movement schedule in the school year 2003 - 2004 were not observed, and their contestations lodged with the school inspectorate were not solved within the legal time limits.

In addition, the People's Advocate was notified of the modality in which the School Inspectorate Caraş Severin organized the contest for a position of educator. In this respect, the People's Advocate made legal efforts by the county school inspectorates and notified thereof the Ministry of Labor, Social Solidarity and Family, as well as the Ministry of Education and Research.

The observance of the right to labor of the persons working in Spain was one of the topics discussed by the People's Advocate with its counterpart in Spain, Mr. Enrique Mugica during the meeting held in Bucharest, within April 3<sup>rd</sup> – 8<sup>th</sup> 2004. In order to explain the issues referring to the establishment of a flexible procedure for the selection of workmen, drafting of a computerized record of all Romanian citizens working in Spain, as well as for the establishment of procedures to extend the validity of the employment contract and establishment of departments specializing in labor issues with the Romanian diplomatic mission in Madrid, the People's Advocate representatives conducted inquiries at the headquarters of the Ministry of Foreign Affairs and to the Ministry of Labor, Social Solidarity and Family. During such inquiries, the following aspects came out:

- a) The Office for the Migration of the Workforce created a “database”, both in digital format and printed, by grouping on categories the requests received from Romanian citizens wanting to work abroad
- b) The employment contract form was drafted in Spanish language and future employees were not aware of all their rights and obligations stated by the employment contract.
- c) The Office for the Migration of the Workforce kept a computerized record on Romanian citizens working in Spain for which it had conducted the selection process.

Referring to the status of the Romanian citizens working in Spain, the People's Advocate drafted a **special report** which was transmitted to the two Chambers of the Parliament. The special report includes the following proposals:

- a) Protection of Romanian workers, by speeding up the process of conclusion, by the Ministry of Labor, Social Solidarity and Family, of the Social Security Agreement between Romania and Spain
- b) Supplementing the duties of the Office for the Migration of Workforce with the obligation of drafting a computerized record with all the Romanian citizens working in Spain and ensuring transparency of the computerized record of Romanians working in Spain, keeping the confidentiality of personal data
- c) Initiating the amendment of the Law no. 464 regarding the ratification of the Agreement between Romania and Spain for the regulation and organization of the labor force movement between the two countries, signed in Madrid on January 23<sup>rd</sup>, 2002 by the Ministry of Labor, Social

Solidarity and Family, containing clauses regarding the extension of the legal relationships between the parties after the expiry of the validity term of the employment contract, through the mediation of the selection commission

- d) Establishment with the Romanian diplomatic mission of advisory departments for Romanians working in Spain, both in the field of social security and labor protection

**CASE STUDY** – case resolved through the People’s Advocate intervention

**File no. 21/2004.** Ioana (pseudonym) submitted a complaint to the People’s Advocate territorial office in Constanța with regard to the order of the Director of the National Opera and Ballet Theatre ”Oleg Danovski” in Constanța, that terminated her employment contract following organizational measures enforced at local level. In addition, the complainant stated that she attended the contest organized by the National Opera and Ballet Theatre „Oleg Danovski” for filling a vacancy, but the contest was organized without complying with the study program required, meaning that the members of the examination board requested her to perform a play not included in the program. Following the efforts of the People’s Advocate territorial office Constanța, the National Opera and Ballet Theatre „Oleg Danovski” cancelled the original administrative act and proceeded to the re-employment of the complainant to a position corresponding to her professional training.

### ***C. Taxes and income taxes***

In 2004, the People’s Advocate received complaints with regard to the failure of the public authorities to observe the right to a correct taxation, stated in art. 56 (para. 2) of the Romanian Constitution.

The complainants informed the People’s Advocate of the defective modality of calculation of the taxes due to central and local public authorities and to the delay in the issuance of taxation decisions.

In order to support the complainants, the People’s Advocate addressed to the local taxes directions and to the public finance administrations.

**CASE STUDIES-** cases resolved through the People’s Advocate intervention

**File no. 7956/2004.** Florin (pseudonym) submitted a complaint to the People’s Advocate with regard to the fact he repeatedly addressed to the Public Finance Administration in Brașov, requesting the accurate calculation and issuance without delay of his taxation decision for income tax advance payments regarding the income tax due for the transferal of the use of a building in Brașov. The aforementioned authority failed to answer his requests. To resolve the complaint, the People’s Advocate requested information from the Public Finance Authority in Brașov. Following the People’s Advocate efforts, the public authority informed that the taxation decision for advance payment of the income tax due for the transferal of the use of the building was sent to the complainant. In addition, the

People's Advocate informed the complainant that the officer liable for the delay in the issuance and communication of such decision was sanctioned according to the law.

**File no. 5602/2004.** Anca (pseudonym) submitted a complaint to the People's Advocate with regard to the fact she received no answer within the legal time limit to the request addressed to the Local Tax and Income Tax Direction – sector 1 Bucharest, whereby she requested the rectification of the tax status regarding the real estate in her property. For the settlement of this case, the People's Advocate requested information from the Local Tax and Income Tax Direction – sector 1 Bucharest. Following the People's Advocate efforts, the public authority informed that the tax status regarding the respective real estate was rectified and the real estate was registered on the complainant's name.

**File no. 5060/2004.** Monica (pseudonym) submitted a complaint to the People's Advocate with regard to the fact that in March 2003, she paid the income tax for a land located outside Perișoru village, Brăila County, according to the legal provisions in force thereat. Subsequently, according to art 2 of the Government Emergency Ordinance no. 12/2003 on exemption from the income tax for land outside the municipalities, the complainant requested the local council of Ianca, Brăila County, to return her the amount of 325.000 lei representing land income tax. Following the People's Advocate efforts by the local council of Ianca, the complaint was resolved and the aforementioned amount was returned to the complainant.

**File no. 197/2004.** Gheorghe (pseudonym) submitted a complaint to the People's Advocate territorial office in Alba Iulia with regard to the refusal of the local administration of Ocna Mureș, Alba County, to answer to his two complaints whereby he requested the re-calculation and reduction of the income tax according to the applicable legal provisions. Following the efforts of the People's Advocate territorial office Alba Iulia, the local administration of Ocna Mureș informed that the reduction by 50% of the income tax for the land and buildings for 2004 was approved, taking into account the income per family member, which amounted to 799.000 lei.

### *Chapter 3. The activity of the People's Advocate territorial offices*

Law no. 35/1997 on the organization and functioning of the People's Advocate, republished, establishes the territorial offices of the People's Advocate institution and counties under their jurisdiction, thus achieving coverage of all geographic areas.

The establishment of the People's Advocate territorial offices is aimed at satisfying a major need, respectively that of allowing easy access of citizens to the People's Advocate services.

Through its territorial offices, the People's Advocate is permanently in touch with the problems the citizens face, and especially with the maladministration of the local public authorities in the areas where the respective offices operate.

In order to facilitate citizens' access to the People's Advocate services and accomplish its duties by continuing the efforts started in 2003, when the territorial offices in Bacău and Alba Iulia were established, two other territorial offices in Braşov and Constanţa were established in 2004. These efforts will continue in 2005, the office in Cluj Napoca undergoing establishment procedure.

In 2004, in order to provide appropriate locations for the territorial offices, a Protocol regarding the transferal into the People's Advocate use of locations held by the Court of Accounts was concluded between the People's Advocate and the Romanian Court of Accounts.

The activity carried out by the People's Advocate territorial offices consists in the settlement of complaints through actions and interventions by the local public authorities, hearings and answering telephone calls.

In 2004, at the People's Advocate territorial offices (Alba Iulia, Bacău, Braşov, Constanţa) **319 complaints** were registered, **2464 hearings** were conducted and **349 telephone calls** were received. In 2004, the territorial offices carried out **90 information activities** consisting in broad mediation through mass media means of information with regard to the People's Advocate duties (Annex no. 5).

**Alba Iulia:** 101 complaints, leading to 53 files, 519 hearings, 119 phone calls, 33 information activities, one inquiry.

**Bacău:** 151 complaints, leading to 70 files, 1595 hearings, 139 phone calls, 38 information activities, one inquiry.

**Braşov** (established in November 2004): 7 petitions, leading to 5 files, 83 audiences, 2 information activities.

**Constanţa** (established in July 2004): 60 complaints leading to 41 files, 267 hearings, 91 phone calls, 2 inquiries.

In addition, in 2004, together with the logistic actions to providing equipment and institutional support, the training of coordinators and experts of the People's Advocate territorial offices was carried out.

