



## **PEOPLE'S ADVOCATE**

### **REPORT of Activity for 2009**

**Bucharest  
2010**

**The report was submitted to the President  
of the Chamber of Deputies  
and  
The President of the Chamber of Senate  
to be discussed in the Parliament assembly,  
as per Article 60 in the Romanian Constitution**

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**Ombudsman  
Minister Office**

People's Advocate  
General Registration  
Reg. No. 686/January 27, 2010

*Honourable President,*

According to the specifications of the Article 60 of the Romanian Constitution and Article 5 of the Act No. 35/1997 concerning the organization and functioning of the People's Advocate institution, re-published, further amendments and supplements included, we enclose the *Report for the year 2009*, with the request to be presented before the two Chambers of Parliament.

I take the occasion Honourable President, to assure you of my high consideration.

Ioan MURARU, Ph.D. Professor  
People's Advocate, signed and sealed

Bucharest, January 27, 2010

**To Mrs. Roberta Alma ANASTASE  
President of the Deputies Chamber**

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**To Mr. Mircea – Dan GEOANA  
President of the Senate**

*Mrs. President of the Chamber of Deputies*

*Mr. President of the Senate,*

*Ladies and gentlemen, deputies and senators,*

The report we are presenting today to the joint assembly of the Chambers of the Parliament of Romania is elaborated in compliance with the constitutional and legal obligation as per the provisions of the Article 60 from the Romanian Constitution, as well as of the Article 50 from the Act No. 35/1997 regarding the organization and functioning of the People's Advocate Institution. The report presents the activity performed in 2009.

The report highlights not only the quantitative, but also the qualitative progress achieved. Thus, in figures, we can notice that in 2009, compared to 2008, a number of 8295 **petitions** were registered, an increase of 3.3%; the **dispatch service** was used by 5978 citizens, with an increase of 2%. A number of 16561 citizens **were heard**, the activity in this field was maintained to a level close to the one registered in 2008. In addition, we can add 30 **investigations**, 6 **recommendations**, 1905 **points of view** related to the unconstitutionality exceptions, 4 **exceptions of unconstitutionality** directly submitted to the Constitutional Court.

This development progress could be achieved under the circumstances of an incomplete personnel structure within the central office.

The report we are presenting to you relates in detail and explains the problems the institution was focused on, according to the specialization fields stipulated by the law. The report provides complete information related to: the specific procedures and means of action available to the institution; material and budget resources; cooperation with similar international institutions and authorities, etc.

In this joint assembly of the two Chambers of Parliament, we have the opportunity to present other pertinent explanations related to the **achievements** in the activity of People's Advocate Institution.

➤ **The concern of the People's Advocate Institution regarding the protection of physical entities rights**

In addition to the concern of the People's Advocate regarding the solution of actual problems recorded in petitions, certain actions were undertaken for the protection of rights of some segments of population, when the individual petitions in the same field were in a large number. This is the case of the People's Advocate special reports, which the Parliament, at least at the level of parliamentary commissions, could usefully consider as subject of a further debate. We take into consideration especially the Special Reports related to the public pension system, the health care security system, the rights of children and youth with disabilities, the rights of war veterans, war widows and un-remarried widows of war veterans, submitted to the Parliament and which include proposals and judicious solutions related to difficult legal problems.

Moreover, the People's Advocate continued the correspondence with Mr. Janusz Kochanowski, the Commissioner for the Protection of Civil Rights from the Republic of Poland, regarding the development of the case of a Romanian citizen, deceased in a Polish penitentiary. The prompt answers received from the Polish Ombudsman, including current information about the investigations performed by the Polish authorities regarding the circumstances surrounding the decease of the Romanian citizen, were able to clarify certain elements of this tragic case.

In his position of a member of the European Network of Ombudsmen, the People's Advocate continues the exchange of correspondence with Ombudsmen from the European Union countries. This expresses the concern of these institutions for the protection of rights and freedoms of physical entities and represents an efficient means for the prompt clarification of the notified problems.

➤ At the same time, we hereby inform the Romanian Parliament that the People's Advocate Institution would recommend the establishment of **an Ombudsman for the army**, following the model existing, for example, in Germany, the Netherlands, Norway, Belgium,

Ireland or the United Kingdom. Such an institution, created after the model of those already operational in Europe, would be extremely useful for the protection of rights of the military personnel.

➤ **Involvement in the constitutionality control**

In the actions undertaken (formulation of 1905 points of view related to the exceptions of unconstitutionality and the notification of the Constitutional Court with 4 exceptions of unconstitutionality, out of which 3 **were admitted**), the People's Advocate expressed itself as an autonomous and independent authority and completely committed to achieving a loyal constitutional conduct. The actions undertaken within the constitutionality control were energetic actions, undoubtedly critical to certain normative documents. We would like to mention the exception of unconstitutionality related to the provisions of the Government Ordinance No. 230/2008 for the amendment of some normative documents within the field of pensions from the public system, state pensions and labor pensions, normative document with a strong social impact. Those who have observed carefully and in good - faith the activity of the People's Advocate in this field can ascertain that there were no conflicts in the past or nowadays between the People's Advocate and the public authorities that issue normative documents subject to constitutionality control. All the authorities have fulfilled their constitutional obligations, the Constitutional Court has also fulfilled its constitutional obligation as guarantor of the Constitution's supremacy, and these actions undertaken by the People's Advocate have been the result of some visions from different perspectives.

As a result, the activity of the People's Advocate in this field was a natural activity in a free society, organized within a constitutional state, governed by the principles of legality, pluralism and transparency.

➤ In 2009, the communication with the **mass media** interested in informing the public opinion about the role and activity of the People's Advocate Institution was highly increased.

Thus, there were over 190 **manifestations** at the level of radio and television stations, central and local newspapers.

➤ Within the conditions of the financial limitations in 2009, the People's Advocate made efforts to continue the participation in the activities of the European Ombudsman Institute (EOI). Furthermore, the People's Advocate from Romania was reelected as a member in the EOI Council in the General Meeting of EOI members, organized in Florence, on October 5, 2009.

At the same time, the People's Advocate Institution became the member of Ombudsmen Network for Children in South and Eastern Europe – CRONSEE, which aims at the protection and promotion of children's rights at a national and international level by facilitating the change of experience and distribution of information among members, through cooperation and the adoption and publishing of some common statements related to the children's rights.

Obviously, the activity undertaken during 2009 could not be objectively characterized unless we mention some **non - fulfillments**.

➤ We were unable to persuade certain **public authorities**, usually within the structures of city halls, public authorities with competences in the re-enactment of property rights, to be receptive to the requests of the People's Advocate Institution and undoubtedly, to the requests of the citizens. In those situations, the means available for the People's Advocate Institutions proved to be inefficient, while the support of the superior hierarchic authority was inexistent.

➤ The efforts of the People's Advocate Institution for taking into **its personal administration** the building in Bucharest, where its activity is performed, with a view to an efficient administration of the budget resources granted to the institution, and subsequently, to the achievement of an cost-cutting measure in the public budget, had no effect.

As to the lack of support from the part of the Romanian Government, we consider that the Parliament of Romania could enforce this request of the People's Advocate Institution.

➤ **Financially**, within the context of the economic and financial crisis, the budgetary constrains in 2009 had generated difficulties related to the development of the institution's activity.

A significant impact was represented by the enforcement of the provisions of the Act No. 329/2009 regarding the reorganization of some public authorities and institutions, rationalization of public expenses, support of business environment and the observance of the frame – agreements with the European Commission and the International Monetary Fund, when the personnel chart of the People's Advocate Institution was incomplete, both at the central headquarters and at the level of territorial offices. The effects of these measures were felt especially as the amount of activity progressed, while the occupation through contest or exam of the vacant positions within the public authorities and institutions was suspended.

Thus, the reality binds us to request concrete and efficient support from the Parliament of Romania, in order to solve certain issues. Our request is based on the reality that, according to the Constitution, the People's Advocate Institution is subordinated to the Parliament of Romania; it is not a part of the system of administrative authorities, and due to this constitutional situation, the Government of Romania and the Ministry of Public Finances usually neglect any concrete and differentiate reference to the People's Advocate Institution. This explains why the financial constraint measures, natural in a period of economic recession, were not applied by taking into consideration the specific character of the People's Advocate Institution. The uniform reduction of funds has affected seriously the activity of the People's Advocate Institution, both at the level of the internal reality and the European reality, taking into consideration the fact that the institution is a part of the European System of Ombudsmen, and within this system certain activities are developed based on personal, specific rules with mandatory participation.

Furthermore, the interdiction of the occupation through contest of vacant positions was a real blow for the People's Advocate Institution, taking into consideration the low number of budgeted personnel for this institution (99 positions).

Another problem that seriously affected the activity was the fact that the budget exercise had been extremely different from the provisions under the Law of the state budget for the year 2009. Therefore, we hope that the Parliament of Romania will take all necessary measures so that the budget exercise for the year 2010 would respect accordingly the numbers approved through the state budget for the People's Advocate Institution.

In conclusion, I express my belief that the support of the Parliament of Romania for the People's Advocate Institution will be more concrete and efficient.

At the same time, we can highlight some **proposals** related to the improvement of the activity within the institution.

The experience achieved demonstrates that some **improvements** of the Act No. 35/1997 concerning the organization and functioning of the People's Advocate Institution could be useful. Namely, the classification of the status of our own personnel, the means for the organization of territorial offices in the sense that based on the possibilities, the People's Advocate should be able to establish territorial offices in another county from the territorial jurisdiction range of the appeal courts. We also underline the necessity to complete the current legislation, in order to establish a territorial office for the People's Advocate Institution, with headquarters in Slobozia, responsible for the five counties (Calarasi, Giurgiu, Ialomita, Ilfov, Teleorman), within the territorial jurisdiction of the Bucharest Court of Appeal.

Similar to the previous years, the People's Advocate Institution would have expected to be **consulted** by the initiators of law and ordinance projects, which, through the content of regulations, relate to the citizens' rights and freedoms, stipulated by the Romanian Constitution, the pacts and other international treaties concerning the fundamental human rights, to which Romania is a part as per the provisions of art. 27 from the Act No. 35/1997, republished. Through this consultation, we could avoid the means used for notifying the Constitutional Court, for amending the eventual regulations that the People's Advocate considers to be unconstitutional. The People's Advocate Institution works with a body of

counselors and experts with high professional training, able to assess correctly the legislative proposals.

The report also includes other proposals for the improvement of the legislative frame related to the rights of physical entities and their reports with the public authorities. We are certain that by reading this report, the individuals interested will be able to assess realistically the activity of the People's Advocate Institution developed during the year 2009.

**Ioan Muraru, Ph. D. Professor,  
People's Advocate**

Bucharest, January 2010

## SYNTHESIS OF THE PEOPLE'S ADVOCATE INSTITUTION REPORT FOR THE YEAR 2009

The report comprises **15 chapters and 9 enclosures**.

**Chapter I** describes the legal organizational and functional frame of the People's Advocate Institution.

Following the presentation of the main regulations in force related to the People's Advocate Institution, there is a brief description of the role, attributions and steps taken in view of solving the requests addressed by the petitioners, whose rights have been violated by the authorities of the public administration. We can underline the fact that, for the fulfillment of the constitutional purpose, the People's Advocate can make investigations, can issue recommendations and in the situation where the investigations expose legislative gaps or serious cases of corruption or non-compliance with the laws of the country, the People's Advocate can present a report enclosing the facts to the president of the two Chambers of Parliament or, according to the case, to the prime – minister. Likewise, the People's Advocate can be involved in the constitutionality control of the laws and ordinances performed by the Constitutional Court.

**Chapter II** presents the **organizational structure and the personnel of the People's Advocate Institution**. We mention that the organizational structure of the People's Advocate Institution is provided under the organizational and functional Regulations of the People's Advocate Institution and it is approved accordingly to the institution's development stage.

**Four specialization fields** operate within the People's Advocate Institution: human rights, equality of chances between men and women, religious cults and national minorities; the rights of children, family, youth, retired people, individuals with disabilities; army, justice, police, penitentiaries; property, labor, social security, taxes and fees. Counselors, experts, referents and other technical and administrative personnel work within the institution.

**Chapter III** presents the **general amount of activity** of the People's Advocate Institution. We can underline the activity during hearings, for solving petitions, answering telephone calls received by the dispatch service and the object of the petitions. At the same time, a comparative analysis regarding the weight of the petitions within the fields of specialization is performed and the activity of the institution in the field of control of constitutionality of laws and ordinances is presented, as well as the activity performed for the information of citizens about the protection of the rights and freedoms of physical entities and for the media coverage of the role played by the People's Advocate Institution.

Throughout 2009, the People's Advocate Institutions granted a number of **16561 hearings**, registered **8295 petitions** and received **5978 telephone calls** at the dispatch service. Regarding the activity of the People's Advocate Institution in the field of control of constitutionality of laws and ordinances, **1905 points of view** were formulated upon the request of the Constitutional Court in 2009. Likewise, the People's Advocate submitted directly to the Constitutional Court **4 exceptions of unconstitutionality**.

**Chapter IV** presents the problems expressed in the petitions addressed to the People's Advocate Institution, related to the violation of some civic rights and freedoms. This analysis presents the investigations and recommendations, as well as a short presentation of the activities undertaken and the outcomes achieved, by employing the intervention means specific to the institution.

In 2009, the People's Advocate Institution conducted a number of **30 investigations** (Enclosure No. 7 – Investigations undertaken). The investigations was mainly focused on the observance of the private property right, right to petition, right of the individual injured by a public authority, right to a decent living standard, right to information, right to labor and social labor protection, protection of children and youth, and the right to social security, right to observance of equality of rights, international treaties related to human rights, free access to justice, as well as the secret of correspondence.

At the same time, **6 Recommendations** were formulated in 2009 (Enclosure No. 8 – Recommendations issued by the People’s Advocate), among which the people’s Advocate notified the public administration authorities about the illegal character of administrative documents or actions. The recommendations issued were focused on the observance of the private property right, of the right of an individual injured by a public authority, the right to a decent living standard and the right of the individual injured by a public authority, and the observance of Article 137 paragraph (2) from the Constitution on the national currency of Romania.

**Chapter V** includes a general presentation of the activity undertaken in the **specialized field of the human rights, equality of chances between men and women, religious cults and national minorities**. The petitions solved are analyzed and the significant case files are presented. Unlike the year 2008, when 637 petitions were processed in this field, their number increased in 2009, in the sense that the field of specialization related to the human rights, equality of chances between men and women, religious cults and national minorities received 675 petitions.

We highlight the actions from: the Health Insurance Fund for Defense, Public Order, National Safety and Legal Authority regarding the demand for the approval of a free dental prosthesis; Archdiocese of Bucharest, regarding the request for the transcription of a license document; the Ministry of Education and Innovation for a request for the unjustified rejection of an essay submitted by a student of a university; the Ministry of Health for the authorities’ refusal to answer to the request for the approval of the amounts necessary for the procedure of bone marrow transplant abroad, as well as the long delay with which the Public Health Department submitted the file to the Ministry of Health in order to be analyzed; the City hall of a sector in the Municipality of Bucharest, related to the financial inaccuracies existing at the level of an ownership association; the Prefect Institution of a county, related to the suspension of an auction, under the pretext of the existence of a renting contract. Moreover, we notified the city halls, prefect institutions, State Secretariat for

Revolutionaries' Problems, National Archives, National Authority for Consumer Protection, Territorial Pension Funds, which did not observe their obligation to respond to the petitioners' personal interest problems and public interest information.

At the same time, two cases in which the People's Advocate Institution referred the matter to itself can be noticed:

- The publishing of some articles in the mass – media, which signaled a possible infringement of the provisions of Article 16 from the Constitution of Romania, related to the equality of rights (discrimination on ethnic criteria of Hungarian students) through the “*Educational Plan for 2009-2010 of the Mures General School Inspectorate*”. The result of the intervention of the People's Advocate Institution was the increase of the number of classes with teaching in Hungarian within the normal high school education.
- The issuing of some regulations that included the possible discriminations on age criteria through *The Order of the Ministry of Health No. 1352 of October 27, 2009 for the modification and completion of the Order of the Ministry of Health No. 50/2004 regarding the methodology for the submission of some categories of individuals with disorders for treatment abroad*, published in the Official Gazette, Part I, No. 742 from November 2, 2009. Following the actions of the People's Advocate Institution to the Ministry of Health, the said ministry was issued a recommendation in the sense of taking the necessary legal measures for the re-examination of the provisions of art. I, point 2, art. 5 paragraph (5) letter d) from the Order No. 1352/2009, in view of eliminating their discriminatory character.

In addition, we mention a series of participations to several events. Thus, we mention the participation to the drafting of the first Country Report for the European Charter of regional or minority languages, charter ratified through the Act No. 282/2007; the participation to the debate organized at the Czech Center in Bucharest with the subject “Rights of LGBT individuals (lesbians, gay, bisexuals, transgender individuals) as human

rights”, occasioned by the launch in Romania of the publication “Yogyakarta Principles”; the participation to the manifestation at the Palace of Parliament occasioned by the National Day of Arman People, when the message of the People’s Advocate Institution was sent; the participation to the reunion at the Ministry of Foreign Affairs regarding the drafting of the fifth Periodic Report of Romania to the International Pact on civil and political rights.