## ***Chapter 4. The activity of the People's Advocate as supervisory authority for personal data processing***

### ***4.1. Administrative capacity***

In 2004, the People's Advocate continued to perform its duties as supervisory authority in the field of personal data protection, according to the provisions of Law no. 677/2001 on the individuals' protection regarding the personal data processing operations and the free movement of such data. Through the Regulations for the organization and functioning of the People's Advocate, republished, (Official Gazette no. 922/October 11th 2004) the **Directorate for the protection of individuals with regard to personal data processing**, having 20 employees, was included in the organization structure of the People's Advocate. In 2004, contests were successively organized for the filling of the vacancies, currently, the Direction functioning at 85% capacity of the personnel chart.

### ***4.2. Fulfillment of duties as supervisory authority***

**A.** Following the strengthening of the institutional capacity of the specialized directorate, the efforts carried out by the supervisory authority intensified, aiming at making personal data controllers aware of their obligations, according to the applicable laws. Tools directed to this purpose consisted in **information, advising and consulting** activities, and specific **control and investigation** activities performed at the offices of personal data operators.

a) With a view to improving the **information** level in respect of rights and obligations arising from the Law no. 677/2001, the People's Advocate organized in 2004, **8 workshops and one round table** with the participation of personal data operators and NGOs in the relevant fields of activity, as follows:

- February 2004 – the workshop “Protection of personal data in insurance industry”
- March 2004 – the workshop “Protection of personal data in finance-banking industry” and round table on “The role of NGOs in informing citizens of the rights guaranteed by the Law no. 677/2001”
- April 2004 – workshop “Protection of data personal in the field of health services”
- May 2004 – workshop “Protection of personal data in the field of accommodation services”
- June 2004 – workshop “Protection of personal data in the field of transportation”
- September 2004 – workshop “Protection of personal data in the field of Internet provision services”
- October 2004 – workshop "Protection of personal data in the field of recruitment and placement of personnel ”;

- November 2004 - workshop “Protection of personal data in the activities of travel agencies”

Mass media representatives contacted the supervision authority, press articles on personal data protection being published in 2004 in financial-banking and insurance magazines.

Following the organization of the aforementioned workshops, various public authorities and banking, insurance, transport companies and Internet providers have notified personal data processing activities. In addition, the activity of these entities was improved, by introducing a better practice regarding the information of individuals whose personal data they process, according to the provisions of the Law no. 677/2001 and to the recommendations addressed by the People’s Advocate in capacity of supervisory authority.

Among the public authorities having notified personal data processing activities to a large extent, we have to mention mainly county police inspectorates, county inspectorates of the Border Police and land registers and real estate advertising offices. Moreover, the authorities subordinated to the Ministry of Administration and Home Affairs drafted their own work methodologies for the enforcement of the provisions of Law no. 677/2001 and of the orders issued by the People’s Advocate in this field. A positive feedback to the People’s Advocate efforts was the issuance by the President of the National Tax Administration Agency of the order no. 657/2004 (Official Gazette no. 1069 of November 17<sup>th</sup>, 2004) disposing the registration of the personal data controller number assigned to the Agency, on the documents through which the personal data regarding *taxpayers - individuals*, are collected, stored or disclosed. A significant social – professional category, the notary publics, submitted one forth of the overall notifications registered in 2004 for data processing activities they performed under the Law no. 36/1995 of notary publics and notary activities and Law no. 656/2002 on the prevention and sanctioning of money laundry.

On the other hand, apart from the efforts of the supervisory authority, actively supported by the institutions involved in the process of negotiation of Romania’s accession to EU structures, there still are public authorities and institutions not having complied with their obligations to notify personal data processing activities. In this respect, we refer to a part of the institutions subordinated to the National Control Authority, diplomatic missions and consular offices of Romania, the Ministry of Health and most of the medical units.

b) The personnel of the specialized directorate gave **943 advices** to personal data controllers, by telephone, in writing or at the People’s Advocate offices, aiming at their compliance with their obligations prescribed by the Law no. 677/2001 (Annex no. 1). In addition, discussions were carried out with representatives of different professional bodies leading to the approval of the codes of conduct passed by the Association of Leasing Companies in Romania (Approval no. 2 in June 15<sup>th</sup>, 2004, published in the Official Gazette no. 627 of July 9<sup>th</sup> 2004) and the Romanian Association of Direct Marketing (Approval no. 3 of September 15<sup>th</sup>, published in the Official Gazette no. 874 of September 24<sup>th</sup>,

2004). These codes of conduct enclose regulations for the protection of the rights of individuals whose personal data may be processed by the members of these professional bodies.

c) In performing its duties set forth by art 23 and 27 of the Law no. 677/2001, the People's Advocate ordered in 2004 the performance of **3 preliminary controls and 6 investigations**, both to public and private controllers. Based on the conclusions of these activities, the People's Advocate recommended the observance of the rights of individuals whose personal data are subject to processing activities, amendment of notifications or submission of notifications to the People's Advocate, for all the personal data processing activities identified. Generally, the controllers complied with the recommendations.

**B.** Pursuant to the intensification of the efforts for the increase of public awareness with regard to the provisions of the Law no. 677/2001, the activity as supervisory authority in the field of personal data processing has known significant progress reflected also by the statistics. Therefore, the overall number of controllers registered until now is **1910**, **1598** notifications for personal data processing being submitted. **1341** controllers were registered only in 2004 (annex no 1); they submitted **1079** notifications (annex no 1)

As compared to 2003, a significant progress is noticed; the number of personal data controllers increased 5 times and the number of notifications increased by more than 300%. Until now, a total of **97 notifications** referring to transferal of personal data abroad were recorded. **57 international transfer notifications** were recorded only in 2004. The progress is remarkable as compared to the previous years, the notifications regarding transferal of personal data abroad increasing by 196.5% as compared to 2003. For transferal notifications, in 2004, **53 authorizations** were issued, of the total of 66. In 2004, **21 applications for the issuance of approvals** were recorded, as compared to one in 2002 and none in 2003. Until now, **4 approvals** were issued.

#### ***4.3. Fulfillment of obligations arising from the negotiation process of Romania's accession to the European Union***

The protection of individuals with regard to personal data processing is included in two EU negotiation chapters, respectively **Chapter 3 - Free movement of services** and **Chapter 24 - Justice and home affairs**. In 2004, the People's Advocate was asked to contribute to their implementation. It sent to the institutions in charge of the integration of these chapters (the Ministry of Administration and Home Affairs, the National Agency for Small and Medium Sized Enterprises and Cooperation) as well as to the Ministry of European Integration, its contribution to the Annual Report on the progress relating to the preparation of EU accession, for November 2003 - November 2004.

In addition, the People's Advocate representatives attended the reunion of the sub-committee no. 2 for Romania - European Union association: "Internal

Market", held in Brussels on July 19<sup>th</sup>, 2004, related to the status of the preparation of Chapter 3 – Free movement of services, as well as the Committee for Romania – European Union association, held in Brussels on November 2004, the sector delegations for Chapter 24 – Justice and home affairs, as well as the reunions of the Inter-ministerial Committee for European Integration.

#### ***4.4. International relations***

Contacts with counterpart authorities in Belgium, France, Ireland and Great Britain have continued aiming at exchanging information needed for the enforcement of the law on personal data protection and relating to the settlement of complaints.

In addition, the People's Advocate attended international reunions in this field - Spring Conference of the European Authorities for the protection of personal data (April 21- 23rd 2004, Rotterdam, the Netherlands) and the International Conference on the rights and responsibilities of individuals whose data are processed, organized by the Secretariat of the European Council together with the Bureau for Personal Data Protection (October 14-15<sup>th</sup> 2004, Prague, The Czech Republic)

In the first quarter of 2005, an exchange of experience with the Guarantors of personal data protection in Italy is planned with a view to training the personnel which carries out activities in the field of personal data protection, mainly with regard to the improvement of the investigation and control techniques. This exchange of experience became possible thanks to the support of the Technical Assistance and Information Exchange Bureau (TAIEX) of the European Commission and represents one of the measures stated in the Action Plan in the field of personal data protection, for June 2004 – December 2005. This plan, drafted by means of Romania's efforts to conclude negotiation of Chapter 3 - Free movement of services, is aimed at strengthening the institutional capacity of the supervision authority, improving the level of awareness related to the obligations of personal data controllers and to the rights of the persons concerned.

#### ***4.5. Proposal for the establishment of a separate supervisory authority***

Law no. 677/2001 appointed the People's Advocate as **supervisory authority** in the field of personal data protection, the People's Advocate being responsible of the monitoring and control, under the aspect of legality, of personal data processing activities. The exercise of the duties provided for by the Law no. 677/2001 by an Ombudsman institution does not correspond to its traditional purpose and to the personal data protection systems in the European Union member states (or future member states).

Therefore, in June 2004, the Ministry of Administration and Home Affairs (coordinator ministry for European integration, for Chapter 24 - Justice and Home Affairs) issued a **draft law** (favorably advised by the People's Advocate) for the establishment of a separate supervisory authority. This draft law comes to support

the integration requirements in the EU institutions and structures, following the spirit of the concerns with regard to the compliance of the national institutions with their counterparts in West-European countries. The European Commission has welcomed the decision for the establishment of a separate supervisory authority for the protection of personal data, recommending the amendment of the draft law from the perspective of harmonization with the provisions of the Directive 94/46/EC on the protection of individuals with regard to personal data processing by the Community institutions and bodies and on the free movement of such data, as well as of the Additional Protocol to the Convention of the European Council no. 108 referring to the protection of individuals with regard to automate processing of personal data. According to the provisions of this draft law on the establishment of a supervision authority for personal data protection, the taking over of the responsibilities as supervision authority from the People's Advocate will be carried out in 2005.

## ***Chapter 5. The People's Advocate activity in the field of constitutional review of laws and ordinances***

In the field of constitutional review of laws and ordinances, conducted by the Constitutional Court of Romania, the People's Advocate has continued to draft opinions with regard to unconstitutionality exceptions relating to laws and ordinances on human rights.

In 2004, the People's Advocate drafted **621 opinions** on unconstitutionality exceptions, a progress in this field, as the percentage increased to **160%** as compared to 2003 and **345%** as compared to 2002.

The 621 causes where the People's Advocate opinion was requested in 2004 referred mainly to alleged violations of: equality of rights (124), free access to justice (72), the principle of non-retroactivity of laws and the principle of more favorable criminal or contravention law (43), the right to defense (31) the rule of law (19) (Annex no. 6)

It comes out that approx. **19%** of the cases refer to the constitutional principle of the citizens' equality of rights. The violation of this principle, such as invoked in the unconstitutionality exceptions, referred in some cases to a possible discrimination on various criteria: wealth, nationality, sex.

The lowest percentage (below 1%) in the period of time studied, refers to opinions relating to art 22 of the Constitution (the right to life, physical and mental integrity), to art 32 of the Constitution (the right to education), art 55 of the Constitution (national defense), art. 28 of the Constitution (secrecy of correspondence), art 50 of the Constitution (protection of disabled persons)

Examining the unconstitutionality exceptions for which the Constitutional Court requested the People's Advocate opinion, it comes out that they mainly referred to the so-called unconstitutionality of the legal provisions: Law no. 146/1997 on the judiciary stamp taxes, further amended and completed, Government Ordinance no. 33/2001 on some measures referring to the salaries of public officers and of other categories of personnel in the budgetary sector, as well as of the judiciaries, Law no. 631/2002 of the state budget for 2003, Law no. 507/2003 of the state budget for 2004, art 278 and the following of the Criminal Procedure Code.

In some unconstitutionality exceptions in respect of which the Constitutional Court requested the People's Advocate opinion, it has been found out that the resolution for the notification of the constitutional procedure court does not comprise the court's opinion with regard to the objection invoked by the author. In such circumstances, the People's Advocate considered that the notification of the Constitutional Court is not legal as it does not comply with the imperative provisions of the Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished.

Following the revising of the Constitution, the People's Advocate was entered the category of the subjects that may notify the Constitutional Court within

the preventive control, its duties in the field of protection of individuals' rights and freedoms in relation to public authorities being strengthened.

In 2004, the People's Advocate notified the Constitutional Court of the unconstitutionality of some provisions of the Law of administrative procedure, passed by the Romanian Parliament but not yet promulgated.

## *Chapter 6. Cooperation with counterpart institutions and authorities*

### *6.1. Cooperation with counterpart institutions (Ombudsmen) in other countries*

According to the Romanian Constitution, the People's Advocate role is to protect individuals' rights and freedoms in relation to public authorities. In exercising its duties of autonomous and independent public authority, the People's Advocate has intensified and diversified its in-country actions intended to ensure the accomplishment of such goal.

Meanwhile, the People's Advocate has intensified its activity abroad, both with regard to bilateral relations with counterpart institutions in Europe and in other countries, and to its increasing involvement in multilateral issues.

In 2004, its external activity targeted mainly better information of the counterpart institutions in other countries, as well as of the regional and international field authorities, with regard to the Romanian People's Advocate organization and functioning, constitutional competences, actual modalities to perform its duties in capacity of supervisory authority with regard to the observance of citizens' rights.

In this context, the actions related to the explanation of the new constitutional regulations, of the significance and impact over the increase of the People's Advocate role and reputation, as an institution of the rule of law, had a significant meaning.

During the visits to Romania of delegations of the Ombudsmen from various countries, as well as with the occasion of the participation of People's Advocate representatives to conferences, symposia, working tables, etc, it acted toward a proper presentation of the relations between the People's Advocate and the Romanian Parliament, other state institutions, civil society, underlining the efforts for a better information of citizens with regard to issues under the People's Advocate competence.

In this respect, we have to add:

- the official visit to Romania of the representative of the National Ombudsman in Netherlands (Stephan Sjouke, counselor and Elleke Meijer, expert) within a long-term cooperation program;
- visit of the Rights' Defender from Spain, Enrique Mugica Herzog;
- visit of the delegation of the Petition committee, formed of members of the parliamentary groups of the German Bundestag, headed by Mr. Klaus Hagermann, of the Social Democratic Party in Germany
- visit of the European Ombudsman, Mr. Nikiforos Diamandouros, in May 2004, an opportunity to strengthen the cooperation between the European Ombudsman and the People's Advocate;

- official visit to Romania of the representatives of the Ombudsman in Netherlands, within the Program „Matra”- (Stephan Sjouke, counselor, Jos de Bruijn, deputy director, Sandra Loois and Jeanet van Wijk, expert);

The significance awarded by the People’s Advocate to such visits was also emphasized by the intensive program of contacts with the Senate, the Chamber of Deputies and the Constitutional Court. Certainly, the largest part of the program was reserved to the working meetings with the People’s Advocate, and with its experts and counselors. The exchange of opinions focused on joint-interest problems, the Romanian party being interested mainly in real action methods to lead to the increase of efficiency of the People’s Advocate activity, in the context of the new challenges which the institution faces in the perspective of the EU accession, taking into account the provisions of the Treaty establishing a Constitution for Europe. Major attention was given to the possibility of solving the disputes between citizens and public authorities by mediation and dialogue.

The guests had the opportunity to visit significant cultural and historical objectives in Bucharest and across the country.

The year 2004 represented a turning point in the start-up of the Matra Program “Strengthening the administrative and institutional capacity of the Ombudsman”, carried out by the People’s Advocate in partnership with the National Ombudsman of Netherlands. The main program activities are: preparatory study, choosing a public image and increase of public awareness, analysis of the opportunity to use an efficient informal procedure for the settlement of complaints, improving professional experience for hearings, assessment and improvement of the People’s Advocate inquiries and special reports, improvement of the complaint registration system.

In October 2004, the first activity of the program “Matra”: the “preparatory study” started, contributing to the establishment of a familiarly work environment, increasing the efficiency of discussions and taking conclusions, ensuring a better understanding between the representatives of the two partners.

In February 2005, the second phase of the “Matra” program will start – choosing a public image and increasing public awareness. The completion of the program will lead to the increase of the People’s Advocate capacity to act to the accomplishment of its legal and constitutional competences, in the context of various changes in Romania’s political, social and economic life, but also in the perspective of Romania’s accession to the European Union on January 1st, 2007.

## ***6.2. Participation of the People’s Advocate representatives to meetings, conferences, symposia and international reunions on human rights***

The year 2004 meant an increase of the participation of the People’s Advocate representatives to international reunions organized within the Ombudsman International Institute, European Ombudsman Institute, the Association of French-speaking Ombudsmen and Mediators, as of which we mention:

- General Assembly of the European Ombudsman, in Budapest, May 2004 (attended: Anton Petrisor Parlagi, counselor)
- The World Forum for Human Rights, in Nantes, France, in May 2004 (attended: Anton P. Parlagi, counselor);
- Regional Conference „ The Ombudsman in South-Eastern Europe, increase of international cooperation”, held in the Serbian Republic, in September 2004 (Simina Popescu, People’s Advocate counselor and Mihaela Ududec, expert);
- The Congress of the Ombudsman International Institute and the Workshop organized by Association of French-speaking Ombudsmen and Mediators, held in Quebec, Canada, in September 2004 (attending: Anton Petrişor Parlagi, counselor and Claudia Sora, expert);
- The Reunion of the European Union - Romania Association Committee in Brussels, in November 2004 (attending: Simina Popescu, People’s Advocate counselor).