**Chapter VI** presents the activity undertaken in the **specialization field of the rights of children, family, youth, pensioners, individuals with disabilities**. Unlike the year 2008, when 1021 petitions were processed in this field, their number increased in 2009, in the sense that the field of specialization related to rights of children, family, youth, pensioners, and individuals with disabilities received 1107 petitions.

In 2009, most of the interventions were undertaken at the National Pension House and other Social Insurance Rights, the Pension House of the Ministry of Administration and Interior and the National Authority of Individuals with Disabilities.

The most frequent dissatisfactions of the petitioners related to the pension rights were focused upon: the manner in which the territorial pension houses calculated or recalculated the pensions; non – granting of the pensions; the refusal of pension houses to process the request formulated in the legal term; delays in the payment of pension rights established following the recalculation of pensions; lack of consideration by the pension houses of all the documents submitted by the petitioners for the recalculation of the pension rights; problems occurred with the transfer of pension files from one house to another, upon the petitioners’ request, following the change of address; abusive conduct of some employees from the pension houses.

Another category of petitioners expressed their discontent in the following directions: incorrect classification in the degrees of disability; non – granting of rights for the individuals with disabilities; unjustified reassessment of the degree of disability and the classification of the individual in a degree inferior to the previous one; refusal of the local public administration authorities to hire personal assistants for the individuals with severe

disability who had the right to benefit of a social assistant; delay in issuing certificates for the classification in one degree of disability; the term established for the accessibilities of these disabled individuals was exceeded; lack of funds for the payment of personal assistants; refusal of some public authorities with competences for the assessment of individuals with disabilities, upon demand, in view of changing the initial classification.

Another aspect of the activity undertaken in this specialization field was the interest towards children. Thus, during 2009, this interest was shaped under the material support of these children throughout the three actions undertaken at: the General School with I – VIII Grades from the commune of Cumpana, county of Constanta; General School with I – VIII Grades from the locality of Strungari, commune of Pianu de Sus, county of Alba and General School “Ionita Sandu Sturza” from the commune of Saucesti, county of Bacau.

Throughout this chapter some of the most significant cases, solved in 2009, are presented.

**Chapter VII** includes a presentation of the activity undertaken in the **specialization field of army, justice, police, penitentiaries**, by mentioning the number of petitions solved in this field as well as the approaches undertaken for their solution. If during the year 2008, 1104 petitions were processed in this field, their number increased in 2009, in the sense that the field of specialization received 1591 petitions.

In 2009, the interventions were performed within: the Ministry of National Defense, namely the National Agency of Fiscal Administration within the Ministry of Finances regarding the problem of pay roll and tax on the revenue achieved by the military personnel in permanent mission abroad; the Superior Council of Magistracy, in quality of guarantor for the independence of justice; the General Department of Consular Affairs within the Ministry of Exterior, related to the procedure for regaining Romanian citizenship by the Moldavian citizens; Department of Transportation Police within the Romanian General Police Inspectorate related to an incident from the “Henri Coanda” Airport; penitentiary units, for the achievement of invalidity pension, the medical treatment that the penitentiary’s convicts

benefit from; public authorities constrained to enforce some judicial sentences regarding the property right.

Likewise, we mention the case when the People's Advocate Institution referred the matter to itself, following the broadcasting of the program "Atunci si Acum" by TVR national station, related to the decease of a Romanian citizen (Claudiu Crulic) in a penitentiary from Poland. During the program, the family of the deceased expressed their discontent towards the results from the investigation undertaken by the Polish authorities, and to the fact that the Ministry of Foreign Affairs and the Romanian Government did not answer to the request addressed by the Crulic family.

After referring the matter to itself, the People's Advocate Institution addressed to the Ministry of Foreign Affairs, Prime Minister and the Commission for the Protection of Civil Rights from the Republic of Poland, to Mr. Janusz Kochanowski, in order to obtain additional information necessary to establish the causes and circumstances related to the decease of the Romanian citizen Claudiu Crulic.

The Ministry of Foreign Affairs and the Commission for the Protection of Civil Rights from the Republic of Poland communicated the fact that the investigations performed by the Departmental Prosecutor's Office from Cracovia, in the file drafted for the legal and accurate character of the criminal investigation against the Romanian citizen Crulic Claudiu Daniel, are included in the "Decision for the dismissal of investigations".

In addition, the Ministry of Foreign Affairs informed the People's Advocate institution that the Romanian diplomatic missions in Italy, country where the parents of the citizen Claudiu Daniel Crulic lived, kept in touch with them for various clarifications.

The Commissioner for Protection of Civil Right from the Republic of Poland notified the People's Advocate Institution that he referred the matter to himself regarding the decease of the Romanian citizen Claudiu Crulic. The conclusions on the investigations undertaken mention, *on one hand that the results of the preliminary investigations demonstrated the fact that the doctors notified the court competent for the execution of detention sentence in order*

*to obtain the permission to conduct diagnosis tests against the convict's will and took measures for his artificial feeding far too late. On the other hand, another delay was caused by the necessity to wait for the enforcement of the court's decision.* At the same time, he notified that the Office of District Prosecutor of Cracovia drafted a charge against three medical employees within the Preventive Detention Center of Cracovia.

In 2009, the People's Advocate Institution removed the exception of unconstitutionality related to the provisions of Article I point (1) from the Government Ordinance No. 42/2009 for the amendment of Civil Procedure Code, published in the Official Gazette of Romania, Part I, No. 324 from May 15, 2009.

Following the request of the National Penitentiary Administration, the People's Advocate Institution analyzed and retained a series of proposals for the amendment of the Act No. 275/2006 regarding the execution of sentences and the measures stipulated by the legal bodies during the criminal trial.

The analysis of the specialization field regarding the army, justice, police, penitentiaries includes the most significant duly observations enclosed in the case files presented, as well as the most interesting cases solved in this field of activity.

**Chapter VIII** presents the activity undertaken during the year 2009 in the **specialization field of property, labor, social security, duties and taxes**. If during the year 2008, 11615 petitions were processed in this field, their number increased in 2009, the field of specialization property, labor, social security, duties and taxes receiving 1855 petitions.

The People's Advocate Institution was notified by the petitioners with respect to the following aspects: delay in drafting the documentation necessary for the reconstitution of the property right by the local commissions with competences to establish the private property right on fields; giving possession and issuing property titles; refusal to reconstitute the property right over old locations; non-compliance from the part of the competent public authorities and institutions of the term established by the law for the solution of the notifications submitted by the entitled individuals; delay in granting compensatory measures

through equivalent, in the situation where the in kind restitution of the real estate was not possible.

At the same time, the petitioners complained about: alleged abuses related to the labor classification; granting of monetary rights and legal labor hours exceeded, the employers – legal entities not granting the compensations due; refusal to provide the workman’s permits after the conclusion of the labor contracts; granting of legal leaves; problems related to the allocation of social dwellings; granting of minimum guaranteed revenue; granting of benefits under the form food and medication.

In addition, the petitioners notified the People’s Advocate Institution about the defective calculation method for all type of taxes collected by the authorities of public local and central administration, the unjustified refusal to register and issue some documents or the lateness in issuing these documents, the delay in issuing tax decisions and the compensation of some debits. For the problems raised by the petitioners, the People’s Advocate Institution performed interventions to city halls, prefect institutions, National Authority for Property Restitution, Ministry of Public Finances.

Due to the fact that through the address No. 2819/April 21, 2008, the People’s Advocate notified, without result, the presidents of the two Chambers of Parliament about the lack of conformity existing between various normative documents with identical legal power, or the lack of some regulation for the enforcement of certain facilities granted by the law to certain social or professional groups, the **Special report regarding the observance of the rights of war veterans, war widows and un-remarried widows of war veterans** was drafted in 2009.

Through the documentation drafted we underlined the necessity to modify and complete art. 284 paragraph (1), paragraph (3) and paragraph (7) from the Act No. 571/2003 regarding the Fiscal Code, further amendments and supplements included, in agreement with the fiscal facilities granted through laws to special war veterans, war widows and widows of war veterans who did not remarry, individuals persecuted for political reasons by the dictatorship established since March 6, 1945, individuals deported abroad or imprisoned.

In what concerns the lack of methodological regulations requested by the provisions of Article 99 of the Act No. 46/2008 regarding the Forest Code, further amendments and supplements included, the People's Advocate Institution addressed to the Prime Minister of Romania, notifying this legislative gap, but it received no answer up to the creation of this report.

The People's Advocate Institution processed the discontents of the petitioners related to the repartition of the amounts allotted by the National Authority for Property Restitution from the state budget, with compensation title, between the three categories of beneficiaries provided by the Act No. 274/2005, Act No. 9/1998, namely Act No. 290/2003. Thus, in addition to the conclusions of the investigation undertaken at the National Authority for Property Restitution, the People's Advocate issued the Recommendation No. 5/209, through which the National Authority for Property Restitution was requested to take the necessary measures in order to: a) elaborate the methodology related to the repartition of the amounts allotted from the state budget, with compensation title, between the three categories of beneficiaries provided by the Act No. 274/2005, Act No. 9/1998, namely Act No. 290/2003; b) issue the methodology related to the criteria and the order based on which the compensations will be granted to the beneficiaries of the Act No. 290/2003. This recommendation was not observed up to the creation of this report.

In this chapter we present some of the most significant cases solved in 2009 in the field of specialization regarding property, labor, social protection, taxes and fees.

**Chapter IX** includes the activity undertaken by the territorial offices of the People's Advocate Institution. Thus, it is noticeable that the activity undertaken by these offices consists in solving petitions through actions addressed to the authorities of the local public administration, granting hearings and taking telephone calls through the dispatch service.

In 2009, the territorial offices of the People's Advocate solved 3031 petitions, performed 9 investigations, granted 13164 hearings and registered 3794 telephone calls to the dispatch service.

The territorial offices of the People's Advocate performed major media coverage of the attributions held by the People's Advocate, and for the prompt solution of the problems notified by the citizens, the mass media maintained a permanent collaboration with the authorities of the public administration. During 2009, there were 305 informative activities, and in the purpose of a permanent collaboration with the authorities of the public administration, we organized a series of meetings with the Directorate of some public institutions in view of signing collaboration protocols.

At the international level, during October 2 - October 5 2009, Mr. Ioan Ganfalean, coordinating counselor for the Territorial Office Alba Iulia of the People's Advocate Institution participated to the General Meeting of the European Ombudsman Institute (EOI) organized in Florence - Italy.

In order to insure the quality of the services provided to the petitioners, during June 25-June 27 2009 in Alba - Iulia was organized the fourth training of the coordinators for the territorial offices of the People's Advocate Institution, where the following topics were approached: Conclusions resulted from certain basic controls and the control of the files from the territorial offices of the People's Advocate Institution; Procedure of addressing from the superior hierarchic institutions related to the petitions on property line; Aspects related to the solution of the petitions against legal decisions; Last legislative steps for the protection of children; Involvement of the People's Advocate Institution in the elimination of some discriminating legal provisions; Procedures and relationships with the authorities from the field; Financial measures imposed by the enforcement of the Government Ordinance No. 34/2009 regarding the budget rectification for 2009 and the Ombudsman's Perspective for army.

The participations and presentations of works within various seminaries, conferences, round tables and public debates are emphasized.

Cooperation agreements with certain universities were initiated in view of establishing some training stages for students.

We mention the increase of the number of hearings provided by the territorial offices, as compared to the previous years (for example, 2464 hearings were granted in 2004 and 13164 hearings were granted in 2009).

**Chapter X** presents the activity of the institution in the field of the **control of the laws and ordinances constitutionality**. The provisions of Article 19 from the Act No. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, mention the fact that, in the event of a notification about the exception of unconstitutionality of the laws and ordinances related to the citizens' rights and freedoms, the Constitutional Court will also request the point of view of the People's Advocate Institution. At the same time, the provisions of Article 30 paragraph (1) from the Act No. 47/1992 on the organization and functioning of the Constitutional Court, republished, establish that the president of the Constitutional Court will communicate the conclusion through which the Constitutional Court was notified to the presidents of the two Chambers of Parliament, Government and the People's Advocate, indicating the final date for the submission of their point of view.

Based on the legal provisions mentioned above, the People's Advocate Institution formulated a number of 1905 points of view related to the exceptions of unconstitutionality.

The causes when the point of view of the People's Advocate was requested were mainly focused on the possible lack of conformity of some legal provisions with: the principle of free access to justice, including the right to an equitable trial, the principle of equality of rights, the right to property, the principle of non-retroactivity of the law, excepting the more favorable criminal or contraventional law, the restraint in the exercise of some rights or freedoms, etc.

The activity of the People's Advocate Institution the field of the control of the laws and ordinances constitutionality, insured in Romania by the Constitutional Court, had materialized in 2009 by the direct submission in front of the Constitutional Court of **4 exceptions of unconstitutionality**, based on Article 146 letter d) from the Constitution and Article 13 letter f) from the Act No. 35/1997 regarding the organization and functioning of the People's Advocate Institution, republished.

In the case of some exceptions of unconstitutionality, we could notice the lack of some requests of the Act No. 47/1992 regarding the organization and working of the People's Advocate Institution, republished, such as the non - expression of the court's opinion and the lack of indication by the author of exception of the provisions under the Constitution that were allegedly breached through the text criticized. In some cases, the claims from the author of the exceptions did not raise constitutional problems, but problems related to the interpretation and enforcement of the law or to the amendment or completion of certain legal provisions, whose solution exceed the competences of the Constitutional Court.

At the same time, in this chapter we present some examples from the practice of the People's Advocate Institution related to the formulation of points of view, requested by the Constitutional Court and we indicated the object of the exceptions of unconstitutionality directly submitted by the People's Advocate in front of the Constitutional Court.

**Chapter XI** presents the **material and budget resources** used in 2009. In this respect, we present an assessment of the budget credits available throughout the year, including the budget rectifications approved and the amounts used for each type of expense.

Throughout 2009, normative documents were issued, which imposed the achievement of savings, especially for the expenses related to the personnel. Subsequently, the Commission for studies and proposals related to the enforcement of some eventual budget constraints measures provided by laws, ordinances or decisions of the Romanian Government was established at the level of the institution. This commission analyzed the budget execution throughout 2009 and set measures focused upon: the suspension of quarterly premiums, merit salaries, the bonus for the scientific title of PhD for the individuals who also receive this bonus from another institution; the temporary suspension of the bonus for hazardous conditions; compensation of extra hours with leaves paid; vacancy of a position of referent following the accomplishment of the retirement conditions of the employee; reduction of bonuses for the complexity of labor to 15%; reduction of compensation for managerial positions to 15%.

Following the provisions of Article 10 paragraph (1) from the *Act No. 329/November 5, 2009 on the reorganization of some public authorities and institutions, rationalization of public expenses, support of business environment and observance of frame agreements with the European Commission and the International Monetary Fund*, within the People's Advocate Institution we decided to provide 4 free unpaid days for all the employees of the institution in November and December 2009. Following the enforcement of this action, the institution observed the percentage for the reduction of the expenses with the personnel of 15.5%.

**Chapter XII** includes information **related to audit and risk management**. We can mention the fact that the missions of internal audit in 2009 were undertaken according to the Annual Plan for internal audit. For localized situations, we mention the fact that we also performed counseling missions, focused on the provision of counseling for the employment and usage of budget credits for the chapter 'Personnel Expenses' used in 2009 based on the proper financial administration, correlated to the governmental policy for the restrain of the budget expenses and for a better approach of the budget deficit in the context of the economic crisis.

The internal auditor systematically monitors the risks of the People's Advocate Institution through the Registry of risks, where they identify the major risks that can affect the efficiency and accuracy of operations, the observance of rules and regulations, the reliability of financial information, protection of goods, based on the prevention and identification of eventual frauds.

We mention that throughout 2009, the People's Advocate Institution was subject to an external audit undertaken by the Romanian Court of Accounts, which concluded its mission by certifying the conformity of the execution account for 2008. It expressed an opinion without reservations, subsequent to the fact that the financial situations were elaborated and presented according to the laws and regulations in force and it provides a real and accurate perspective under all the significant aspects.

**Chapter XIII** presents the **involvement of the People's Advocate institution in the internal and international manifestations**. The People's Advocate Institution has permanently extended its cooperation with similar institutions in the country and abroad, which

triggered a significant increase of the institution's image, both internally and internationally. The participations of the People's Advocate Institution to the external and internal events (conferences, seminars and reunions) contributed to the media coverage of the People's Advocate Institution.

The international active presence of the representatives of People's Advocate Institution to the debates focused on the protection and promotion of human rights was also supported through the distribution of some reference documents, among which the Activity Report of People's Advocate for 2008, the Informative Bulletin of People's Advocate and the various specialization works drafted by counselors and experts.