During these meetings, the People’s Advocate representatives actively participated to the debates, underlined the Romanian People’s Advocate activities for the protection of citizens' rights and freedoms, spoke in favor of the intensification of the dialogue at regional and international level between Ombudsmen in various countries, for the increased participation of the International Ombudsman and European Ombudsman to the efforts aimed at promoting the Ombudsman objectives.

In most of the occasions, this participation was also used to distribute reference papers, among which the People’s Advocate Activity Report for 2003, specialized papers drafted by the People’s Advocate counselors and experts, such as papers regarding the protection of free judgment and opinion, as well as of religious cults, the People’s Advocate intervention for the protection of individuals’ economic rights, the People’s Advocate activity in the field of protection of individuals serving imprisonment sentences, the People’s Advocate activity in the field of combating discrimination.

## *Chapter 7. Financial aspects*

According to the Law no. 35/1997 regarding the organization and functioning of the People's Advocate, republished, the People's Advocate has its own budget, integral part of the state budget. The draft budget is approved by the People's Advocate with the consultative advice of the Ministry of Public Finance and is submitted to the Government to be included separately in the draft budget under enactment. Thus, the People's Advocate budget was approved through the Law no. 507/2003 of the state budget for 2004 and ensured mainly the material needs of the institution. The new offices were modernized; computing equipment and furniture were purchased for the new head office and territorial offices.

As the People's Advocate scope of activity has enlarged, its organization structures have diversified and, implicitly, its budget, reflecting the major changes at the level of these structures, has modified.

Its prerogatives, as well as its functioning modality confers to this new institution a key role in the strengthening of the democracy and founding the rule of law, as we know that the observance of the human rights represents the aim to which all public and private activities concur.

The data and information herein were revised by:  
Vasile Burtea, Deputy People's Advocate; Simina Popescu, Claudia Sora, the People's Advocate counselors; Niculae Lapa, Secretary General.

## GENERAL VOLUME OF ACTIVITY

No.	Indicator	Overall works
1.	<b>Complaints submitted to the People's Advocate referring to the violation of the citizens' rights and freedoms</b>	<b>4621</b>
2.	<b>Hearings at the People's Advocate head office and territorial offices</b>	<b>5971</b>
3.	<b>Telephone calls received at the People's Advocate reception office and territorial offices</b>	<b>2305</b>
4.	<b>Investigations conducted by the People's Advocate</b>	<b>38</b>
5.	<b>Recommendations drafted by the People's Advocate</b>	<b>8</b>
6.	<b>People's Advocate special reports</b>	<b>2</b>
7.	<b>Opinions on objections of unconstitutionality of laws and ordinances referring to citizens' rights and freedoms, expressed on the Constitutional Court's request</b>	<b>621</b>
8.	<b>Unconstitutionality objections raised by the People's Advocate</b>	<b>1</b>
9.	<b>Registration of individuals and legal entities as personal data operators</b>	<b>1341</b>
10.	<b>Notices on the personal data processing</b>	<b>1079</b>
11.	<b>Advice to personal data operators</b>	<b>943</b>

**STATISTICS OF THE COMPLAINTS REGISTERED WITH THE  
PEOPLE'S ADVOCATE, PER INFRINGED RIGHTS**

<b>No.</b>	<b>Rights provided by the Constitution</b>	<b>Number of Complaints</b>
1	Equality of rights (Article 16)	33
2	Aliens and stateless persons (Article 18)	-
3	Right to asylum, extradition and expulsion (Article 19)	1
4	Free access to justice (Article 21)	521
5	Right to life, to physical and mental integrity (Article 22)	42
6	Individual freedom (Article 23)	15
7	Right to defense (Article 24)	25
8	Right to freedom of movement (Article 25)	17
9	Right to intimate, family and private life (Article 26)	9
10	Inviolability of domicile (Article 27)	-
11	Secrecy of correspondence (Article 28)	1
12	Freedom of conscience (Article 29)	1
13	Freedom of expression (Article 30)	2
14	Right to information (Article 31)	403
15	Right to education (Article 32)	8
16	Access to culture (Article 33)	5
17	Right to protection of health (Article 34)	60
18	Right to a healthy environment (Article 35)	8
19	Right to vote (Article 36)	1
20	Right to be elected (Article 37)	1
21	Right to be elected in the European Parliament (Article 38)	-
22	Freedom of meetings (Article 39)	-
23	Right to association (Article 40)	5
24	Right to labor and social protection of labor (Article 41)	87
25	Right to strike (Article 43)	1
26	Right to private property (Article 44)	1325
27	Right to economic freedom (Article 45)	5
28	Inheritance right (Article 46)	33
29	Right to a decent living standard (Article 47)	859
30	Family and the right to marriage (Article 48)	6
31	Protection of children and young people (Article 49)	15
32	Protection of the disabled persons (Article 50)	60
33	Right of petition (Article 51)	495
34	Right of a person aggrieved by a public authority (Article 52)	256
35	Restriction of certain rights or freedoms (Article 53)	2
36	Complaints not referring to rights or freedoms	319
	<b>TOTAL</b>	<b>4621</b>

## STATISTICS OF COMPLAINTS PER COUNTY

No	County	No of complaints
1	Alba	126
2	Arad	54
3	Argeş	146
4	Bacău	236
5	Bihor	43
6	Bistriţa- Năsăud	26
7	Botoşani	66
8	Brăila	68
9	Braşov	137
10	Bucureşti	1371
11	Buzău	75
12	Caraş-Severin	38
12	Călăraşi	56
14	Cluj	94
15	Constanţa	219
16	Covasna	10
17	Dâmboviţa	70
18	Dolj	102
19	Galaţi	93
20	Giurgiu	50
21	Gorj	57
22	Harghita	18
23	Hunedoara	69
24	Ialomiţa	41
25	Iaşi	118
26	Ilfov	66
27	Maramureş	70
28	Mehedinţi	43
29	Mureş	60
30	Neamţ	100
31	Olt	74
32	Prahova	148
33	Sălaj	16
34	Satu Mare	20
35	Sibiu	59
36	Suceava	105
37	Teleorman	28
38	Timiş	89
39	Tulcea	68
40	Vaslui	91
41	Vâlcea	80
42	Vrancea	51
<b>Total*</b>		<b>4551</b>

## STATISTICS OF COMPLAINTS RECEIVED FROM ABROAD

No.	Country	No. of complaints
1.	BELGIUM	1
2.	FRANCE	2
3.	GERMANY	15
4.	GREECE	3
5.	IRAN	1
6.	ISRAEL	4
7.	NETHERLANDS	2
8.	GREAT BRITAIN	3
10.	POLAND	2
11.	SWEDEN	2
12.	HUNGARY	1
<b>TOTAL *</b>		<b>36</b>

*\* 34 complaints sent by electronic mail add to the overall number of complaints addressed to the People's Advocate in Romania and abroad.*

**THE ACTIVITY OF THE PEOPLE'S ADVOCATE TERRITORIAL  
OFFICES**

<b>No.</b>	<b>Territorial office</b>	<b>Complaints registered</b>	<b>Hearings</b>	<b>Telephone calls</b>	<b>Information activities</b>
1.	Alba-Iulia	101	519	119	-11 radio-TV shows; -12 press articles -10 actions in cooperation with NGOs
2.	Bacău	151	1595	139	-17 radio-TV shows; - 21 press articles
3.	Braşov	7	83	-	- 1 radio tv show; -1 press article
4.	Constanţa	60	267	91	- 17 press articles
<b>5.</b>	<b>Total</b>	<b>319</b>	<b>2464</b>	<b>349</b>	<b>90</b>