We highlight the participation to the seminary organized on October 4 and October 5 2009 in Italy, Florence, for the **Council of European Ombudsman Institute (EOI) and the General Meeting of EOI**. The seminary was attended by the representative of national and regional ombudsman institutions from Austria, Belgium, Cyprus, Germany, Hungary, Italy, Holland, Poland, Slovenia, Ukraine, Russia, etc. The People's Advocate Institution was represented by Ioan Muraru, Ph. D. Professor, People's Advocate, Simina Gagu and Ioan Ganfalean, counselors. In the EOI Council was also elected the People's Advocate, Ioan Muraru, Ph. D. Professor.

We mention some of the events attended by the representatives of the People's Advocate Institution: the International Ombudsman Conference for army forces, **Berlin – Germany**; the Conference of Ombudsmen Network for Children in South and Eastern Europe (CRONSEE), **Dubronvik – Croatia**, organized by the Ombudsman for Children from the Republic of Croatia and the Organization Save the Children from Norway; at this conference the participants signed a cooperation Memorandum; the thematically Meeting of the Ombudsmen Network for Children in South and Eastern Europe, CRONSEE, organized in **Zagreb – Croatia**; the Forth Training Session of the Center for Training and Experience Exchange in the field of Mediation from Rabat, **Rabat – Morocco**, organized by the Association of Francophone Ombudsmen and Mediators (AOMF) and the institution Diwan Al Madhalim

(Moroccan Ombudsman), with the support of the International Organization of the Francophonie; the international Conference “The Ombudsman and cultural dialogue in a changing society” organized by the European Ombudsman Institute (EOI) and the National Center for Human Rights from Egypt, **Cairo – Egypt**.

Likewise, taking into account the adhesion of Romanian to the European Union and the acquisition of the quality of a member state, the European Ombudsman elaborated the Activity Report for 2008 also in Romanian, along with a series of posters and postal cards. We also mention the *12 letters* through which certain petitioners who addressed the European Ombudsman for the solution of some requests were advised to address the People’s Advocate Institution in Romania for a competent solution of their problems.

In the context of the cooperation reports with other institutions, we mention the cooperation with the Faculty of Law within the University of Bucharest – Program ELSA and the International Magistracy Institute, based on which 17 students and 17 legal auditors undertook training stages at the People’s Advocate Institution. Upon the conclusion of each training stage, the students filled in the evaluation charts of this program, which included questions and suggestions related to the development of the training stage.

In the same context, on May 5, 2009 the People’s Advocate organized a meeting with a group of 30 law students within the University Babes – Bolyai from Cluj – Napoca, where we presented aspects related to the organization and functioning of the People’s Advocate Institution, the attributions, cooperation reports with the legal authority, the Romanian Constitutional Court, the Parliament and the Executive.

**Chapter XIV** summarizes the overall activity related to the **legal trials**, by presenting the number of legal causes where the People’s Advocate Institution was involved in 2009. At the same time, we underline the problems that triggered these litigations, as well as the importance of maintaining the People’s Advocate Institution within the mediation and dialogue institutions, and not within the institutions with coercive competences.

**Chapter XV** includes information related to **Media Coverage, Bulletin, Radio, Romanian Actuality**. The main means for the media coverage of the People's Advocate Institutions were represented by the participation to various radio and television programs, written press, quarterly Informative Bulletin, press releases and the website of the institution, which provides public interest information.

We must underline the fact that the People's Advocate intensified his efforts to be well known by the citizens, by familiarizing them to the role granted by the Constitution and through the organization and functioning law, and the instruments through which the People's Advocate Institution can intervene promptly and professionally for the support of citizens. We highlight the most important interventions of the people's Advocate in mass media for the problems raised by the petitioners. At the same time, we notice a stronger implication of the territorial offices within the People's Advocate Institution in the relationships with the television, radio and the press, the most important broadcast means of information to the population.

In addition, we mention the actions undertaken for granting social benefits, organized by the field of the rights of children, family, youth, pensioners, individuals with disabilities and which were presented in detail in the section with the description of the activities undertaken by this field.

The report of the People's Advocate Institution ends with the presentation of the **9 enclosures** which present in order: the general volume of activity, the statistics of registered petitions in comparison to the rights and freedoms that were violated, the statistics of petitions divided per county, the statistics of petitions received from abroad, the activity of the People's Advocate Institution's territorial offices, the statistics of points of view expressed by the People's Advocate regarding the exceptions of unconstitutionality, investigations undertaken, recommendations issued by the People's Advocate and graphics for the indicators registered in the activity of the People's Advocate Institution.

From the content of the report we can observe a favorable evolution of the activity undertaken by the People's Advocate throughout 2009. The activity undertaken by the People's Advocate Institution has registered a significant quantitative and qualitative improvement as compared to the previous years, mainly due to the increasing trust in the People's Advocate Institution of the individuals whose rights and freedoms were breached by the public authorities.

## **CHAPTER I. LEGAL FRAME FOR THE ORGANIZATION AND FUNCTIONING OF THE PEOPLE'S ADVOCATE INSTITUTION**

The People's Advocate, the constitutional name under which the classic western European ombudsman is organized and operates in Romania, has imposed itself as a dimension for the constitutional democracy with the role to protect the rights and freedoms of natural entities in their report with the authorities of the public administration.

The regulations related to the People's Advocate can be found in:

- The Romanian Constitution, art. 58-60, art. 65, paragraph 2), art. 146, letters a) and d), republished in the Official Gazette of Romania, Part I, No. 767 from October 31, 2003;
- Act No. 35/1997, on the organization and functioning of the People's Advocate Institution, republished in the Official Gazette of Romania, Part I, No. 844 from September 15, 2004, amended and supplemented by the Act No. 383/2007 published in the Official Gazette of Romania, Part I, No. 900 from December 28, 2007;
- The structural and functional regulations of the People's Advocate Institution, republished the Official Gazette of Romania, Part I, No. 619 from July 8, 2004, supplemented by the Decision No. 6/2007 of the Permanent Offices of the Chamber of Deputies and Senate, published in the Official Gazette of Romania, No. 445 from June 29, 2007;
- Act No. 554/2004 of the legal administrative department, published in the Official Gazette of Romania, Part I, No. 1154 from December 7, 2004, further amendments and supplements included;
- Act No. 170/1999 for the approval of the People's Advocate Institution's affiliation to the Association of Francophone Ombudsmen and Mediators, published in the Official Gazette of Romania, Part I, No. 584 from November 30, 1999;

- Act No. 206/ 1998 for the approval of the People's Advocate Institution's affiliation to the International Ombudsman Institute and to the European Ombudsman Institute, published in the Official Gazette of Romania, Part I, No. 445 from November 23, 1998.

The People's Advocate is appointed by joint session of the Chamber of Deputies and Senate for a 5 years term. During its mandate, the People's Advocate cannot fulfill any other public or private position, except for the didactic functions within the higher education system.

The permanent offices of the Chamber of Deputies and Senate appoint the assistants of the People's Advocate, specialized on the fields of activity established through the Act No. 35/1997, republished, thus insuring an increased efficiency of the activity undertaken by the institution, in complete agreement with the regulations from other countries where the ombudsman is organized and operational.

The People's Advocate operates either ex-officio, or at the request of individuals whose rights and freedoms have been breached, within boundaries established by the law. The Constitution compels the public authorities to provide the People's Advocate with the support necessary for exercising his attributions.

The People's Advocate is responsible only in front of the Parliament, being compelled to present reports to the Parliament. In these reports, the People's Advocate can also make recommendations related to the legislation or can adopt measures for the protection of the citizens' rights and freedoms.

The particular legal features of the People's Advocate are provided by the legal provisions that present in detail the constitutional dispositions. Thus the People's Advocate is an autonomous public authority and independent from any other public authority; he cannot be replaced with public authorities, he cannot be bound by any imperative or representative warrant, and his activity has a public nature; he has his own budget which is an integral part of the state budget; the People's Advocate and his assistants are not legally liable for the opinions expressed or for the actions undertaken, in compliance with the law, in exercising the attributions stipulated by the law.

In order to fulfill his constitutional and legal role, the People's Advocate receives, examines and solves, within the conditions of the law, the petitions addressed by any physical entity, regardless of citizenship, age, gender, political affiliation or religious beliefs. The petitions addressed to the People's Advocate will be formulated in writing and sent by mail, including electronic mail, by telephone, fax or directly through hearings, which represent the main means for dialogue with the citizens. The petitioner must prove the refusal of the public administration to legally solve their request. The petitions addressed to the People's Advocate are exempted of the stamp fee.

In order to solve the problems brought to his attention, the People's Advocate has the right to compel the public administration authority in question to take the measures necessary for defending the rights and freedoms of the physical entities, as well as to notify the public authorities hierarchically superior about the lack of reaction of the individuals who are compelled to take the necessary measures. Likewise, the People's Advocate can make investigations and formulate recommendations.

Therefore, the People's Advocate has the right to make his own investigations, to ask the public administration's authorities for any information or documents necessary for the investigation, to establish hearings and to take statements from the leaders of the public administration's authorities as well as from any clerk who can provide the information necessary for solving the petition. In addition, for the exercise of his competences, the People's Advocate issues recommendations which cannot be parliamentary or judicially controlled. Through the recommendations issued, the People's Advocate notifies the authorities of the public administration about the illegal character of the administrative actions or facts.

The People's Advocate's competence in solving some petitions related to the judicial authority is materialized in his legal possibility to address, as appropriate, to the Ministry of Justice, the Public Minister or the president of the judicial court, who are bound to notify the measures undertaken. This represents a legal method for the People's Advocate to intervene in the situations of bureaucracy generated by the non-enforcement of Article 21,

paragraph (3) of the Constitution, which developed the provisions of Article 6 of the Convention for the Protection of Human Rights and the fundamental freedoms related to the right of the parties to a fair trial and the cause solved within a reasonable term.

In the event when, through the undertaken investigations, the People's Advocate notices gaps in the legislation or severe cases of corruption or lack of observance of the national laws, he will submit to the presidents of the two Chambers of Parliament or, as appropriate, to the prime-minister, a report with his observations.

In addition, the People's Advocate can be involved in the control of constitutionality of laws and ordinances, performed by the Constitutional Court. Thus the People's Advocate can notify the Constitutional Court about the unconstitutionality of the laws passed by the Parliament, before they are enacted by the President of Romania; he can submit to the Constitutional Court exceptions of unconstitutionality related to the laws and ordinances in force; upon the request of the Constitutional Court, he can formulate points of view on the exceptions of unconstitutionality of laws and ordinances, related to the citizens' rights and freedoms.

The mission of the People's Advocate Institution is to serve the citizen, to help him to become familiarized with his rights and duties towards the institutions of the state. The creation of such a mechanism for the defense of the rights and freedoms of natural entities in their reports with the public authorities contributes to the humanization of the relationships between the individual and the institutions of the state.

## CHAPTER II. ORGANIZATIONAL STRUCTURE AND SCHEME OF PERSONNEL

The **organizational structure** of the People's Advocate Institution is provided in the structural and operational Regulations of the institution.

The organizational structure of the institution reflects the **specialization fields**, as established by the law, namely:

- a. Human rights, equality of chances between men and women, religious cults and national minorities;
- b. Rights of children, family, youth, pensioners, individuals with disabilities;
- c. Army, justice, police, penitentiaries;
- d. Property, labor, social security, duties and taxes.

The institution is directed by the **People's Advocate**, supported by the **4 assistants specialized** on the four fields of activity.

The **General Secretary** coordinates the economical and administrative activity of the institution.

The **Consultative Council** operates within the institution and it includes the People's Advocate, his assistants and councilors, the general secretary as well as other individuals appointed by the People's Advocate. The Council assembles once a month or as often as necessary.

The Advisory Council is summoned by the People's Advocate.

At the territorial level, the activity is developed through the **14 territorial offices**, organized on the geographic criterion of the Courts of Appeal.

In 2009, the People's Advocate Institution developed its activity with a personnel diagram that included a number of **100 positions** (99 positions subsidized) distributed at the center and at the territorial level.

Throughout 2009, there were **four vacant positions**, one position of expert in the field of activity “Rights of children, family, youth, pensioners, individuals with disabilities”, one position of expert in the field of activity “Army, justice, police, penitentiaries”, one position of chief of cabinet and one position of referent in the “Economic and administrative service”.

Due to the enforcement of the Act No. 329 from November 5, 2009 on the reorganization of some public authorities and institutions, rationalization of public expenses, support of business environment and observance of the frame agreements with the European Commission and the International Monetary Fund, **five more positions became vacant**: one position of expert in the field “Human rights, equality of chances between men and women, religious cults and national minorities”, one position of counselor in the field “Rights of children, family, youth, pensioners, individuals with disabilities”, one position of counselor in the field of activity “Army, justice, police, penitentiaries”, one position of expert in the “Economic and administrative service” and one position of counselor in the Territorial Office Ploiesti.

These vacant positions could not be occupied through contest, due to the legislation restraints at that time.

The personnel within the institution, **27 counselors, 47 experts, 8 referents and 11 employees** as technical and administrative staff, is assimilated to the personnel from the specialization structures of the Parliament.

For the improvement of the professional training of the specialization personnel within the institution, we organized the annual meeting with the experts from the territorial offices, which took place in Alba Iulia, on June 25 – June 27.

At the same time, throughout 2009, the counselors and experts within the institution participated to various internal and external seminars and public debates, related to the issue of protection of rights and freedoms for the natural entities.

### CHAPTER III. GENERAL AMOUNT OF ACTIVITY

#### a) Activity undertaken during the hearings

Throughout 2009, the central office and the territorial offices of the People's Advocate Institution granted a number of **16561 hearings**, through which the petitioners claimed infringements of the rights of physical entities (Enclosure No. 1).

#### b) Activity of solving the petitions

Throughout 2009, the central office and the territorial offices of the People's Advocate Institution registered a number of **8295 petitions** (Enclosure no.1).

#### c) Activity of receiving the telephone calls registered through the dispatch service

The natural entities that approached the People's Advocate Institution by telephone were mainly those located at great distances, as well as individuals with movement disorders. The institution's dispatch service registered **2184 telephone calls**. The territorial offices of the People's Advocate Institution registered **3794 telephone calls**. Thus, a total number of **5978 telephone calls** were recorded (Enclosure No. 1).

#### d) The object of the petitions submitted to the People's Advocate

The petitions addressed to the People's Advocate Institution were focused on infringements of some civil rights and freedoms, as well as abuses of the public authorities. These have been analyzed in relationship with the infringed rights and freedoms, in the context of the specialization fields of the activity within the People's Advocate Institution (Enclosure No. 2).

#### e) The comparative analysis of the amount of petitions on the specialization fields

From the total number of the petitions addressed to the institutions, **1855 petitions** are related to property, labor, social protection, taxes and fees. The field of army, justice, police and penitentiaries registered **1591 petitions**. **1107 petitions** were registered in the field related to the rights of children, family, youth, pensioners, individuals with disabilities. **675 petitions** were

registered in the field of human rights, equality of chances between men and women, religious cults and national minorities, while **36 petitions** were distributed to the General Secretariat of the institution, the counselors of the People's Advocate and to the department Relationships with other institutions or individuals and protocol. **3031 petitions** were registered in the territorial offices.

**f) Activity undertaken by the People's Advocate Institution in the field of constitutionality control of laws and ordinances**

Throughout 2009, **1905 points of view related to the unconstitutionality exceptions of laws and ordinances** were formulated upon the request of the Constitutional Court.

At the same time, the People's Advocate submitted directly in front of the Constitutional Court **4 exceptions of unconstitutionality** with the following objects:

- Government Ordinance No. 230/2008 for the amendment of certain normative documents in the field of
- Art. 5, art. 6, art. 7 and art. 8 from the Government Ordinance No. 149/2007 on the approval of certain measures within the field of public finances published in the Official Gazette of Romania, Part I, No. 882 from December 21, 2007, **passed through the Decision No. 859/2009**
- Government Ordinance No. 94/2009 in view of insuring the continuous activity of some structures within the Government's operative body, published in the Official Gazette of Romania, Part I, No. 324 from May 15, 2009, **rejected through the Decision No. 1644/2009**.

**g) The activity undertaken for the information of citizens about the protection of rights and freedoms of natural entities and for the media coverage of the role played by the People's Advocate Institution**

*Public television and radio*

The TV stations *Antena 3, Antena 1, TVR1, OTV, Radio Romania Actualitati, PRO TV* hosted the People's Advocate Ioan Muraru, Ph. D. Professor, who dialogued with the hosts of the programs on various subjects, among which: exception of unconstitutionality related to the Government Decision No. 230/2008 for the amendment of certain normative documents in the field of pensions from the public system, state pensions and labor pensions, the issue of Bible and justice and the Trial of Jesus, the recommendations issued by the People's Advocate Institution and their observance in Romania, the measures foreseen by the governmental decisional factors in view of eliminating the effects of the economic and financial crisis.