**STATISTICS OF THE OPINIONS EXPRESSED BY THE PEOPLE'S  
ADVOCATE ON THE OBJECTIONS OF UNCONSTITUTIONALITY**

<b>No.</b>	<b>Field</b>	<b>No. of opinions</b>	<b>Observ.</b>
1.	Free access to justice; Fair trial ( art. 21; art. 6 of C.E.D.O. ECHR)	106	
2.	Right to life, to physical and mental integrity (Article 22)	1	
3.	Individual freedom (Article 23)	12	
4.	Right to defense (Article 24)	31	
5.	Freedom of opinion (Articles 29, 30, 39, 40)	14	
6.	Right to education (Article 32)	1	
7.	Right to labor and social protection of labor and prohibition of forced labor (Article 41)	18	
8.	Right to property (Articles 44, 136)	72	
9.	Right to a decent living standard (Article 47)	3	
10.	Right to petition (Article 51)	6	
11.	Right of a person aggrieved by a public authority (Article 52)	10	
14.	Restriction of certain rights or freedoms (Article 53)	65	
15.	Rule of law (Article 1)	19	
16.	principle of non-retroactivity of law; more favorable criminal or contravention law (art. 15 align. 2)	43	
17.	Principle of equality of rights (Article 16)	124	
18.	Priority of international regulations (Articles 11, 20)	10	
19.	Government regulations (art. 108)	3	
20.	Prosecutor's statute (art. 131-art. 132)	3	
21.	National defense (art. 55)	1	
22.	right to inheritance (art.46)	2	
23.	Judges' statute ( art. 125)	10	
24.	Intimate, family and private life (art. 26)	2	
25.	secrecy of correspondence (art.28)	1	
26.	protection of disabled children (art. 50)	1	
27.	local public administration (art. 120-art.123)	4	
28.	Higher Council of Magistracy (art. 133, art.134)	5	
29.	use of means of appeal (art. 129)	11	
30.	courts of law (art.126- art.127)	1	
31.	Legislative mandate (art.115)	6	
32.	the right to vote and to be elected (art.36-art.37)	2	
33.	economic freedom (art.45)	1	
34.	economy ( art. 135)	17	
35.	public authorities (art.61-art.72)	2	

<b>36.</b>	Exceptions invoking the non-compliance with the laws, not with the Constitution	<b>2</b>	
<b>37.</b>	Exceptions where the infringed constitutional text was not specified	<b>12</b>	
<b>38.</b>	<b>TOTAL</b>	<b>621</b>	

*\*312 opinions concern several areas, and only the significant areas were taken into consideration for the drafting of these statistics*

## INVESTIGATIONS

No.	Object of the investigation	Number of investigations	Public administration authority where the investigation was conducted	Results of the investigation
1.	Checking the modality of enforcing the legal provisions on the right to private property ( Law no. 10/2001 and Law no. 18/1991), the right to labor and social security	13	<ul style="list-style-type: none"> <li>- municipality of sector 3, Bucharest;</li> <li>- municipality of sector 4, Bucharest;</li> <li>- municipality of Bucharest;</li> <li>- prefecture of Dâmbovița county;</li> <li>- municipality of Constanța;</li> <li>- prefecture of Constanța county;</li> <li>- Thermal supply company - Bucharest;</li> <li>- the prefecture of Dâmbovița county;</li> <li>- The Ministry of Foreign Affairs;</li> <li>- Labor Inspection Bucharest ;</li> <li>- the Ministry of Labor, Social Solidarity and Family;</li> <li>- The Office for the Migration of the Workforce.</li> </ul>	settlement of complaints, issuance of recommendations and drafting a special report
2	Compliance with the right to information , the right to petition, the right of the person aggrieved by t a public authority	10	<ul style="list-style-type: none"> <li>- Local Councils of sectors 1-6, Bucharest;</li> <li>-Directions for local taxes and income taxes of sectors 1-6, Bucharest;</li> <li>- Financial administrations, unemployment offices of sectors 1-6, Bucharest;</li> <li>-Direction for the protection of child's rights of sectors 1-6, Bucharest;</li> <li>-post offices of sectors 1 - 6, Bucharest;</li> <li>-The municipality of sector 3 Bucharest;</li> <li>- The National House of Pensions and other Social</li> </ul>	settlement of complaints, issuance of recommendations

			<b>Security Rights;</b> <b>-The Prosecutor's Office by the Bucharest Tribunal;</b> <b>-The Prosecutor's Office by the Higher Court of Cassation and Justice;</b> <b>-Police Station 22 of sector 6, Bucharest;</b> <b>-Police Station 11 of sector 3, Bucharest;</b> <b>-Road Police Direction of Bucharest ;</b> <b>-the municipality of Alba-Iulia;</b> <b>-The Ministry of Public Finance.</b>	
3	<b>Compliance with rights of the retired persons</b>	9	<b>-The Ministry of Foreign Affairs;</b> <b>- The National House of Pensions and other Social Security Rights;</b> <b>- The Pension House of Bucharest.</b>	settlement of complaints, issuance of recommendations and drafting of a special report
4	<b>Compliance with the detention conditions in penitentiaries</b>	2	<b>- Giurgiu Penitentiary;</b> <b>-Maximum Security Penitentiary Bucharest - Rahova</b>	settlement of complaints
5	<b>Checking the detention conditions in the police arrest</b>	1	<b>-Police Inspectorate of Gorj County</b>	settlement of complaints
6	<b>Compliance of the right to protection of the disabled persons</b>	2	<b>- The Ministry of Transportation, Construction and Tourism;</b> <b>-the administration of Berești-Bistrița commune, Bacău county</b>	settlement of complaints
7	<b>Compliance with the right to health care</b>	1	<b>Hospital no. 9 "Dr. Obregia"</b>	settlement of complaints
	<b>TOTAL</b>	<b>38</b>		

**DRAFT RECOMMENDATIONS MADE BY THE PEOPLE'S ADVOCATE  
IN 2004**

No.	No. and date of drafting. Object	Public authority to which the recommendation was made	Short content of the recommendation
1.	1/ January 29th 2004 Violation of the right to a decent living standard and of the right to petition, prescribed by art. 47 and art. 51 of the Constitution, in the case of settlement of the applications for the granting of the capacity of beneficiary under the Law no 309/2002 on the recognition and granting of rights to persons having performed military service with the General Direction of Labor Service within 1950-1961	-The National Archives	<ul style="list-style-type: none"> <li>- examining the situation caused by the failure to communicate within the legal time limit the answers to the applications whereby the persons concerned requested the issuance of the certificates regarding the performance of the military service with the former labor units of the former General Direction of the Labor Service, and further on, establishing the legal framework to avoid any such delays;</li> <li>- taking the legal measures required for :               <ul style="list-style-type: none"> <li>*compliance with the provisions of the Law no. 428/2003 for completing art. 6 of the Law no. 309/2002, according to which no taxes are due for the issuance of the documents needed to prove that the applicant is classified within the provisions of art. 1 of the Law no. 309/2002;</li> <li>*drafting in cooperation with the Military Unit 02405 and with the Ministry of Labor, Social Solidarity and Family, of a centralized and integral record on the personnel of the former labor units;</li> <li>*taking over the rest of the archive, kept by the Ministry of Transportation, Construction and Tourism, which keeps payrolls of the persons ("soldiers") that were used as military and civil workforce in the former General Direction of the Labor Service, within 1950-1953;</li> <li>*reconsidering the need to draft proposals for the amendment and completion of the Law no. 309/2002, in respect of the "Notes" drafted by the National House of Pensions and other Social Security Rights for the unitary enforcement of the abovementioned law.</li> </ul> </li> </ul>
2.	2/January 29 <sup>th</sup> , 2004 Violation of the right to a decent living standard and of the right to petition prescribed by art. 47 and art. 51 of the Constitution, in case of settlement of the complaints with regard to the granting of the capacity of beneficiary under the Law no	-The Ministry of National Defense	<ul style="list-style-type: none"> <li>- examining the situation caused by the failure of the Military Unit 02405 to answer within the legal time limit the complaints whereby the persons concerned requested the issuance of the certificates comprising the registrations of the military record files, as documentary evidence of the performance of the military service in the former labor units, establishing the legal framework to avoid any such delays;</li> <li>- taking the legal measures required so as :               <ul style="list-style-type: none"> <li>* the Military Unit 02405 Pitești drafts in cooperation with the National Archives and the Ministry of Labor, Social Solidarity and Family a centralized and integral record on the personnel of the former labor units;</li> <li>* the Military Unit 02405 Pitești separately marks in the certificates issued, whether the applicants for the capacity of beneficiary of the Law no. 309/2002 performed the military service within the former units of the former General Direction of the Labor Service, or within the former labor units of the</li> </ul> </li> </ul>

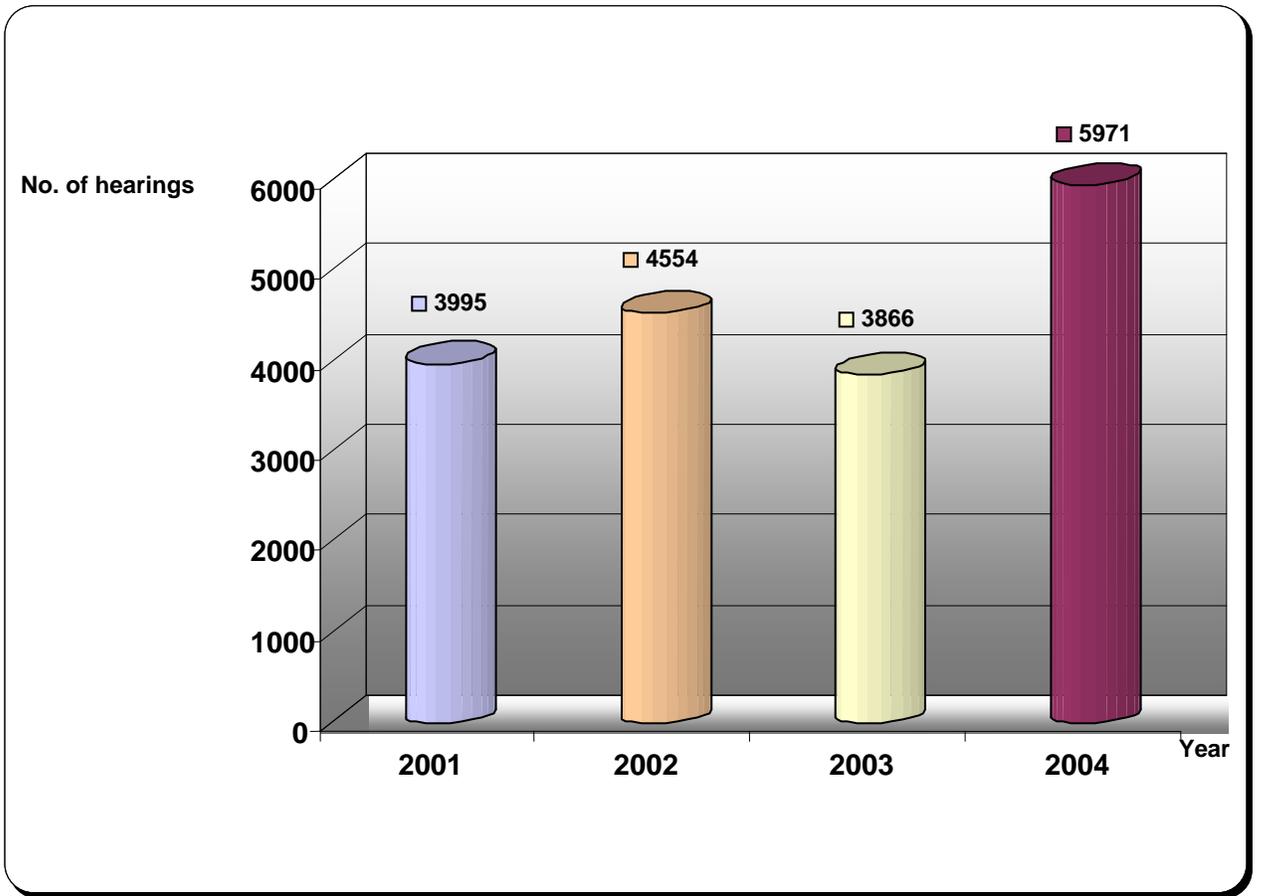
	309/2002 on the recognition and granting of rights to persons having performed military service with the General Direction of Labor Service within 1950-1961		former Ministry of Armed Forces ; * reconsidering the need to draft proposals for the amendment and completion of the Law no. 309/2002, in respect of the "Notes" drafted by the National House of Pensions and other Social Security Rights for the unitary enforcement of the abovementioned law.
3.	3/ January 29 <sup>th</sup> , 2004 Violation of the right to a decent living standard and of the right to petition prescribed by art. 47 and art. 51 of the Constitution, in case of settlement of the complaints with regard to the granting of the capacity of beneficiary under the Law no 309/2002 on the recognition and granting of rights to persons having performed military service with the General Direction of Labor Service within 1950-1961	-The Ministry of Labor, Social Solidarity and Family	-examining the situation caused by the failure to unitarily enforce the Law no. 309/2002 by the commission for the enforcement of the provisions of the Government Ordinance no. 105/1999 on the granting of rights to persons oppressed by the political regimes established in Romania starting with September 6 <sup>th</sup> 1940 until March 6 <sup>th</sup> 1945 due to ethnical reasons, commissions operating within the territorial pension houses. - taking measures for: *drafting in cooperation with the National Archives and the Military Unit 02405 Pitești of a centralized and integral record on the personnel of the former labor units within the former General Direction of the Labor Service; * taking into consideration by the commissions within the territorial pension houses of the registrations on the military records, observing the "Notes" drafted by the National House of Pensions and other Social Security Rights; * reconsidering the need to draft proposals for the amendment and completion of the Law no. 309/2002, in respect of the "Notes" drafted by the National House of Pensions and other Social Security Rights for the unitary enforcement of the abovementioned law.
4.	4/February 12 <sup>th</sup> 2004 Enforcement of the provisions of Law no. 9/1998 on the granting of compensations to Romanian citizens for their assets passed in the property of the Bulgarian State, following the enforcement of the Treaty between Romania and Bulgaria, signed in Craiova, on September 7 <sup>th</sup> 1940	-The Ministry of Public Finance	- taking measures so as the files submitted under the Law no. 9/1998 are settled within the time limit prescribed by art. 35 lit. b) of the Methodological Norms for the enforcement of the Law no. 9/1998 on the granting of compensations to Romanian citizens for their assets passed in the property of the Bulgarian State, following the enforcement of the Treaty between Romania and Bulgaria, signed in Craiova, on September 7 <sup>th</sup> 1940; - informing the public with regard to what need to be done to get the compensations on the grounds of the Law no. 9/1998; - taking measures to regularly inform the beneficiaries of the Law no. 9/1998 of the settlement of the files undergoing examination by the Central Commission for the enforcement of the Law no. 9/1998, as well as to ensure communication between the Central Commission and the citizens.

5.	5/Mach 5 <sup>th</sup> 2004 Enforcement of the provisions of the Government Emergency Ordinance no. 5/2003 on the granting of subsidies for the heating of the dwelling place and granting of facilities to population for the payment of the thermal power supply	-The Mayor of sector 6, Bucharest	<ul style="list-style-type: none"> <li>- examining the situation caused by the inappropriate enforcement by the owners' associations and the thermal power supplier, of the provisions of the Government Emergency Ordinance no. 5/2003;</li> <li>- taking measures to resolve the complaints whereby the persons benefiting of the provisions of the Government Emergency Ordinance no. 5/2003 argue its enforcement.</li> </ul>
6.	6/October 5 <sup>th</sup> 2004 Enforcement of the provisions of Law no. 10/2001 on the legal statute of some real estates abusively taken over by the state within March 6 <sup>th</sup> 1945-December 22 <sup>nd</sup> 1989	-The General Mayor of Bucharest	<ul style="list-style-type: none"> <li>-examining the situation caused by the fact that the Legal, Procedural and Law Direction of the Local Administration Bucharest failed to resolve within the legal time limit the notifications submitted on the basis of the Law no 10/2001 and establishing the appropriate organizational framework to avoid any such delays;</li> <li>- taking measures so as to timely answer to the applications whereby applicants request information of the settlement of their files.</li> </ul>
7.	7/November 11 <sup>th</sup> 2004 Enforcement of the provisions of the Law no 10/2001 on the legal statute of some real estates abusively taken over by the state within March 6 <sup>th</sup> 1945-December 22 <sup>nd</sup> 1989	- The General Mayor of Bucharest	<ul style="list-style-type: none"> <li>-examining the situation caused by the fact that the Legal, Procedural and Law Direction of the Local Administration Bucharest failed to resolve within the legal time limit the notifications submitted on the basis of the Law no 10/2001 and establishing the appropriate organizational framework to avoid any such delays;</li> <li>- taking measures so as to timely answer to the applications whereby applicants request information of the settlement of their files.</li> </ul>
8.	8/ December 6 <sup>th</sup> 2004	The Mayor of Alba-Iulia	<ul style="list-style-type: none"> <li>- examining the situation caused by the fact that the Local Administration of Alba-Iulia failed to communicate within the legal time limit answers to the citizens' applications and establishing the appropriate framework to avoid any such delays.</li> </ul>