In addition, the People's Advocate granted interviews to the radio station *Vocea sperantei, TV Speranta, radio station Europa FM, television station VER 2, and to the local stations Radio Radical FM Bacau, Television station CNS Roman, TV Bacau, Realitatea TV, the local television station RTT Brasov, the stations TV Neptun and Favorit, Radio Constanta, Radio Oltenia Craiova, the station RTV Galati – Braila, the Station TVR Iasi, local TV station VTV Curtea de Arges, TV stations Antena 1 Pitesti and Alpha TV, Prahova TV, Radio Targu – Mures, the stations TV Timisoara 89 and Analog TV.*

*Written press*

The written press, among which we mention *Flacara lui Adrian Paunescu, Ziarul Unirea*, published interviews with Professor Ioan Muraru, PhD., the People's Advocate, about to the exception of unconstitutionality related to the Government Ordinance No. 230/2008 and the aspects related to the activity undertaken by the People's Advocate Institution.

At the same time, we received notifications at the central level: *Gandul, Jurnalul National, Cotidianul, Ziua, "Actualitatea Romaneasca Ziarul oRmanilor de Pretutindeni"* and at the local level: the newspaper *Informatia de Alba, Ziarul de Roman, the daily newspapers Cuvantul Nou,*

*Transilvania Expres, the newspaper Replica de Constanta, Observator, Obiectiv de Tulcea, the daily newspapers Panoramic Mehedintean, Gorjanul, the newspapers Monitorul de Galati, Realitatea, Ziarul de Iasi, Ziarul Crisana, Orizont Economic Argesean, 24 de minute, Argesul, Ghidul locatarului, Monitorul de Prahova, Adevarul de seara, Ziarul Ploiesti, Ziarul Adevarul, the daily newspapers Evenimentul de Botosani, Monitorul de Botosani, Evenimentul Regional al Moldovei, Punctul, City News Mures and Metropol, Ziarul Renasterea Banateana.*

**Press releases** were broadcasted quarterly and on various occasions by the media agencies and they were published on the official website of the People's Advocate institution.

The quarterly **Informative Bulletin** focused on the activity of the institution, distributed free of charge to natural entities and to the authorities of the central and local public administration, was elaborated through a personal financial effort and through the efforts of Mrs. Claudia Sora, counselor of the People's Advocate.

For the support of citizens, the People's Advocate Institution, through its territorial offices, concluded **cooperation protocols** with the authorities of the public administration, as well as with the national universities, for the practical stages of students within the People's Advocate Institution.

At the same time, for the support of children with special problems, the People's Advocate granted **special benefits** from the fund available, actions organized by the field rights of children, family, youth, pensioners, individuals with disabilities.

#### **CHAPTER IV. INVESTIGATIONS AND RECOMMENDATIONS, MEANS OF INTERVENTION SPECIFIC TO THE PEOPLE'S ADVOCATE INSTITUTION**

Act No. 35/1997, republished, provides the People's Advocate with specific intervention means, through which he examines and solves the requests notified, the investigations and recommendations.

The **investigations** represent the sources for the most concrete information which can be used in solving the petitions. Through the investigations, the People's Advocate has the right to request the authorities of the public administration, public institutions, as well as any other public services under the jurisdiction of the public administration's authorities to provide any information or documents necessary for the investigation, to audit and to take statements from the managers of public administration's authorities and from any clerk who can provide information necessary to solve the request.

As a result of the investigations performed, in the situation where he identifies violations of the petitioner's civic rights and freedoms, the People's Advocate can: **a)** either address a written demand to the authority of the public administration that breached the rights of the petitioner, binding it to reform or to revoke the administrative document and to compensate the damages caused, as well as to return the injured person to the previous situation; **b)** either notify the hierarchically superior public authorities about the lack of reaction from the individuals responsible with taking the necessary measures; **c)** either issue recommendations addressed to the authority of the public administration that breached the rights or issued the illegal document.

**Recommendations** represent the documents through which the People's Advocate notifies the authorities of the public administration when he notices a serious violation of the petitioner's rights or the illegal character of the administrative document.

## INVESTIGATIONS

In 2009, the People's Advocate Institution undertook a number of **30 investigations** (Enclosure No. 7 – Investigations undertaken), out of which:

- 3 investigations related to the observance of private property right at the City hall from the commune of Finta, county of Dambovită, at the City hall from the city of Turda, county of Cluj, and at the City hall from the commune of Posești, county of Prahova;
- 1 investigation related to the observance of private property right and the right to information at the Prefect Institution from the county of Ilfov;
- 10 investigations related to the property right and the right of the individual injured by a public authority at: the National Authority for Property Restitution (3); City hall from the Municipality of Bucharest – Department Judicial, legal service and legislation (2); City hall from the commune of Margau, county of Cluj; City hall from the commune of Cotmeanca, county of Argeș; City hall from the commune of Vedea, county of Argeș; City hall from the commune of Rosia, county of Sibiu; City hall from the Municipality of Bucharest;
- 1 investigation related to the observance of private property right, right to petition and the right of the individual injured by a public authority at City hall from the Municipality of Bucharest – Department Judicial, legal service and legislation;
- 3 investigations related to the observance of property right and the right to petition at the City hall from the Municipality of Bucharest (2) and the National Authority for Property Restitution;
- 2 investigations related to the observance of the right to petition and the right to a decent living standard at the Local Pension House Sector 6 and the Pension House from the Municipality of Bucharest;
- 1 investigation related to the observance of the right to a decent living standard, the right to petition and the right of the individual injured by a public authority at the Local Pension House Sector 1;

- 1 investigation related to the observance of the right of the individual injured by a public authority at the Pension House from the Municipality of Bucharest;
- 1 investigation related to the observance of the right to information and right of the individual injured by a public authority at the Territorial Labor Inspectorate from the Municipality of Bucharest;
- 1 investigation related to the observance of the right to labor and social security at the National Agency for Labor Force Employment;
- 1 investigation related to the protection of children and youth and the right to health security at the Foster Center No. 8 “Speranta” – Huedin;
- 2 investigations related to the observance of the right to petition at the Ministry of Justice and Civic Freedoms and at the Local Pension House Sector 6;
- 1 investigation related to the observance of equality of rights, international treaties related to human rights and free access to justice, at the Department of Consular Relationships within the Ministry of Foreign Affairs;
- 1 investigation related to observance of the right to petition and the right to health security, at the Department of Public Health from the Municipality of Bucharest;
- 1 investigation related to the observance of the right to information, the right to health security, the right to petition, the secret of correspondence and the right to a decent living standard, at the penitentiary Craiova;

## **RECOMMENDATIONS**

In 2009, **6 recommendations** were formulated (Enclosure No. 8 – Recommendations issued by the People’s Advocate), through which the People’s Advocate notified the authorities of the public administration about the illegal character of administrative documents or actions:

- 2 Recommendations related to the observance of the private property right, addressed to the Mayor from the commune of Afumati, county of Ilfov and the Mayor from the commune of

Rosia, county of Sibiu;

- 2 Recommendations related to the observance of the private property right and the right of the individual injured by a public authority, addressed to the Mayor from the commune of Cotmeanca, county of Arges and to the president of the National Authority for Property Restitution;
- 1 Recommendation related to the observance of the right to a decent living standard and the right of the individual injured by a public authority, addressed to the Pension House from the Municipality of Bucharest;
- 1 Recommendation for the observance of art. 137 paragraph (2) from the Constitution, related to the national currency of Romania, addressed to the Ministry of Public Finances.

## **CHAPTER V. THE FIELD OF HUMAN RIGHTS, EQUALITY OF CHANCES BETWEEN MEN AND WOMEN, RELIGIOUS CULTS AND NATIONAL MINORITIES**

The field of human rights, equality of chances between men and women, religious cults and national minorities, benefits from vast competences, including a large number of the fundamental rights and freedoms provided in the Constitution of Romania. Therefore, the activity in this field was based on **clarifying** the content of the requests received from petitioners as well as conducting investigations. In addition, we cannot leave out, when referring to the protection of human rights in general, the collaborations that the field had with several authorities in 2009, the meetings with the representatives of several Non-Governmental Organizations, the participation to seminars on this subject, the articles published in the national and international press.

In 2009, the field of human rights, equality for chances between men and women, religious cults and national minorities received for analysis and solution a number of **675** petitions, which represent **8%** of the total number of **8295** petitions registered within the People's Advocate Institution. For **83** of the petitions distributed to the field, we undertook actions to the public authorities in view of solving the notified problems by the petitioners, and for a number of **529** petitions, the notified problems were clarified at the level of the field, without the intervention to the authorities. As a large number of petitions were focused on aspects that did not fit the institution's object of activity (about 5%), the petitioners were directed towards the authorities with legal competences to solve their problems, by indicating the legal procedure to be followed. The aspects notified in the petitions were mainly related to violations of equality of rights, the right to petition, the right to information correlated with violations of the right of the individual injured by a public authority and, in a lesser degree, violations of other fundamental rights and freedoms.

In the events when the public authorities did not respond to the requests or the

answers received did not clarify the petitioners' problems, **2 investigations** were conducted at the Territorial Labor Inspectorate of Bucharest Municipality and at the National Authority for Property Restitution, finalized with the clarification of the aspects notified by the petitioners.

At the same time, the department proposed and solved **2 cases in ex-officio procedure:**

- the publishing of some articles in mass – media, which indicated a possible discrimination on ethnic criteria of the Hungarian students through the *Educational Plan for 2009-2010 of the Mures General School Inspectorate*, the result of the action undertaken by the People's Advocate Institution was the increase of the number of classes with teaching in Hungarian in the normal high school education.
- Reexamination of the provisions of art. I, point 2, art. 5 paragraph (5) letter d) from the Order No. 1352/2009 for the amendment and supplement of the Order of the ministry of health No. 50/2004 related to the methodology for the submission of some categories of individuals with disorders for treatment abroad, published in the Official Gazette, Part I, No. 742 from November 2, 2009, in view of eliminating their discriminatory character.

Regarding the participation to manifestations and workshops specific to the field of activity of human rights, equality of chances between men and women, religious cults and national minorities, we mention:

- the participation to the drafting of the first Country Report on the European Charter of regional or minority languages, charter ratified by Law No. 282/2007;
- the participation to the debate organized at the Czech Center in Bucharest with the subject "Rights of LGBT individuals (lesbians, gay, bisexuals, transgender individuals) as human rights", occasioned by the launch in Romania of the publication "Yogyakarta Principles";
- the participation to the manifestation organized at the Palace of Parliament

occasioned by the *National Day of Arman People* on May 23, 2009, when we sent the message of the People's Advocate Institution;

- the participation to the reunion from the Ministry of Foreign Affairs regarding the *drafting of the* fifth Periodic Report of Romania to the International Pact on Civil and Political Rights, on June 10, 2009.

## ***I. HUMAN RIGHTS***

Through the requests in this category, individuals notified violations of the following fundamental rights and freedoms: unity of people and equality of rights (art. 4 and 16); the right of foreign and stateless citizens (art. 18); the right to life and to physical and mental integrity (art. 22); right to intimate, family and private life (art. 26); freedom of conscience (art. 29); freedom of expression (art. 30); the right to information (art. 31); the right to health security (art. 34); the right to a healthy environment (art. 35); the right to vote (art. 36); the right to be elected (art. 37); the right to be elected in the European Parliament (art. 38); the right to petition (art. 51); the right of a person injured by a public authority (art. 52).

Among the petitions assigned to this field notifying violations of the fundamental rights and freedoms, we underline the petitions related to the right to petition, in number of **281**, and the petitions related to the violation of the right to information, in number of **212**, representing the overall percentage of more than **73%** of the petitions solved by the personnel in the field.

In the second place, with a number of **56**, representing **8%** of the petitions solved, there are the petitions notifying the violations of rights by the public authorities and institutions related to the right of a person injured by a public authority, provided by Article 52 in the Romanian Constitution.

The fact that, during 2009, a big number of the complaints from the individuals continued to be focused on the alleged violations of the right to information, the right to petition, as well as the right of the individual injured by a public authority, demonstrates that there are situations when the public servants within the institutions of central and local public administration are uncertain about their actions and that the managerial ability to implement the decentralized responsibilities is not consolidated. Although real progress was achieved, strong efforts are still required in order to improve the quality of the services provided to the citizens.

As related to the petitions focused on an alleged violation of equality of rights (art. 4 and art. 16), **34** petitions were registered, representing **5%** from the total number of petitions distributed in the field. Similar to the previous year, their number was relative low, being influenced by the increase of the civic addressability to the National Council for the Prevention of Discrimination, as public autonomous authority in the field of discrimination, with legal personality, under parliamentary control and guarantor for the observance and enforcement of the principle of non – discrimination, in compliance with the internal legislation in force and the international documents to which Romania is part to.

In the following section we will present an analysis of the requests solved, taking into consideration the violated rights:

**a) equality of rights (art. 4 and art. 16 of the Constitution)**

The **34 petitions** based on a possible violation of equality of citizens' rights were focused on: alleged violations of chapter IV from the Law no. 329/2009 on the reorganization of some public authorities and institutions, distribution of public expenses, support of business environment and the observance of frame agreements with the European Union and the International Monetary Fund, as well as certain provisions under the Law no. 330/2009 on the unitary waging of the personnel paid from public funds, the

decisions issued by the pension houses, the provisions of the internal regulations within schools and on various occasions, the petitioners requested the direct notification of the Constitutional Court about the exception of unconstitutionality of the legal provisions. The issue of discrimination, seldom approached by the petitioners, due to the previously mentioned reasons, was still present during this year, especially after the drafting of the governmental legislative initiatives related to the act of unitary waging and the act of the unitary pension system and subsequent to the enforcement of Law no. 329/2009 and Law no. 330/2009.

At the same time, even if they do not fit directly with the provisions of art. 16 of the Constitution as they do not have Romanian citizenship, but they enjoy a special regime, some citizens from the Republic of Moldavia addressed to our institution, in a number significantly higher than in 2008, notifying that they were discriminated during the procedure of granting the Romanian citizenship, especially through the manner perceived as discriminatory in which the number of the requests that can be annually submitted to the Consular Department from the Romanian Embassy in the Republic of Moldavia was limited. We appreciate that by the actions undertaken at the Department of Citizenship within the Ministry of Justice and Civic Freedoms, the Ministry of Foreign Affairs and the Government, our institution also contributed to the speeding of the passing of Law no. 354 from November 12, 2009 on the approval of Emergency Government Ordinance no. 36/2009 for the amendment and supplement of the Law for the Romanian citizenship no. 21/1991.

The following cases are representative for the activity undertaken within the field related to the violation of the provisions of Article 16 of the Constitution.

### **CASE FILES**

**File no. 6916/2009.** The People's Advocate Institution was notified by Moldovan (fictive name), born in the Republic of Moldavia, about a file submitted to the

Commission for Citizenship Issues within the Ministry of Justice and Civic Freedoms in view of regaining the Romanian citizenship and, due to the fact that he received no response within a reasonable time, he also filed a request for speeding the necessary formalities for regaining the citizenship. Subsequently, the Commission requested some supplements to the file, submitted by the petitioner on August 26, 2008 and he has received no response ever since.

Regarding the requests formulated by the petitioner, based on art. 4 of Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, further amendments and supplements included, the People's Advocate Institution addressed to the Department for Citizenship within the Ministry of Justice and Civic Freedoms, requesting the implementation of the necessary legal measures.

As a result of the action undertaken, through the address registered at the People's Advocate Institution with no. 7986/2009, the Department for Citizenship informed us that the petitioner's file was currently forwarded to the Commission for Citizenship Issues for a proper analysis and certification, and that it was appointed for solution in the session from October 2, 2009.

**File no. 11048/2009.** Analyzing the provisions of the Order of the ministry of health no. 1352 from October 27, 2009 for the amendment and supplement of the Order of the ministry of health no. 50/2004 related to the methodology for the submission of some categories of individuals with disorders for treatment abroad, published in the Official Gazette, Part I, No. 742 from November 2, 2009, we noticed that it contains some regulations that create discrimination of age criteria. Thus, the order establishes a priority on points for the financing demands of certain categories of individuals with disorders who need treatment abroad, in case that the monthly funds for this purpose are exceeded. According to this order, the patient's age represents a basic criterion for the approval of the treatment abroad. As a result, an individual with the age of 60 or more has fewer chances to benefit from treatment abroad, to the extent where the monthly

funds for this purpose are exceeded. Regarding this aspect, the Order of the ministry of health No. 1352/2009 inflicts the regulations related to the prevention of discrimination, provided by art. 4 paragraph (2) and art. 16 of the Romanian Constitution, art. 2 paragraph (1) from the Government Ordinance No. 137/2000 on the prevention and sanction of all types of discrimination, republished, further amendments and supplements included and by the main international treaties and conventions to which Romania is a part.

Towards the aspects mentioned, based on art. 14 paragraph (1) and art. 23 of the Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, further amendments and supplements included, the People's Advocate Institution begun an ex-officio procedure and submitted an address to the interim ministry of health, requesting the reexamination of the provisions of art. I, point 2, art. 5 paragraph (5) letter d) of the Order no. 1352/2009 in order to eliminate their discriminatory character.

Through the Address No. A.V. 1742 from December 10, 2009 and registered at the People's Advocate Institution with no. 11.773 of December 11, 2009, the People's Advocate Institution received a response from which resulted the fact that the provisions of art. I, point 2, art. 5 paragraph (5) letter d) from the Order No. 1352/2009 are considered as legal. In essence, it motivated that, due to the fact that the public funds are limited, the individuals with disorders can only benefit from treatment within their limit, which imposed the settlement of some priority criteria. At the same time, it also mentioned that this criterion was also mentioned in the Order of the ministry of health No. 50/2004, amended by the Order of the ministry of health No. 1352/2009.

As the Order no. 1352/2009 establishes (on point 2, art. 5, paragraph 5) four priority criteria for the financing of treatment abroad and on paragraph (6) of the same paragraph it establishes two additional criteria, the People's Advocate Institution assessed that the provisions under letter d) from paragraph (5): "Patient's age" can be eliminated, without

infringing upon the reasons determining the elaboration and approval of the new normative document, thus eliminating the possibility to classify them as discriminatory. The existence of a similar provision within a previous order of the ministry of health cannot justify the maintenance of the discriminatory character within the provision.

In addition, Article 53 of the Constitution regarding the exercise of some rights or freedoms and the provisions of Article 15 of Enclosure I to the Law no. 30/1994 regarding the ratification of the Convention for the protection of human rights and fundamental freedoms and the additional protocols to this convention, further amendments included, related to: “Derogation for emergency situations” establish the conditions under which the exercise of some rights or freedoms can be restraint, conditions that are not met within the case that makes the object of this file.

Taking into consideration the information above, the People’s Advocate issued a recommendation addressed to the Ministry of Health, in the sense of enforcing the legal measures necessary for the reexamination of the provisions of art. I, point 2, art. 5 paragraph (5) letter d) of the Order No. 1352/2009, in order to eliminate their discriminatory character.

**b) the right to life and to physical and mental integrity (art. 22 of the Constitution)**

2 petitions were assigned to the field of human rights, equality of chances between men and women, religious cults and national minorities, being focused on alleged violations of Article 22 of the Constitution. As for their content, it revealed aspects related to private conflicts, between petitioners and third parties (family members, relatives, neighbours), so, the People’s Advocate Institution provided information about the competences established by the organizational act and guided the petitioners in the legal steps to be undertaken.

**c) the right to intimate, family and private life (art. 26 of the Constitution)**

The violation of this right was notified through **2 petitions**. The petitions were related to repeated complaints of the citizens regarding the violation, by third parties, of the Law no. 506/2004 on the processing of data with personal character and the protection of private life within the field of electronic communications, of the right to intimate, family and private life; the petitions were solved by indicating the legal actions to be undertaken by the petitioners.

**d) freedom of expression (art. 30 of the Constitution)**

During 2009, **4 petitions** related to an alleged violation of the freedom of expression were received by this field of activity.

Their content revealed the fact that some citizens interpret willingly or due to their unawareness about some legal provisions, for example, the Emergency Government Ordinance no. 31/2002 on the interdiction of organization and symbols with fascist, racist or xenophobic character and the promotion of cult of the individuals guilty of committing some crimes against peace and humanity, by their incorrect assessment as inflicting on the provisions of art. 30. At the same time, in our responses we underlined the necessity to observe the correlative obligations that result from the provisions of art. 30 paragraph (6) of the Constitution, related to the fact that the freedom of expression cannot harm the dignity, honor and private life of an individual.

**e) the right to information (art. 31 of the Constitution)**

This field of activity received **212** petitions notifying the right to information, representing a percentage of **31%** from the total number of the petitions submitted to this field.

Despite the fact that these types of petitions were numerous, similar to the previous years, not all the petitioners were able to prove that they had addressed to the

authorities in charge. Subsequently, the People's Advocate Institution was unable to give them direct support in solving the registered petitions; however, it informed the petitioners of the legal procedures to be followed.

The main aspects notified in the petitions referred to the request for information related to: the activity and resources of some institutions employing European funds; the organization of auctions; information related to the institutions that can be notified about the cases of corruption in Romania; legal provisions related to the assigning of parking spaces; the European regulations on the peace of the citizen; legal provisions related to public lighting and the attributions of the public authorities for the enforcement of the Law no. 230/2006 on the service of public lighting; information related to the passing of Law no. 257/2008 for the amendment of paragraph (1) of art. 1 of the Emergency Government Ordinance No. 148/2005 on the support of the family in view of raising a child; provisions of the Law no. 341/2004 of gratitude towards the heroes-martyrs and fighters who contributed to the victory of the Romanian Revolution in December 1989 and the actions to be undertaken within the public authorities; the actions necessary for the achievement of the title of war veteran, in compliance with the provisions of the Law no. 44/1994, republished, further amendments and supplements included; creation of the Institute for the Investigation of Communist Crimes; the competences of the National Authority for Monitoring the Processing of Data with Personal Character; regulation for the activity of solving petitions; provisions of Law no. 544/2001 on the free access to information of public interest; the activity, address and the schedule for hearings granted at the central office of the People's Advocate Institution or at the territorial offices, as well as the conditions under which the institution provides financial aid.

The examination of these petitions highlights the fact that there are some public authorities and institutions which do not comply with their constitutional obligations to provide the petitioners with the required information, under the terms and conditions

provided by the Law no. 544/2001 on the free access to information of public interest, further amendments and supplements included.

The People's Advocate Institution acted promptly, notifying the city halls, Prefect institutions, the Secretariat of State for the Problems of Revolutionaries, the National Archives, the National Authority for Consumer Protection, territorial pension houses, which did not observe their obligation to respond to the petitioners' requests related on public matters and problems of personal interest. Frequently, the petitioners' requests were submitted to the authorities with competences for solving the problems notified.

### **CASE FILES**

**File no. 3465/2009.** Through a complaint addressed to the People's Advocate Institution, Cristina (fictive name) notified us about the refusal of the Mayor from the Municipality of Caransebes to submit the copy of the contract of legal assistance that she concluded with a lawyer office and which she had to present in the process filed against the plaintiff, the alleged right violations being the right to information and the right to petition, provided of art. 31 of the Romanian Constitution.

With respect to the facts mentioned in the petition, as per the Article 59 paragraph (2) of the Romanian Constitution, corroborated with art. 4 of the Law No. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, on April 21, 2009 we required information from the City hall of the Municipality of Caransebes, taking into consideration that the petitioner based her demand on the provisions under the Law no. 544/2001 on the free access to public interest information.

As a result of the actions undertaken, on May 27, 2009 the notified authority submitted to our institution the response based on the provisions of the Law no. 51/1995 on the organization and exercise of the profession of lawyer, republished, in the sense that, in compliance with the provisions of this act, the clause related to the fee of the advocate can only be revealed to third parties with the agreement of the parties. The

response submitted to the petitioner was supplemented by the provisions of the Law no. 215/2001 of the local public administration, with the additions necessary for accurate information on the problem: the amount of that fee will be made public following the approval of the judgment expenses by the court. At the same time, the petitioner received a copy of the response provided by the city hall.

**File no. 7462/2009.** Through the complaint addressed to the People's Advocate Institution, Popescu (fictive name) notified that he submitted a petition to the National Council for the Solution of Disputes, requesting the motivated decisions of this institution since its establishment and up to present, but he received a response that he assessed as inconclusive.

With respect to the requests of the petitioner, as per the Article. 4 of the Law no. 35/1997, we addressed to the National Council for the Solution of Disputes.

As a result of the activity undertaken at this institution, through the address registered at the People's Advocate Institution with no. 8465 from September 9, 2009, we received a response from which resulted that, due to our intervention, the institution mentioned above posted on its website (in the Official Bulletin) the data required by the petitioner.

#### **f) the right to protection of health**

In 2009, the field of the right to protection of health received **10** petitions.

The petitions were based upon: the rights of the individuals who benefit from the provisions of certain special acts (Law No. 189/2000 on the approval of Government Ordinance no. 105/1999 for the amendment and supplement of the Decree – Law no. 118/1990 on the granting of certain rights to the individuals politically persecuted by the dictatorship established since March 6, 1945, as well as the individuals deported abroad or imprisoned, republished, further amendments and supplements included, Act No. 44/1994 on war veterans, as well as some rights of individuals with disabilities and war

widows, republished), granting of compensated medications, some rights allegedly violated related to the individuals with disabilities, cases with the lack of respect of the national health programs, difficulties related to the financing of treatments or medical interventions abroad.

### **CASE FILES**

**File no. 362/2009.** Through a complaint addressed to the People's Advocate Institution, Baciú (fictive name) notified about a possible violation of the right to protection of health and the right to petition, provided by art. 34 and art. 51 of the Romanian Constitution, inflicted by the National Health Insurance House for Defense, Public Order, National Safety and Legal Authority.

The petitioner addressed to the National Health Insurance House for Defense, Public Order, National Safety and Legal Authority, requesting the approval for a free dental prosthesis.

Although he benefited of the provisions under the Law no. 189/2000 for the approval of Government Ordinance no. 105/1999 for the amendment and supplement of Decree – Law no. 118/1999 on the granting of certain rights to the individuals politically persecuted by the dictatorship established since March 6, 1945, as well as the individuals deported abroad or imprisoned, republished, further amendments and supplements included, and the matter was notified to the Medical Center for Diagnosis and Ambulatory Treatment Stefan Minci, Central Clinic of the Ministry of National Defense – Department of Stomatology, the petitioner received no response up to the moment when he addressed our institution, so the procedure he needed was postponed.

Subsequently, following art. 59 paragraph (2) of the Romanian Constitution, corroborated with art. 4 of the Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, the People's Advocate Institution requested to the Health Insurance House for Defense, Public Order, National Safety and

Legal Authority to analyze the situation and to take the necessary measures in order to solve the request.

The response submitted to our institution was prompt and elaborated, demonstrating that the situation signaled was seriously analyzed and the solution of the cause was scheduled to a date established in April 2010. The response was submitted to the petitioner.

**File no. 5028/2009.** Through a complaint submitted to the People's Advocate Institution, Ortansa (fictive name) notified an allegedly violation by the Ministry of Health of the right to health protection and the right to petition, provided of art. 34 and art. 25 of the Romanian Constitution.

The petitioner notified the refuse of the authorities to respond to the request for the approval of certain amounts necessary for the intervention of bone marrow transplant abroad for her daughter and also notified the delay of the Public Health Department Botosani to submit the file in order to be analyzed by the Ministry of Health.

Subsequently, following art. 56 paragraph (2) of the Romanian Constitution, corroborated with art. 4 of the Law no. 35/1997, republished, the People's Advocate Institution requested the Ministry of Health to analyze the situation and to take the legal steps.

The response submitted to the People's Advocate Institution mentioned that they requested the points of view of the Public Health Department Botosani and the General Public Health Department for Medical Assistance and Programs within the Ministry of Health. Through the final response, we were informed that the case was solved in the favor of the petitioner, by issuing the Government Decision no. 927 from August 19, 2009 for the approval of the funds necessary for the transplant. A copy of the response was sent to the petitioner, along with a copy of that decision.

**g) the right to a healthy environment (art. 35 of the Constitution)**

**5 petitions** were submitted to the field of human rights, equality of chances between men and women, religious cults and national minorities, which notified the violation of the right to a healthy environment provided of art. 35 of the Constitution.

The small number of petitions in this category can be explained by the fact that the institutions competent in solving such cases, first of all the National Environmental Guard, the National Agency for Environmental Protection, the Administration of the “Delta Dunarii” Biosphere Reservation, the National Agency for Hazardous Substances and Chemicals within the Ministry of the Environment and Durable Development, were much more visible due to the means of intervention and sanction provided by law, therefore the individuals have had the possibility to address directly to these institutions.

The aspects notified in the petitions submitted to the People’s Advocate Institution were mainly based on the observance of the legal provisions for the insurance of a healthy and ecologically equilibrated environment: the negative impact resulted from the location of a station for waste transfer in a locality, the violation of regulations related to the level of ambient noise, etc.

**CASE FILE**

**File no. 10690/2009.** Through a complaint submitted to the People’s Advocate Institution, Albu (fictive name) notified that a dental surgery was opened within an apartment building where he lives, under his apartment which, due to the fact that it was not phonically insulated upon construction, the noise affects both his own health and the health of his child, who suffers from first degree disability. The petitioner stated that this dental surgery could not have all the necessary authorizations and equipment in order to function legally (namely the authorization of the executive committee of the building and the consent of the owners directly affected, neighbors on horizontal and vertical plan, and other professional authorizations) and that it did not observe the hygienic and sanitary

regulations. The petitioner also stated that he notified the Public Health Department Botosani, which refused to take measures in order to solve the case.

Following the action undertaken at the Public Health Department Botosani, we received a response in which they insure their support for the petitioner.

#### **h) the right to vote (art. 36 of the Constitution)**

In 2009, the People's Advocate Institution received a number of **8 petitions** notifying the right to vote, which were submitted to the field of human rights, equality of chances between men and women, religious cults and national minorities.

As compared to the previous year, the number of petitions submitted to the People's Advocate Institution which notified the violation of the right to vote, has been subjected to a natural increase, as 2009 was an electoral year and a referendum was also organized. The problems notified were mainly based on: legal provisions related to the organization of the electoral campaign, discontents related to certain provisions of the electoral law, the right to vote being conditioned by the existence of a valid identity document (unexpired as validity term), etc.

In all the situations, the petitioners were informed about the legal regulations in force and the means available for improving the legal frame in the field.

#### **CASE FILE**

**File No. 5549/2009.** Petru (fictive name), president of a non- profit association with headquarters in the United Kingdom of Great Britain and Northern Ireland, submitted a notification to our institution in which requesting a point of view related to the observance by Romania of the provisions of the Directive 93/109/EC from December 6, 1993 for the establishment of the means used to exercise the right to vote and to be elected in the European Parliament for the citizens of the Union residents in another Member State that are not nationals, directive transposed by Romania through the Emergency Government Ordinance no. 11/2009 for the amendment and supplement of

Law no. 33/2007 on the organization and development of elections for the European Parliament. The petitioner, who presented a leaflet edited by the Ministry of Foreign Affairs and the Permanent Electoral Authority, suggested that the leaflet should have included information related to the means through which a Romanian citizen could request his elimination from the voting lists from another EU Member State, in order to vote the candidates from the country.

Following the actions undertaken at the Ministry of Foreign Affairs and the Permanent Electoral Authority, we submitted the necessary information to the petitioner, namely the obligation of elimination that the host - state has, which must be performed according to the conditions and terms provided in the regulation document for the transposition of the Directive 93/109/EC from the host - state and, at the same time, to request the duly authority to notify the Romanian party about this action.

The petitioner was also directed towards the authority from the host – state to be addressed.

**j) the right to petition (art. 51 of the Constitution)**

Taking into consideration that the right to petition is part of the category of rights- guarantees, representing the largest number of petitions throughout this year (**281**), its violation is associated, in most of the cases, with the violation of one or several rights, for example, the right of a person injured by a public authority, provided by art. 52 of the Romanian Constitution, the right to private property, provided by art. 44 of the Constitution, the right to a decent living standard, provided by art. 47 of the Constitution, the right to information, provided by art. 31 of the Fundamental Act.

Therefore, the individuals notified the People's Advocate that they addressed some public authorities through requests, complaints, notifications, proposals for the solution of some personal problems (such as: solution of some aspects related to pensions; property; granting of social aid; providing explanations related to the solution process

for the notifications registered by the legitimate persons, according to Law no. 10/2001 on the legal condition for some property taken abusively between March 6, 1945 and December 22, 1989, further amendments and supplements included, or the stage of the solution of the files related to the compensations granted according to Law No. 9/1998 on the granting of compensations to Romanian citizens for the property transferred to the Bulgarian state by enforcing the Treaty between Romania and Bulgaria, signed at Craiova on September 7, 1940, republished; changing the certificates for revolutionaries and granting the rights provided by Act No. 341/2004 of gratitude towards the heroes-martyrs and fighters who contributed to the victory of the Romanian Revolution in December 1989, reacquiring the Romanian citizenship and clarifying the Romanian citizenship), but they faced some difficulties caused by the notified public authorities, related to providing information regarding the solving stage of the file, as well as the date and form in which the petitioners should have received what the law has to offer to them.

At the same time, we were notified about situations in which certain authorities refused to register the petitions. In other situations, although the petition was registered, the public authorities notified either did not submitted the response within the term provided by the law to the petitioner, or slowed down the solution of the aspects notified.

Through the field of human rights, equality of chances between men and women, religious cults and national minorities, the People's Advocate Institution undertook prompt actions for the support of petitioners and their requests, addressing at all the levels provided under the law, in order to receive the response requested.

### **CASE FILES**

**File no. 8133/2009.** Tavi (fictive name) submitted a complaint to the People's Advocate Institution, notifying an alleged violation by the City hall of 3<sup>rd</sup> District of the

Municipality of Bucharest, of the right to petition, provided of art. 51 of the Romanian Constitution.