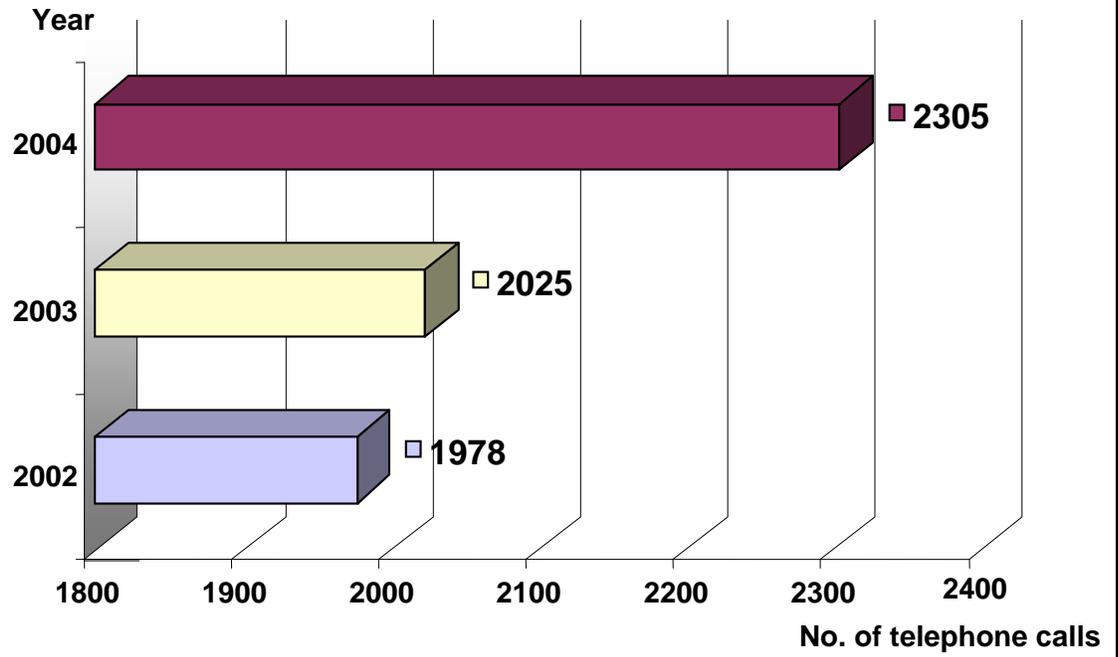
*ANNEX no. 9*

**CHARTS REGARDING THE INDICATORS OF THE PEOPLE'S  
ADVOCATE ACTIVITY**

**Hearings**

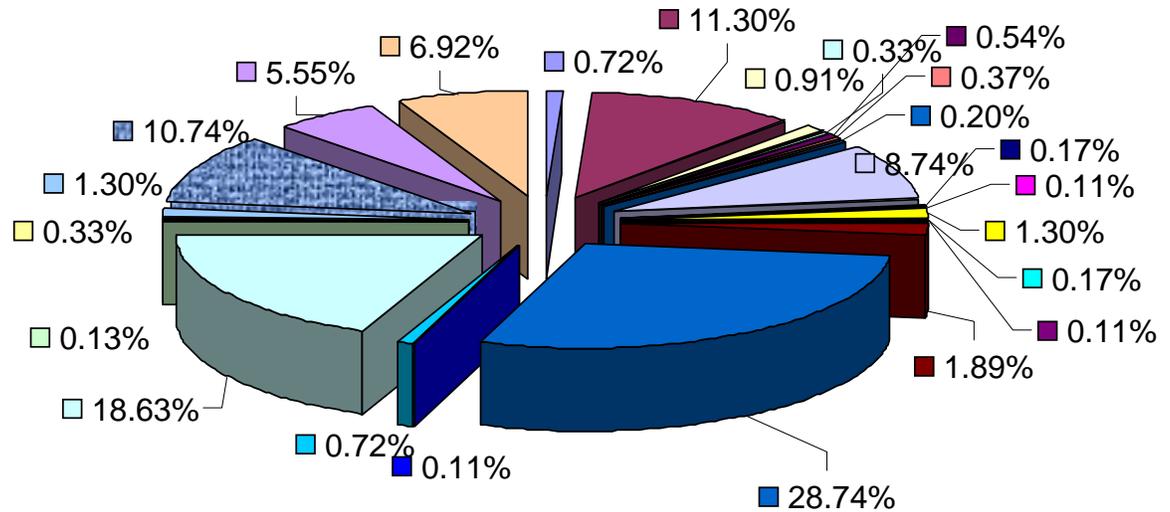


### Telephone calls received by the People's Advocate



■ 2002 ■ 2003 ■ 2004

### Distribution of complaints by infringed right



- Equality of rights
- Free access to justice
- Right to life, to physical and mental integrity
- Individual freedom
- Right to defence
- Right to freedom of movement
- Right to intimate, family and private life
- Right to information
- Right to education
- Access to culture
- Right to protection of health
- Right to a healthy environment
- Right to association
- Right to labour and social protection of labour
- Right to private property
- Right to economic freedom
- Inheritance right
- Right to a decent living standard
- Family and the right to marriage
- Protection of children and young people
- Protection of the disabled persons
- Right of petition
- Right of a person aggrieved by a public authority
- Petitions not referring to rights and freedoms

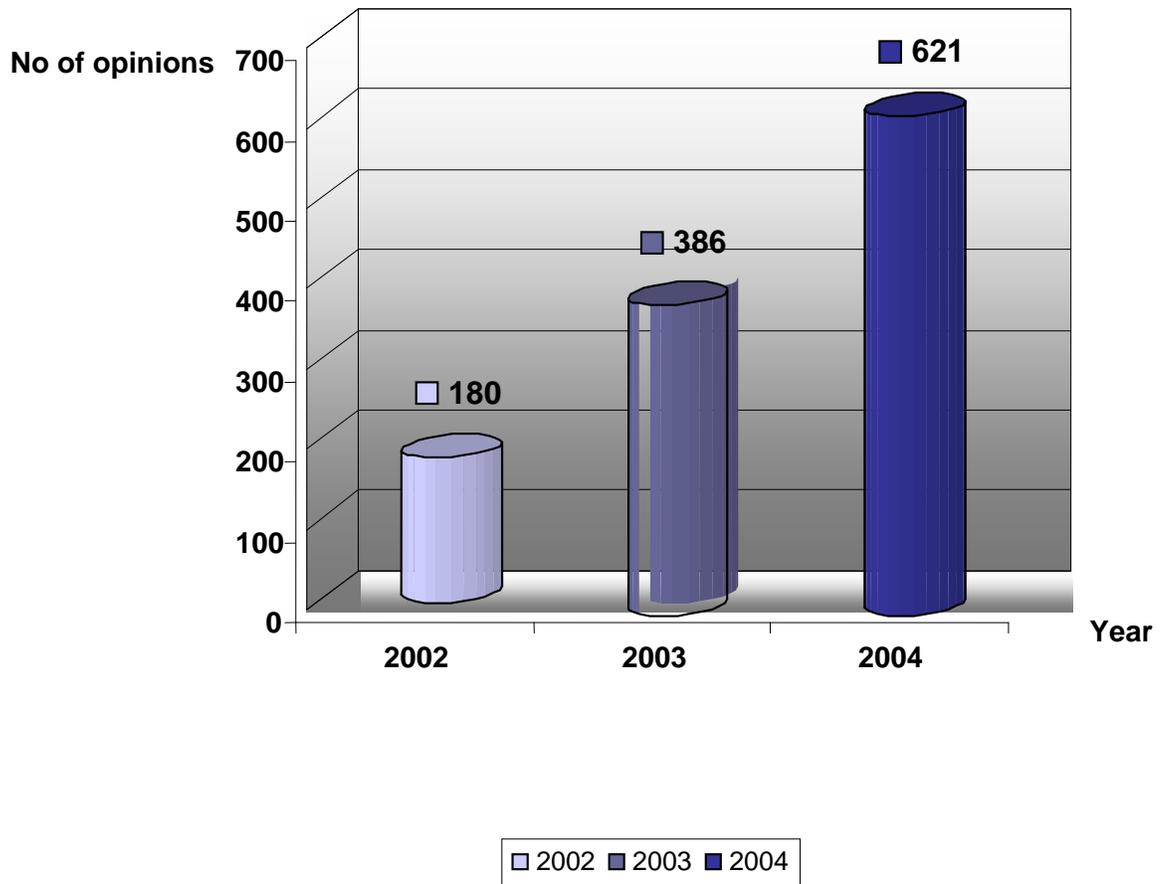
*NOTE: the rights infringed registering less than 5 complaints were not included*