The petitioner claimed and proved that he addressed to the City hall of 3<sup>rd</sup> District, but he received no response up to the date when he submitted his request to the People's Advocate Institution. As the term provided under Government Ordinance no. 27/2002 on the regulation of the activity for the solution of petitions, approved by Law No. 233/2002, had been long expired, according to the provisions of art. 59 of the Romanian Constitution and art. 4 of the Law No. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, we requested the City hall of 3<sup>rd</sup> District to analyze the causes that led to such a situation and to take the necessary legal measures, informing at the same time the People's Advocate Institution about these steps. Following this approach, on June 26, 2009 we received the response of the public authority notified, from which resulted that the petitioner's problem was solved.

**File no. 10070/2009.** Galan (fictive name), student at the University "Stefan cel Mare" from the Municipality of Suceava, notified an alleged violation by the Ministry of Education, Research and Innovation, of the right to petition, provided of art. 51 of the Romanian Constitution. On September 10, 2009, he notified the Ministry of Education, Research and Innovation, claiming the unfounded rejection of the essay he submitted. As the petitioner received no response up to the date when he submitted his petition to the People's Advocate Institution, we requested further information from this ministry, based on art. 59 paragraph (2) of the Romanian Constitution, corroborated with art. 4 of the Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished. Subsequently, on November 6, 2009, the authority notified submitted to our institution the response with the additional data necessary for accurate information on the aspects of interest for the petitioner. A copy of this response was submitted to the petitioner.

**k) the right of the individual injured by a public authority (art. 52 of the Constitution)**

In 2009, the right of the individual injured by a public authority was invoked in a large number of petitions distributed to the field, and this aspect can be assessed as negative for the enforcement of the reform in the public administration.

Although the number of these petitions was high (56), similar to the previous years, not all the petitioners proved that they notified the authorities in the first place. Due to this fact, the People's Advocate Institution could not support them for the solution of the petitions submitted, but directed them towards the legal procedures to be followed.

Most of the petitioners' rights were injured by institutions and authorities of the public administration through their refuse or delay of their response to various petitions, which prevented the enforcement of the decisions upon the term or under the conditions provided by the law. Subsequently, most often, the violation of the right of the individual injured by a public authority was correlated to the violation of right to petition. The cases presented are representative for this issue.

**CASE FILES**

**File No. 1292/2009.** Through a complaint addressed to the People's Advocate Institution, Tatiana (fictive name) notified about an alleged violation, by the City hall of 1<sup>st</sup> District, of the right of the individual injured by a public authority and of the right to petition, provided of art. 52 of the Romanian Constitution.

The petitioner notified the refuse of the authorities to respond to the request for the control of financial inaccuracies existing at the level of ownership association from the apartment building where she lives, according to the provisions under the Law No. 230/2007 on the establishment and functioning of ownership associations, invoking material losses for the inhabitants of the building.

As related to the notifications of the petitioner, in order to support her and to establish a pertinent opinion about this situation, based on art. 59 paragraph (2) of the

Romanian Constitution, corroborated with art. 4 of the Law No. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, on February 17, 2009 we requested information from the City Hall of 1<sup>st</sup> District.

Following the actions undertaken, on March 26, 2009, the notified authority submitted to our institution the copy of the response sent to the petitioner, under the No. BRS 149/February 19, 2009, notifying that her request was submitted to the General Community Police Department Sector 1. Subsequently, through address No. 1485/2009, registered at the People's Advocate Institution under no. 3415 from April 1, 2009, the General Community Police Department Sector 1 notified that, in order to verify the aspects, they established a meeting with the ownership association and with the petitioner at the end of April, in order to clarify the situation. The petitioner was informed about this aspect and she received a copy of the address submitted by the General Community Police Department 1<sup>st</sup> District.

## ***II. EQUALITY OF CHANCES BETWEEN MEN AND WOMEN, RELIGIOUS CULTS AND NATIONAL MINORITIES***

In 2009, the field of human right, equality of chances between men and women, religious cults and national minorities received no petitions on the equality of chances between men and women and no aspect was signaled on the freedom of conscience or freedom of organization of religious cults.

We consider that the lack of some petitions in the field of equality of chances between men and women and religious cults is explained by the existence at the state level of some public authorities with competences in these fields. Thus, we mention that in the field of equality of chances between men and women, several public authorities and organizational structures operate at state level, among which: the Ministry of Labor and Social Protection; the Commission for equality of chances between men and women

within the Chamber of Deputies; the Commission for equality of chances within the Senate; National Agency for Equality of Chances between Women and men; National Commission in the field of equality of chances between men and women; County Commission, namely from the municipality of Bucharest, in the field of equality of chances between women and men; the Economic and Social Council, through the Commission for equality of chances and treatment. In addition, in the field of religious cults, the Ministry of Culture, Cults and National Patrimony is organized and operational at state level, and the Commission for human rights, cults and problems of national minorities within the Chamber of Deputies and the Commission for human rights, cults and minorities within the Senate operate within the Parliament.

As related to the notifications on the rights of national minorities, the most relevant aspect is the one previously mentioned, related to the publishing of some articles in mass – media, which signaled a possible discrimination on ethnic criteria of the Hungarian students through the Educational Plan for 2009-2010 of the General School Inspectorate Mures, and for which the People’s Advocate Institution started an ex officio procedure.

In the same context, we mention that, without having a statistic on the petitioners on national minorities, but only on the violated rights, from the total number of individuals who notified the People’s Advocate Institution on alleged violations of the provisions of art. 16 of the Romanian Constitution, the individuals with Romany nationality rank on the first place. The object of their petitions was mainly based on: alleged indifference, silence or hostility manifested by the authorities towards their problems to alleged violations of the right to life and physical and mental integrity, the right to intimate and private life, the right to private property, the right to association. Most of the complaints were clarified, for the rest we indicated the procedures to be followed or the competent institutions, by providing guidance and explanations.

In relationship with the aspects related to the national minorities in our country, the institution was also notified by the Democrat Union of Bulgarians, which signaled

an alleged discrimination of the ethnical group it represents, towards the members of the Democrat Union of Bulgarians from Banat, for the presentation of their history in the book of history teachers with the title History of Minorities from Romania, published by Editura Didactica si Pedagogica, on which the Association "DIVERS" 2000 has all the rights reserved. Towards the aspects signaled, they notified that, in this case there is no implication from an institution of the public administration, the materials being elaborated by the organizations of national minorities represented in the Parliament, the problem can be solved following some actions near the editors, in view of publishing an enclosure. In addition, the Association "DIVERS" 2000 mentioned on the cover of the work that it is not liable for the content of the materials published.

Taking into consideration the aspects mentioned above, in order to solve the problems of the national minorities in our country and to establish the means for their support, our institution continued its actions in view of establishing some partnerships between the People's Advocate Institution and the organizations of various national minorities. If in 2008 we submitted some letters of motivation to each national minority represented in the Parliament, notifying the intention of the institution to establish a better mutual acquaintance and to cooperate with the institutions, in 2009 we submitted letters of motivation to other organizations known and unrepresented in the Parliament.

However, we appreciate that the small number of the petitions formulated by the national minorities is also explained by the existence at state level of some public institutions with competences in the field. These are: the National Council for the Prevention of Discrimination; the Romany National Agency; the National Romany Cultural Center; the Department for Interethnic Relationships; the Council of National Minorities; the Commission for human rights, cults and problems of national minorities within the Chamber of deputies; the Commission for human rights, cults and minorities within the Senate.

## **CHAPTER IV. THE FIELD OF RIGHTS OF CHILDREN, FAMILY, YOUTH, PENSIONERS, INDIVIDUALS WITH DISABILITIES**

In 2009, the field of the Rights of the children, family, youth, pensioners and the people with disabilities received a number of **1107** petitions, representing **20.2%** of the total number of petitions received by the People's Advocate Institution. **17.6%** of these petitions were clarified as a result of the intervention of the People's Advocate Institution. A percentage of **70.7%** of the petitions clarified were solved in favor of the petitioners, **20%** of the petitions were unable to be solved in favor of the petitioner and the rest are currently undergoing the solving process. The fact that the petitions were not solved in favor of the petitioner does not represent a negative result for the petitioner, at least they benefit from a complete explanation from the institution or the organism involved in the matters requested.

### ***I. THE RIGHTS OF CHILDREN***

Act No. 272/2004 on the protection and promotion of the child's rights created a new legal frame regarding the observance, promotion and guarantee of the child's rights. The enforcement of this legislation allowed the creation of a new modern European system for the protection of the rights of the child in harmony with the international treaties to which Romania is part, with the Convention of November 20, 1989 on the child's rights, republished, and with the Convention for Protection of Human Rights and Fundamental Freedoms.

The main aspects highlighted by the petitioners in the **53 petitions** addressed to the field of the rights of the child, family, youth, pensioners and persons with disabilities referred to the request of information based on which the minor was assigned to one of the parents, the rights and obligations of divorced parents towards minor children resulted from

their marriage, the payment or increase of alimony, the rights and obligations of the tutelary authority towards the minor fostered, the legal possibilities for granting some forms of benefits for raising the child, as well as the discontents of one of the parents related to the content of some legal decisions through which the minor was assigned to the care of other parent, granting the indemnity for raising a child, in the event of multiple pregnancies, access to health, discount of transportation expenses for children who cannot benefit from education within the locality where they live, the situation of Romanian children abroad, unaccompanied by parents or by another legal representative.

### **CASE FILES**

**File No. 1608/2009.** Maria (fictional name) requested the support of the People's Advocate Institution for her minor son, aged 9, who suffers from Pompe disease, included in the National Program for hemophilia, thalassaemia and other rare diseases, for the redistribution of the funds necessary to insure the chronic treatment of this rare disease.

The petitioner states in her request that her son benefited from enzymatic substitution treatment with the medication Myozyme through ICAP Program up to September 2008, afterwards the treatment was insured through the National Program for Rare Diseases, from the budget of the National Individual Fund for Health Insurances, but only up to February 2009.

In addition, the mother claims that in the absence of the relocation of funds for 2009, her child has no access to health and adequate health care and his health is endangered.

Taking into consideration the gravity of the case, we requested the public institutions responsible with the distribution of funds necessary for the child's treatment, namely the Ministry of Health and the National Health Insurance House, to communicate, in emergency case, the measures taken for financing the treatment of that child.

Following the actions undertaken, the Ministry of Health, through the General Department for Public Health, Medical Assistance and Programs, communicated that the main credit coordinator approved the distribution and financing of the territorial public

health Directorate with the amount of 157 thousand lei, which will be completely distributed to the emergency county hospital and will be used for the treatment of the petitioner's son.

**File No. 4005/2009.** The European Commissioner for Civil Rights in Hungary notified the People's Advocate in Romania about the situation of about 40 minor children, abandoned by their natural parents and located on the Hungarian territory, assumed to be Romanian citizens. According to the information submitted, the Romanian children were included in the records of the Hungarian authorities and benefited from special protection, under the form of family fostering.

The Hungarian Ombudsman notified that the Hungarian authorities tried to clarify the situation of those children, but they could not obtain an accurate response from the Romanian authorities. In the context presented, the children could not benefit from a "permanent" protection, including adoption, as they could be brought to Romania anytime.

The People's Advocate Institution notified the National Authority for the Protection of Children's Rights and the Ministry of Foreign Affairs.

In addition, we organized the meeting of the representatives of the People's Advocate Institution and the president of the National Authority for the Protection of Children's Rights.

Following the undertaken actions, the public institutions notified responded to the People's Advocate Institution, providing information on the situation of the children concerned by the intervention of the Hungarian Ombudsman, as well as their point of view on the situation.

At its turn, the People's Advocate Institution notified the Parliamentary Commissioner for Civil Rights in Hungary about the fact that, according to the information provided by the National Authority for the Protection of Children's Rights, this institution was notified by the Hungarian authorities, through the diplomatic mission of Romania in Budapest, about 28 cases of some Romanian children on the Hungarian

territory, unaccompanied by their parents or by another legal representative. All the notified cases were processed, in compliance with the Romanian legislation in the field and with the provisions under the Convention of the United Nations Organization related to the rights of children, to which Romania is a part.

The National Authority for the Protection of Children's Rights and the specialized territorial services focused their efforts on the reintegration of children brought to the country in their own families, and when this was not possible, they undertook the action adequate for each case, mainly the fostering in a family. There were cases when the children remained within the families in Hungary, when their parents established in Hungary or acquired Hungarian citizenship, the procedure of the Hungarian authorities being thus applicable.

Most of the cases were solved without problems, and the lack of functionalities that occurred in some situations was determined by the lack of information related to the children and their parents. The management of the National Authority for the Protection of Children's Rights underlined the fact that the notification of the cases leads to the enforcement of the legal procedures in view of their clarification. However, in order to identify the children, the Hungarian party must submit the relevant document which would allow their identification and the confirmation of their Romanian citizenship. For the improvement of the activity necessary for the clarification of the situation related to that particular category of children, the National Authority for the Protection of Children's Rights requested the Romanian Embassy in Budapest to reevaluate the situation of the minor children concerned by the requests and the documents necessary for repatriation.

The Romanian Embassy in Budapest informed us that the repatriation procedure was a difficult one, because of some impediments related to the identification and submission of children in Romania. The Ministry of Foreign Affairs also communicated that the Romanian Embassy and the General Consulates in the Republic of Hungary organized the repatriation of a number of children and is currently finalizing the procedure for another

minor child. Responding also to the notifications received from various competent Hungarian authorities, the Romanian Embassy will continue the repatriation procedures according to the Romanian legislation for the protection and promotion of children's rights.

Another aspect of the activity undertaken by the field of specialization of children, which underlines the interest towards children, was the material support granted throughout the three actions undertaken at: the General School with I – VIII Grades from the commune of Cumpăna, county of Constanța; General School with I – VIII Grades from the locality of Strungari, commune of Pianu de Sus, county of Alba and General School “Ionita Sandu Sturza” from the commune of Săucești, county of Bacău. Thus:

\* On July 31, 2009, at the General School with I – VIII Grades from the commune of Cumpăna, county of Constanța we organized the action for granting of social benefits from the fund available for the People's Advocate Institution, according to the provisions of art. 36 from the Act No. 35/1997, republished.

Within this action, we granted social benefits under the form of personal use goods (clothing and shoes), school books and sweets, to a number of 50 pupils, boys and girls, from I – VIII grades.

\* On October 15, 2009, the People's Advocate Institution granted **social benefits** to the children from the General School with I – VIII Grades from the locality of Strungari, commune of Pianu de Sus, county of Alba. The delegation was led by Professor Ioan Muraru, PhD., People's Advocate. The benefits granted to the 25 pupils from the school were under the form of personal use goods (clothing, shoes, and products for personal hygiene), school books and sweets.

\* On November 12, 2009 we organized the action for **granting social benefits** to the General School “Ionita Sandu Sturza” from the commune of Săucești, county of Bacău.

The benefits granted to a number of 71 pupils, boys and girls, from the school were under the form of personal use goods, school books and sweets.

## ***II. THE RIGHTS OF THE FAMILY***

In the **37 petitions** received by the field of rights of children, family, youth, pensioners, individuals with disabilities, related to the protection of the rights of the family, the petitioners requested information on: the obligations of the parents to contribute to the support of the minor child and the right to inheritor pension, throughout the life, of the surviving husband, establishment of tutelage and guardianship, the legal frame of the goods acquired during marriage. In addition, the petitioners expressed their disagreement about the content of some legal decisions through which the minor was assigned to the care of other parent, the refuse of Romanian state authority to grant the visa requested by one of the spouses, established abroad, in view of family reunion, the difficulties related to the achievement of a social dwelling and to the provisions under the Emergency Government Ordinance No. 148/2005 on the granting of a single birth indemnity, regardless the number of children resulted from the pregnancy.

### **CASE FILES**

**File No. 339/2009.** Irina (fictional name) requested the support of the People's Advocate Institution for the solution of the locative difficult situation of her family (the petitioner, her disabled husband and their two children). In the petition she mentions, without proving through documents, that although she has a file for a social dwelling registered at the City hall Sector 2 for more than 12 years and she already lives in an apartment included in the fund for social dwellings, the petitioner could not fulfill the legal formalities in order to achieve that dwelling. The petitioner

claimed that the local public authorities were responsible, namely the City hall Sector 2, for the situation created.

The petitioner was notified that according to the dispositions of art. 20 from the Act No. 448/2006 on the protection of the rights of individuals with disabilities, republished, further amendments and supplements included, “In view of insuring the access of the individuals with disabilities to a dwelling, the public authorities have the obligation to insure the introduction of a priority criterion for the lease, at the inferior levels, of dwellings that belong to the public state domain or to its territorial administrative units”. Therefore, the text of the act related to the mandatory introduction of a priority criterion for the lease at inferior levels of dwellings within the public locative funds, for the individuals with disabilities and not to the priority related to the assignment of social dwellings for the individuals with disabilities.

In addition, the petitioner was informed that for the solution of her problem, the provisions of art. 43 from the Dwelling Act No. 114/1996, republished, further amendments and supplements included, must also be taken into consideration, according to which “the social dwellings are assigned by the authorities of the local public administration which manage them based on annually established criteria, within the conditions of the provisions under the hereby chapter, and they can be assigned, in the order of priority established by the law, to the following categories of individuals: individuals and families evacuated or undergoing evacuation from the dwellings reassigned to the former owners, youth with the maximum age of 35, youth from social fostering institutions, with the age of 18, individuals with first and second degree disabilities, individuals with disabilities, pensioners, war veterans and war widows, beneficiaries of the provisions under the Act of gratitude towards the heroes – martyrs and fighters who contributed to the victory of the Romanian Revolution on December 1989, as well as the individuals who sacrificed their lives or suffered from the anticommunist labor riot in Brasov on November 1978 No. 341/2004, further

amendments and supplements included, and the provisions under the Decree – act No. 118/1990 on the granting of certain rights to the individuals politically persecuted by the dictatorship established since March 6, 1945, as well as the individuals deported abroad or imprisoned, republished, further amendments and supplements included, other individuals or families entitled”.

Subsequently, the petitioner was asked for additional information and documents in view of an intervention of the People’s Advocate Institution for the solution of her problems.

**Petition No. 1500/2009.** Grigore (fictional name) requested information to the People’s Advocate Institution on the possibility to transmit the property right through legal inheritance and its legal bases, within the context of the acts on the reconstitution of property right.

The petitioner was notified that according to art. 4 paragraph (2) and paragraph (3) from the Act No. 10/2001 on the legal frame of some buildings abusively taken over between March 6, 1945 and December 22, 1989, republished, further amendments and supplements included, the legal or testamentary inheritors of the entitled natural entities also benefit from the provisions of the act mentioned.

At the same time, successors who did not accept the inheritances after March 6, 1945, are duly reassigned in their right within the acceptance term of the succession for the goods that make the object of the act mentioned.

### ***III. THE RIGHTS OF YOUTH***

The **14 petitions** addressed by the youth to the field of the rights of the child, the youth, pensioners and the disabled individuals, mainly expressed dissatisfactions in related to the conditions of living they are provided with in the institutions of social protection, not granting the scholarships at the term established by the University Senate,

not granting a social residence, the refusal to approve the transfer, at request, to another placement centre, breach of the right to work and the right to property, the right to an inheritor pension. In addition, the youth requested information on the procedure for obtaining unemployment benefit and information on citizenship.

#### ***IV. THE RIGHTS OF THE PENSIONERS***

The **832 petitions** related to the pension submitted to the field of the rights of children, family, youth, pensioners, individuals with disabilities were based both on the discontents of the pensioners from the public pension system and on the discontents of the pensioners from other systems, namely: army, justice, police, aviators, etc.

Regarding the public pension system, the petitioners were discontented about:

- the manner in which some territorial pension houses calculated or recalculated the pensions, or towards the fact that their pensions were not recalculated;
- the impossibility to obtain certificates to attest the quantum of salaries and bonuses with permanent character necessary for the recalculation of pensions, according to the provisions under the Emergency Government Ordinance No. 4/2005;
- the score obtained as a result of the pension recalculation;
- exceed of the legal terms provided by the legislation in force for the date of the pension recalculation, delays in solving the requests related to revisal of the pensions recalculated or to the establishment of the rights to pension or assignment from one type of pension to another, and even the lack of response to several petitions;
- the refusal of the pension houses (especially the local pension houses of the sectors from the Municipality of Bucharest and the Central Pension House from the Municipality of Bucharest) to process the requests formulated, within the legal term;

- acknowledgement of the subscription stage performed in Romania in view of obtaining pension in another European state;
- difficulties related to the achievement of an international or European pension in Romania;
- the score obtained after recalculating the pensions;
- delays in payments of the new pension rights established as a result of the recalculation;
- the refuse of the pension houses to enforce irrevocable judicial decisions for establishing the rights to pension;
- the errors and omissions made by the pension houses upon the establishment of pension rights;
- disregarding by the pension houses of the documents registered by the petitioners in view of recalculating pensions;
- difficulties related to the recalculation of pension as a result of effecting some subscription stages after the date of retiring based on age limit;
- problems occurred with the transfer of the pension files from one pension house to another, at the request of the pensioner due to changing their residence;
- non- indexing of pensions by the pension houses in compliance with the legal dispositions;
- abusive behavior of some employees of pension houses towards pensioners;
- the means for establishing the pension quantum for individuals who worked under special conditions;
- the illegal suspension of pension payments;
- the representatives of pension houses who did not provide some clarifications on the means of the recalculation of pensions, the current methodology being complicated and laborious, which makes it very difficult for the pensioners to check the

- accuracy of pension recalculation;
- the salaries taken into account for the recalculation of pensions, for the periods when the income obtained was not registered in the workman's pass and cannot be proven by certificate;
  - the evidence of salary rights achieved and the amounts retained and collected at the pension and social insurances fund, within the periods worked abroad with governmental contract;
  - compelling, through legal provision, the pensioner to reconstitute the pension file, when it can no longer be found, as per the provisions under the Government Decision No. 1550/2004, according to which the submission of proving documents necessary for the reconstitution of the pension documentation is the obligation of the pensioner in question;
  - violation of the principle of contributiveness upon the establishment of pension rights by not taking into account all of the salary revenues, for which contributions to social security were due and paid;
  - lack of modifying the quantum of several pensions following recalculation, because the score determined based on the new legislation was lower than the one previously established. Thus, many pensioners have not even benefited from the indexations of the pensions subsequently granted by the Government;
  - conditioning the issue of a certificate proving the quality of member within the legally established creators' units and recognized as legal entities with public utility, necessary in order to benefit by the indemnity granted according to Act No. 8/2006 on the establishment of indemnity for the pensioners within the public pension system, members of legally established creators' units and recognized as legal entities with public utility on the payment of an amount.

In addition, several petitioners requested the People's Advocate Institution either to eliminate an unconstitutionality objection, or to eliminate an exception of unconstitutionality related to chapter IV from the Act No. 329/2009 on the reorganization of some public authorities and institutions, rationalization of public expenses, support of business environment and the observance of frame agreements with the European Union and the International Monetary Fund.

In connection to the normative document mentioned above, we must note that, in addition to the discontents of the pensioners, this also created a series of confusions. Thus, several pensioners, consultative academic professors, requested information on the applicability of the provisions within the chapter IV from the Act No. 329/2009, because the legal provisions mentioned above were interpreted and applied in a different manner by the management of the universities where they worked.

Towards the problems notified by the pensioners, we undertook actions at the Ministry of Education, Research and Innovation, at the territorial pension houses, at the National House for Pensions and other Social Insurances Rights, at the National Institute for Medical Expertise and we conducted **investigations** at the Pension House from the Municipality of Bucharest, at the Pension House Sector 6 Bucharest. At the same time, we issued a Recommendation addressed to the Pension House from the Municipality of Bucharest.

### **CASE FILES**

**File No. 9309/2008.** Through several demands registered by the People's Advocate Institution, the petitioners requested the People's Advocate support for the recalculation of pensions by considering all the revenues achieved during the professional activity for which contributions to social insurances were paid, according to the legal provisions in force.

In order to clarify the situation, following the provisions of art. 4 from the Act No. 35/1997 republished, further amendments and supplements included, we notified

the situation to the General Secretary of the National House for Pensions and Other Social Insurance Rights.

Through the address registered at the People's Advocate Institution, the General Secretary of the National House for Pensions and Other Social Insurance Rights notified the fact that he submitted the situation mentioned above both to the Ministry of Justice and to the Superior Magistracy Council in view of identifying some institutional action which would solve the problems of the pensioners.

**File No. 9753/2009.** Cornelia (fictional name) notified the People's Advocate Institution about the lack of response from the County Pension House Gorj to her request submitted through registered letter with proof of receipt on August 25, 2009.

In connection to the content of the petition and the documents attached, we notified the County Pension House Gorj.

Following the action undertaken at the County Pension House Gorj, we received from this public institution the address registered at the People's Advocate Institution under the No. 10189 from October 23, 2009 which included information about the problem notified by the petitioner.

**File No. 4776/2009.** Ioan (fictional name) addressed the People's Advocate Institution, claiming the fact that the certificates he filed in 2006, subsequently elaborated and submitted to the pension house in 2007 and in 2008 were not revalorized for the recalculation of his pension.

The results of the actions undertaken by the People's Advocate Institution were notified to the petitioner, along with the documents received from that pension house. In addition, we informed the petitioner that, in the situation where he would need additional information about the situation notified by the pension house, or if he would not receive the pension in the increased amount, he could submit a new petition to the People's Advocate Institution.

**File No. 3589/2009.** Maria (fictional name) addressed the People's Advocate Institution, proving the fact that she addressed to the Local Pension House Sector 6 through letter submitted through registered letter with proof of receipt, On February 18, 2009, requesting the granting of labor pension, according to the provisions under the Act No. 7/2006 on the status of public parliamentary clerk, further amendments and supplements included, but she received no answer.

The People's Advocate Institution undertook action to that local pension house on April 15, 2009. We received a response through the addressed registered at the People's Advocate Institution on May 25, 2009 according to which, through the decision from March 26, 2009, the request for granting the labor pension submitted by the petitioner was favorably solved.

**File No. 6285/2009.** George (fictional name) claimed he did not receive the monthly indemnity from which he benefited based on the Decree – Act No. 118/1990, in the amount increased through the Emergency Government Decision No. 59/2008, namely 200 lei for each year of detention. Although the increase was enforced since July 1, 2008, the petitioner continued to receive the indemnity with no increases.

In addition, the petitioner was discontent of the fact that he received no answer to the first two petitions addressed to the pension house (on November 21, 2008 and on March 23, 2009).

The petitioner's request was favorably solved; the pension house issued the decision for the increase of the indemnity, the difference of 13,041 lei will be granted to the petitioner in July 2009.

## ***V. THE RIGHTS OF THE INDIVIDUALS WITH DISABILITIES***

Through the **139 petitions** related to the rights of the individuals with disabilities that were submitted to the field of rights of children, family, youth, pensioners, individuals with disabilities, the petitioners expressed their discontents related to: incorrect classification within the degrees of handicap, non – granting of the rights for the individuals with disabilities, unjustified evaluation of the degrees of handicap and the classification of the individual in a degree of handicap inferior to the previous one, refuse of the local public administration authorities to hire personal assistants for the individuals with sever disability who had the right to benefit from a social assistant, delay in issuing certificates for the classification in one degree of disability, the term established for the accessibilities of these disabled individuals was exceeded, lack of funds for the payment of personal assistants, refuse of some public authorities with competences for the evaluation of individuals with disabilities, upon demand, in view of changing the initial classification. At the same time, the petitioners requested the supplement of the legal provisions in force, with provisions according to which, within the educational process, the higher, public and private educational establishments are compelled to insure classes for students with disabilities, within the form requested in writing by these students and the creation at the national level of an institution specialized in the psychological and sociological counseling, guidance and professional conversion of the individuals who lose their eyesight.

### **CASE FILES**

**File No. 1279/2009.** Mihai (fictional name) notified the People's Advocate Institution, claiming he was damaged by the decision of classification within a degree of handicap, issued on January 13, 2009 by the Superior Commission for the Evaluation of Individuals with Disabilities for Adults, through which the contestation of the

certificate from October 31, 2008 was solved, certificate issued by the Superior Commission for the Evaluation of Individuals with Disabilities for Adults from Sector 6. For the support of his request, the petitioner filed a series of medical documents certifying his serious health problems.

Taking into consideration the diagnosis resulted from the examination of the medical documents submitted by the patient, we requested the Superior Commission for the Evaluation of Individuals with Disabilities for Adults to reevaluate the situation of the petitioner and to submit its result, requesting, at the same time, detailed explanations about the solution of the contestation, namely the reasons for his classification in the degree of handicap accentuated, and not severe.

Following the action undertaken by our institution, the Superior Commission for the Evaluation of Individuals with Disabilities for Adults notified that, in the context of the new elements related to the patient's health, proved through medical documents, it took the matter to itself and issued the decision for the classification in the degree of severe handicap, without further revisions. Thus, the situation of the patient was favorably solved.

**File No. 2309/2009.** Florin (fictional name), individual with disabilities, notified the People's Advocate Institution about the fact that he requested the National Authority for Individuals with Disabilities some explanations related to the lack of payment of the subsidized interest for the credit contracted in his name for the purchase of a car.

The petitioner claimed that through the lack of payment of the subsidized interest, the National Authority for Individuals with Disabilities did not observe the credit contract concluded, and subsequently he was charged with penalties by the crediting bank unit.

Following the actions undertaken by the People's Advocate Institution, the National Authority for Individuals with Disabilities informed us that it performed the payment of the subsidized interest in the petitioner's account.

## **CHAPTER VII. THE FIELD OF ARMY, JUSTICE, POLICE, PENITENTIARIES**

In 2009, in the field of activity of army, justice, police, penitentiaries a number of **1591** petitions were registered, representing **30.2%** from the total number of **5264** **petitions** registered at the People's Advocate Institution. The percentage of the petitions registered in the field of army, justice, police, penitentiaries for which the People's Advocate undertaken actions were **3%**.

### ***I. ARMY***

In the field of army, the People's Advocate Institution received a number of **9** **petitions** in 2009, which were focused upon: the discontent of some military employees towards: the age of retirement, taking into consideration the fact that they do not benefit from social protection; waging and taxation of revenue achieved by the military personnel in permanent mission abroad; granting of some military titles.

Regarding the age of retirement of military employees and taking into consideration the provisions of art. 47 paragraph (2) from the Constitution, according to which the citizens have the right to pension and other forms of social insurances and social security measures, within the conditions established by the law, the petitioners were informed that the legislator has the liberty to establish the social security rights of the citizens, the conditions and criteria for their assignment, their calculation method, in relationship with the possibilities created through the financial resources available, namely to amend them according to the changes related to the economic and financial resources of the state.

## **CASE FILES**

**File No. 1893/2009.** Andrei (fictional name) requested the People's Advocate Institution's point of view about the issue of waging and taxation of revenue achieved by the military personnel in permanent mission abroad for which the provisions under the Government Decision No. 837/1995 are applicable, which relate to the waging criteria in foreign currency and other rights in foreign currency and Romanian currency of the military personnel in permanent mission abroad, republished, dispositions that are not included in the content of the Fiscal Code. Thus, the petitioner mentioned that when he received the fiscal record, he noticed the following: at point V "Calculation of tax on income from revenues" was registered only the income achieved in Romanian currency during his deployment in the country and the corresponding tax; not all the monthly incomes in foreign currency and the corresponding tax were registered, although he had signed also a payroll in currency, which affected the monthly contribution for the social insurances, unemployment benefit, pension fund. In this context, the petitioner addressed to the General Department of Public Finances and to the Service of Direct Taxes – Resident citizens, which informed him that the military personnel is not tax exempted (art. 55 paragraph (4) letter (m) from the Fiscal Code) and that the enforcement of the Government Decision No. 837/1995 by the Ministry of National Defense does not comply with the provisions of the Fiscal Code.

At the request addressed by the People's Advocate Institution, the Financial Accountancy Department within the Ministry of National Defense informed us that the issue invoked by the petitioner was analyzed by the National Agency for Fiscal Administration within the Ministry of Public Finances.

Following the action undertaken by the People's Advocate Institution, the National Agency for Fiscal Administration within the Ministry of Public Finances informed us that, according to the provisions of art. 42 letter m) from the Law No.

571/2003 on the Fiscal Code, further amendments and supplements included, “net revenues in currency received by the members of diplomatic missions, consular offices and cultural institutes of Romania located abroad, according to the legislation in force” are subject to tax collection.

According to the point of view submitted to the People’s Advocate Institution by the General Department for Legislation and Direct Taxes within the Ministry of Public Health, “military personnel within the representative structures abroad are not part of the category of Romanian diplomatic and consular personnel”.

According to the provisions of art.55 paragraph (1) from the Fiscal Code, incomes from salary represent all the incomes in money and/or in kind achieved by a natural entity performing an activity based on an individual labor contract or on a special status provided by the law, regardless of the period to which it refers, the name of revenues or the form under which they are granted, including the indemnities for temporary labor incapacity. Taking into consideration the information above, they assessed that, *the revenues achieved by the military personnel in permanent mission abroad are subject to tax collection according to the provisions under Chapter III – Income from salaries, from Title III of the Law No. 571/2003 related to the Fiscal Code, further amendments and supplements included.* Thus, for the revenues from salaries and assimilated to salaries, achieved by the military personnel in permanent mission abroad, the submitting unit has the obligation to retain and to transfer the tax in the amount and on the terms provided by the Fiscal Code and to fill in the Form 210 “Fiscal Record for tax on income from salaries”.

The fiscal record for tax on income from salaries is filled in by the employers/payers of revenues from salaries and assimilated to salaries, for each natural entity who achieves revenues from salaries or assimilated to salaries, on the main position or beyond the main position, according to the law, based on the

amounts included in the payrolls or another documents provided by the law, corresponding to the period for tax collection and paid to the employees.