## DISTRIBUTION PER COUNTY IN 2004

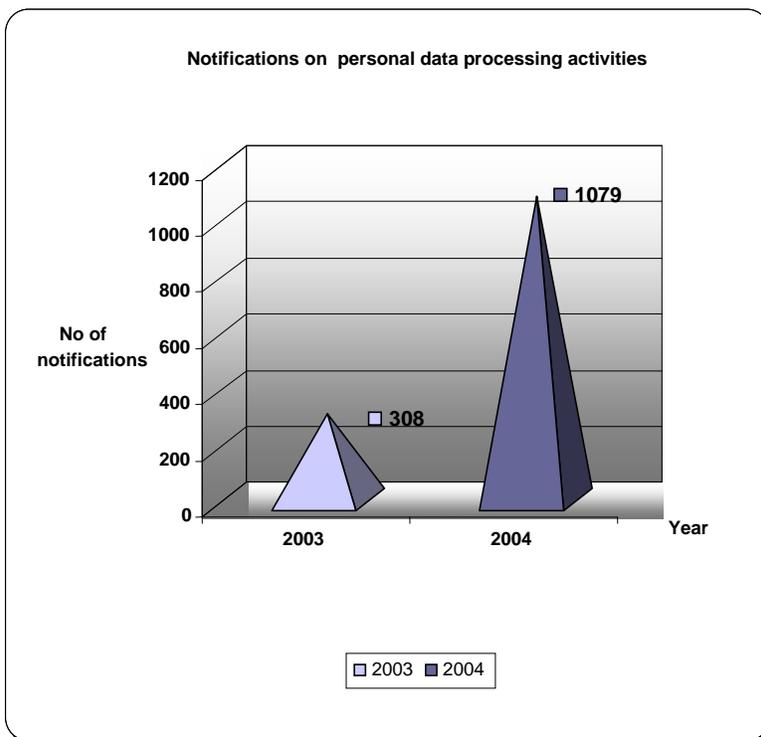
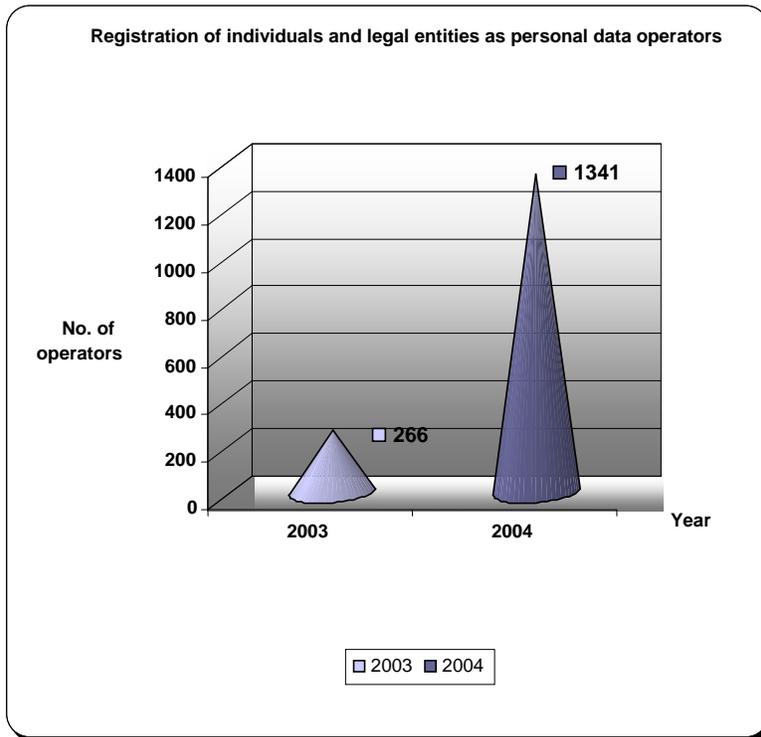


In-country complaints (mail): 4550  
 Complaints received by email: 34  
 Complaints from abroad: 37  
 Total complaints in 2004: 4621

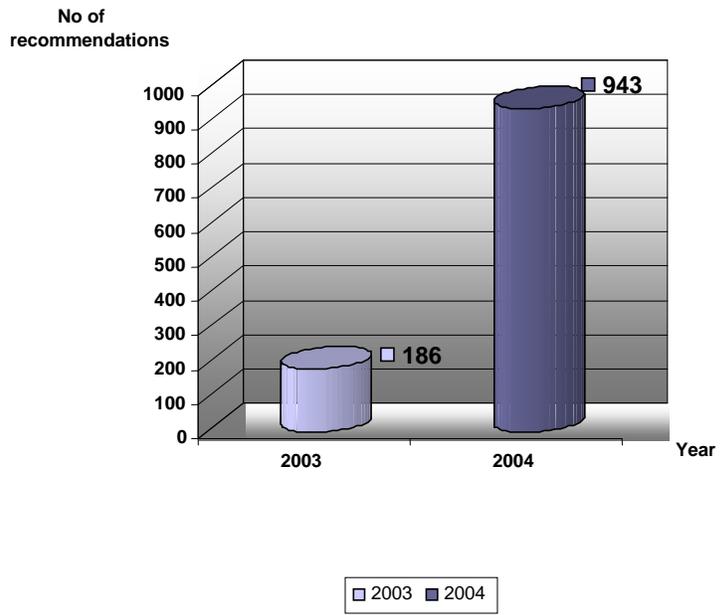
### Opinions with regard to objections of unconstitutionality



## Charts regarding the activity of the Department for the protection of individuals with regard to personal data processing



Recommendations to personal data operators



## TABLE OF CONTENTS

*The People's Advocate foreword, Mr. Ioan Muraru, Ph.D.*

<b>Chapter 1. Strengthening the institution—legal, organizational and functional changes .....</b>	<b>page 2-4</b>
<b>1.1 The new legal framework for the organization and operation of the institution .....</b>	<b>page 2-3</b>
<b>1.2 Establishment of new territorial offices in Brasov and Constanta.....</b>	<b>page 3</b>
<b>1.3 The organization and personnel of the People's Advocate.....</b>	<b>page 3</b>
<b>1.4 Promotion and training of personnel .....</b>	<b>page 4</b>
<b>1.5 Working conditions.....</b>	<b>page 4</b>
<b>Chapter 2. The People's Advocate activity per area of expertise.....</b>	<b>page 5-34</b>
<b>2.1 General volume of activity .....</b>	<b>page 5-6</b>
<b>2.2 The People's Advocate procedures and specific means of action .....</b>	<b>page 6-8</b>
<b>2.3 Human rights, equality of chances between men and women, religious cults and national minorities.....</b>	<b>page 8-14</b>
<b>A. Equality of chances</b>	
<b>B. The right to free movement</b>	
<b>C. Right to petition</b>	
<b>D. The right to information</b>	
<b>E. The right to a healthy environment</b>	
<b>F. The right of the person aggrieved by a public authority</b>	
<b>2.4 The rights of children, family, youth, retired persons and disabled persons.....</b>	<b>page 14-20</b>
<b>A. Protection of youth and children</b>	
<b>B. The right to a decent living standard</b>	
<b>C. Protection of Disabled Persons</b>	
<b>2.5 Military service, justice, police and penitentiaries .....</b>	<b>page 20-27</b>
<b>A. Military service</b>	
<b>B. Justice</b>	
<b>C. Police</b>	
<b>D. Penitentiaries</b>	
<b>2.6 Property, labor, social security, taxes and income taxes.....</b>	<b>page 27-34</b>
<b>A. Property</b>	
<b>B. Labor and social security</b>	
<b>C. Taxes and income taxes</b>	

<i>Chapter 3. The activity of the People’s Advocate territorial offices.....</i>	<i>page 35</i>
<i>Chapter 4. The activity of the People’s Advocate as supervision authority for personal data processing .....</i>	<i>page 36-40</i>
4.1 Administrative capacity .....	page 36
4.2. Fulfillment of duties as supervision authority .....	page 36-38
4.3 Fulfillment of obligations arising from the negotiation process of Romania’s accession to the European Union.....	page 38-39
4.4 International relations .....	page 39
4.5 Proposal for the establishment of a separate supervision authority.....	page 39-40
<i>Chapter 5. The People’s Advocate activity in the field of constitutional review of laws and ordinances.....</i>	<i>page 41-42</i>
<i>Chapter 6. Cooperation with counterpart institutions and authorities .....</i>	<i>page 43-45</i>
6.1 Cooperation with counterpart institutions (Ombudsmen) in other countries.....	page 43-44
6.2 Participation of the People’s Advocate representatives to meetings, conferences, symposia and international reunions on human rights .....	page 44-45
<i>Chapter 7. Financial aspects.....</i>	<i>page 46</i>
<i>Annexes.....</i>	<i>page 47-65</i>
Annex no. 1 General volume of activity.....	page 47
Annex no. 2 Statistics of the complaints registered with the People’s Advocate regarding the infringed rights .....	page 48
Annex no. 3 Statistics of complaints per county.....	page 49
Annex no. 4 Statistics of complaints received from abroad .....	page 50
Annex no. 5 The activity of the People’s Advocate territorial offices.....	page 51
Annex no. 6 Statistics of the opinions expressed by the People’s Advocate on the objections of unconstitutionality .....	page 52-53
Annex no. 7 Investigations .....	page 54-55
Annex no. 8 Draft recommendations made by the People’s Advocate.....	page 56-58
Annex no. 9 Charts regarding the indicators of the People’s Advocate activity .....	page 59-65