**File No. 8644/2009.** Daniela (fictional name) notified the People's Advocate Institution about the action undertaken at the Ministry of National Defense, through which she requested the granting of the Order of Military Credit 2<sup>nd</sup> class for her husband (deceased), but she received no answer.

In relationship with the information presented, the People's Advocate Institution decided to notify the Ministry of National Defense, which informed us that the issue exposed was submitted to the ministry of national defense, and that he decided that the issue would be analyzed and solved by the military structure with competences in the field. The petitioner was notified about the response to her petition, namely that the analysis of the documents submitted revealed the fact that the Ministry of National Defense undertook the necessary actions for granting the Honorific Distinction "In the Service of the Country", for 20 years of military service, to the petitioner's husband, war veteran, deceased. The proposals of the Ministry of National Defense were based on the provisions under the Law No. 238/1998 on the granting of the Order "Military Credit" to military retired, war veterans, with the amendments made through art. 87 paragraph (3) from the Law No. 29/2000 on the national system for medals of Romania. Subsequently, as the refuse of the Presidential Administration – Chancellery of Orders to grant that honorific distinction was not due to a certain attitude of the Ministry of National Defense, in order to obtain additional information, the Ministry of National Defense mentioned the fact that the petitioner could undertake personal action towards the Presidential Administration – Chancellery of Orders.

## *II. JUSTICE*

Regarding the provisions of **art. 21** from the Constitution on the free access to justice and of **art. 6** from the Constitution on the Protection of Human Rights and fundamental freedoms, in 2009 the field of army, justice, police, penitentiaries registered a number a **1459 complaints**, representing a percentage of **27.70%** from the total number of **5264 complaints** registered by the People's Advocate Institution and a number of **443 complaints** were focused on the activity of legal courts. The subjects of the complaints was represented by the dissatisfaction of the petitioners towards: the way of solving the civil or criminal cases by the courts and the non-communication of the judicial decisions established; the quantum of the sentences established; the delay in the settlement of criminal prosecution; non-information of the individuals concerned by the bodies with competences in criminal proceedings, on the stage of solution of the complaints formulated; the means employed by the courts and the bodies with competences in criminal proceedings for the administration of the evidences; the activity of judges and prosecutors; impossibility to enforce some writs of execution which establish the obligations of the public institutions; the means employed by the legal executors for the drafting of the enforceable documents.

A series of complaints related to justice were analyzed in the context of art. 31 from the Constitution, thus the petitioners received information about: the Romanian authority with competences for the enforcement of legal decisions delivered by the European Court of Human Rights; the procedure to appeal the European Court of Human Rights; the procedure for the recognition of legal decisions pronounced in another Member State of the European Union; the authority with competences in the field of compensatory payments due in quality of creditors of the National Investment Fund; the procedure of the international legal assistance in the civil and

commercial field; the legal frame for the obligation to pay the pension for support up to the age of 25.

Among the petitions addressed to the field, **66 complaints** had as object litigations related to the private law, whose solution represented exclusively the obligation of the legal authority. Related to this category, the petitioners were informed about the provisions under the Law No. 51/1995 on the organization and exercise of the profession of lawyer, republished, further amendments and supplements included, according to which the legal advice and representation in front of the legal courts is assigned to lawyers registered in the Bar, and, where applicable, about the provisions under the Government Emergency Ordinance No. 51/2008 on the public legal assistance in civil matters, further amendments and supplements included.

In the field of justice, a series of complaints had as object some issues whose solution was under the competence of: a) the Public Ministry – **123 complaints**; b) the Superior Council of Magistracy – **6 complaints** and c) the Ministry of Justice – **7 complaints**.

#### **a) The Public Ministry**

**File No. 147/2009.** Ilie (fictional name) notified the Territorial Office Alba – Iulia of the People’s Advocate Institution about the delay related to the communication of the solution in a criminal file by the Prosecutor’s Office near the Civil Court Alba – Iulia.

Following the action undertaken by the Territorial Office Alba – Iulia of the People’s Advocate Institution, the Prosecutor’s Office near the Civil Court Alba – Iulia communicated the fact that they notified the resolution for that file, at the address mentioned by the petitioner, but the correspondence returned to the Prosecutor’s Office near the Civil Court Alba – Iulia. Faced to this situation, the

Prosecutor's Office submitted again the solution to the petitioner, at the new address indicated in the request.

**b) The Superior Council of Magistracy**

**File No. 5319/5411/2009.** Matei (fictional name) notified the People's Advocate Institution within the context of art. 21 paragraph (3) from the Constitution about the actions undertaken for the litigation related to the building which, although he owned based on a lease contract, obtained following an auction, had been returned in kind to its owners. In this matter, the petitioner expressed his discontent related to:

e. the means employed by the legal courts for the performed investigations in connection with the returned building; the obligation to pay a rent; the payment of some compensations for the lack of usage of the housing space by the current owners;

f. the High Court of Cassation and Justice rejected the requests through which he demanded the relocation of the civil and criminal files, whose object was the litigation related to that building;

- the solutions related to the non – performance of legal proceedings, established by the Prosecutor's Office near the Civil Court Lugoj related to all the criminal complaints formulated towards the crimes committed in relationship with that building.

In relationship with the information presented, the People's Advocate Institution decided to submit the request formulated by the petitioner to be solved by the Superior Council of Magistracy.

**c) The Ministry of Justice****CASE FILES**

**File No. 9054/2009.** Gina and Ion (fictional names), citizens of the Republic of Moldavia, with Romanian nationality, expressed their discontent towards the extended procedure for the solution of the request submitted in view of regaining the citizenship by the Department of Citizenship within the Ministry of Justice and Civic Freedoms. In this purpose, the petitioners requested, on one hand the observance of the provisions of art. 1 paragraph (3) from the Constitution, and on the other hand, they asked the People's Advocate to recommend, based on art. 60 from the Constitution, within the annual report he would submit to the Parliament, the legislative amendments in the sense of the observance of the rights and freedoms of Moldavian citizens with Romanian nationality who want to regain the Romanian citizenship, namely the registration of their requests to be performed in a reasonable period of up to 6 months.

At the same time, from the request and documents enclosed by the petitioners resulted the following: they requested to the Department of Consular Relationships – Ministry of Foreign Affairs, to forward the application to the Consular Section of the Romanian Embassy in Chisinau and to notify the “receipt of the documents necessary to reacquire the Romanian citizenship in 30 days upon the formulation of the application”. The Department of Consular Relationships – Ministry of Foreign Affairs informed that the Romanian Embassy in Chisinau makes continuous efforts to process the requests for scheduling formulated within the last years, referring to the high number of demands and the limited spaced available to the embassy for the activities with the public, but also to the fact that scheduling in an objective necessity, taking into consideration the impressive number of

applications; when the petitioners' requests will reach the processing phase, the embassy will invite the petitioners to file the documents.

In relationship with the information presented, as the content of the petition formulated did not indicate clearly if the petitioners formulated a request in view of regaining or achieving the Romanian citizenship or their intention and taking into consideration the fact that the Department of Consular Relationships within the Ministry of Foreign Affairs is responsible for the activity undertaken by the diplomatic missions (consular departments) and it cooperates with the Ministry of Justice (involved in the procedure for granting or, as appropriate, regaining the Romanian citizenship), an investigation was conducted at the Department of Consular Relationships within the Ministry of Foreign Affairs.

The following aspects resulted from the investigation: an increase of the number of requests related to the acquirement of citizenship in 2006 (over 300 thousand) as compared to the years before the integration of Romania within the European Union and this year, following the events on April 9 from the Republic of Moldavia, towards the low capacity to process the application, motivated by the lack of personnel; as related to the working procedure of the Romanian Embassy in Chisinau, the investigation mentioned the fact that due to the high amount of activity, in 2006 was established a system of order, thus the individuals can send a prior letter (request) of motivation, which can be also submitted though registered mail with proof of receipt, and subsequently they will be invited chronologically, according to the date of the mail, to the consular department where the officials will check the existence of the documents required by the law, then the file will be submitted in the country, to the Ministry of Justice, where they will analyze the request to regain the citizenship; *the petitioners from the republic of Moldavia submit no request to reacquire the Romanian citizenship and no letter of motivation to the competent authorities*; the petitioners addressed to the Department of Consular Relationships

with two requests, for which they received a response; in connection with the requests for regaining the citizenship, the Romanian Embassy in Chisinau processes around 250 a week (1000 cases monthly) and over 24,000 files were submitted to the Ministry of Justice and Civic Freedoms to be analyzed; due to the high volume of requests, two more consulates (Cahul and Balti) for the population in the South and North of the country will be operational in the Republic of Moldavia, starting with the next year.

Due to the fact that the result of the investigation undertaken at the Department of Consular Relationships within the Ministry of Foreign Affairs was that no fundamental right of the petitioners was violated, a subsequent action of the People's Advocate Institution in the sense requested by the petitioners was unjustified. Therefore, the petitioners were advised to address to the authorities provided by art. 12 paragraph (1) and paragraph (2) from the Law No. 21/1999, republished, further amendments and supplements included, namely in solid justified cases, through authorized agent with special mandate and authenticated at the Ministry of Justice, Department for citizenship or at diplomatic missions or the competent consular offices according to the location or residence of the applicants.

**File No. 7753/2009.** Ana (fictional name) representing the interests of the members of the Professional Association of Mediators in Romania, requested the People's Advocate Institution to undertake actions for the prompt validation, by the Ministry of Justice and Civic Freedoms, of the members in the Mediation Council elected through the vote of mediators within the National Conference, organized by the Mediation Council.

Thus, we were informed that the members of the associations addressed two requests to the Ministry of Justice and Civic Freedoms, but they received no response. The petitioner mentioned that through the lack of a response to these notifications "either positive or negative", the right of each member of the

association related to the exercise of the profession of mediator was affected, the activity of the Mediation Council being blocked.

In relationship with the aspects presented by the petitioner, the People's Advocate Institution addressed to the Ministry of Justice and Civic Freedoms which did not respond to the notification sent, but the petitioner informed us that on October 13, 2009 the ministry of justice issued the Order No. 2772/C on the validation of members within the Mediation Council.

In the context of Article 21 from the Constitution related to the free access to justice, the People's Advocate received a number of **97 petitions** about the refuse or delay of some authorities of the public administration to enforce the legal decisions, final and conclusive, aspect which revealed the existence of some gaps of the mechanism created for the execution of the final stage of the legal action – the enforcement.

### **CASE FILES**

**File No. 1350/2009.** George (fictional name) notified the People's Advocate Institution about the lack of enforcement by the Local Commission for Land Fund Calarasi of a legal decision related to the reconstitution of the property right on the surface of land of 0.24 ha which belonged to his father.

Following the action undertaken by the People's Advocate Institution, the City hall from the Municipality of Calarasi informed us that, the Decision of the County Council Calarasi validated the Enclosure No. 23 of the Act No. 247/2005, and the petitioner's father was registered with a surface of 0.24 ha. The documentation was submitted to the Cadastral Office and Real Estate Publicity Calarasi, which elaborated the documents necessary for the Protocol through which the land was taken over by the Agency of State Domains, but the forms for the conclusion of the

protocol were not finalized. Moreover, the City hall from the Municipality of Calarasi did not receive the land from the Agency of State Domains in order to draft the records for livery.

The Agency for State Domains informed the People's Advocate Institution that for the surface of 4.10 ha, field in the portfolio of the Agency and in the administration of SC Agromix Calarasi, they concluded the Protocol for delivery – receipt between the Agency for State Domains and the City hall from the Municipality of Calarasi. The City hall from the Municipality of Calarasi signed the protocol mentioned above and it will reassign the land to the petitioner, in quality of inheritor of his father.

**File No. 5997/2009.** Mariana (fictional name) notified the People's Advocate Institution about the actions with no result, which she and her brother undertook at the City hall from the Municipality of Galati in order to issue a new disposition, according to the legal decision pronounced. From the documents attached by the petitioner, we noticed that she submitted to the National Authority for Property Restitution the documents necessary to enforce the legal decision of the Court Galati – Civil Department, but she received no answer.

Following the actions undertaken by the People's Advocate Institution, the City hall from the Municipality of Galati informed us that it forwarded the legal decision delivered to the National Authority for Property Restitution, in view of its enforcement. In addition, the Department for the coordination of the enforcement of Law No. 10/2001 within the National Authority for Property Restitution communicated the response submitted to the petitioner, according to which, after the analysis of the file within the Secretariat of the Central Commission for the Establishment of Compensations, they noticed that through the legal decision, the Court of Galati established the amount of compensations based on Law No. 10/2001. In the session of the Central Commission for the Establishment of Compensations,

the issuing of the decision in the amount established by the court was approved, decisions which will be valorized within the conditions of Title IV of the Act No. 247/2005 related to the reform in the field of property and justice, as well as some additional measures, with subsequent amendments and supplements.

A number of **120 petitions** addressed to the field of activity of army, justice, police, penitentiaries were focused on the invocation by the petitioners of some unconstitutionality related to some legal provisions, among which: the Government Emergency Ordinance No. 105/2009 related to some measures in the field of public positions, as well as for the reinforcement of managerial capacity at the level of decentralized public services of the ministries and other bodies of the central public administration from the territorial administrative units and of some public services, as well as for the regulation of some measures related to the cabinet of dignitary from the central and local public administration, the chancellery of prefect and the cabinet of the local elected officer; art. 76 paragraph (1) letter e) from the Act No. 275/2006 on the execution of sentences and of the measures delivered by the legal bodies during the criminal trial; the Emergency Government Ordinance No. 207/2008 for the amendment and supplement of the Act No. 248/2005 on the system of free circulation of Romanian citizens abroad; Emergency Government Ordinance No. 71/2009 on the payment of some amounts provided under writs of execution having as object the granting of salary rights to the personnel in the budget field; art. 33 paragraph (14) from the Law No. 303/2004 on the status of judges and prosecutors, republished, further amendments and supplements included; art. 6 paragraph (2) from the Law No. 85/2006 on the procedure of insolvency, further amendments and supplements included, etc.

### ***III. POLICE***

In 2009, the field on army, justice, police, penitentiaries, registered a number of **58 petitions** related on the activity of police bodies, which were focused on: the lack of information of the petitioners on way of solving the complaints formulated; complaints against the traffic ticket; delay of criminal investigations; the conditions for the recruitment of candidates in view of participating to the contest for the admission to the Police Academy “Alexandru Ioan Cuza”.

In relationship with the complaints related to the activity of the police as a body for criminal investigation, the petitioners were informed about the provisions of art. 275 paragraphs (1) and (3) from the Criminal Procedure Code, according to which “any individual can file a complaint against the measures and actions of criminal proceedings, if they harmed his legitimate interests. The complained is addressed to the prosecutor who supervises the activity of the body for criminal investigation and it is submitted either directly to this prosecutor or to the body for criminal investigation”.

In relationship with the discontents towards the conditions for the recruitment of candidates in view of participating to the contest for the admission to the Police Academy “Alexandru Ioan Cuza”, which made the object of a request addressed to the People’s Advocate Institution, the petitioner was informed about the fact that, according to the provisions of art. (1) paragraph (1) and art. 2 paragraph (1) from the Decision No. 294/2007 on the organization and functioning of the Police Academy “Alexandru Ioan Cuza”, this is a public higher education institution, certified, through state education network, with legal personality, being an integrant part of the national system of academic studies, and the provisions under the normative documents incident at the national level to higher education are also applicable for

the academic studies organized by the Academy. At the same time, according to the provisions of art. 32 paragraph (6) from the Romanian Constitution, and art. 13 from the education Law No. 84/1995, republished, the academic autonomy is insured. According to art. 92 paragraph (3) letter b) from the education Law No. 84/1995, republished, further amendments and supplements included, academic autonomy is insured by programming, organizing, developing and improving the educational process; the organization of the admission to studies of candidates and the conclusion of the criteria for the evaluation of academic and professional performances of students (request No. 4280/2009).

### **CASE FILES**

**File No. 130/2009.** Diana (fictional name) notified the incidents in which her daughter, aged 17, was involved on the Henri Coanda Airport (Otopeni). The petitioner mentioned that: within the Henri Coanda Airport, after passing the security filter and after the recovery of her personal items, her daughter noticed the absence of her mobile phone, and although she informed the officer who accompanied her and the members of the control team about the lost of her mobile phone, they took no action for its recovery, thus the minor child left without her mobile phone, not being able to contact her parents or another individual; she notified the Borderline Police from the Henri Coanda Airport, the Transportation Police of the Henri Coanda Airport about the matter, but she received no answers, but only information that did not clarify the aspects notified.

Following the actions undertaken, the People's Advocate Institution received the following information:

- The Department of Transportation Police within the General Romanian Police Inspectorate informed us that, after the investigations undertaken, they established that the mobile phone was taken by X from the safety control area for passenger boarding, individual who did not delivered the good to the injured party or to the

authorities within the term provided by the law. In relationship with the individual mentioned, they established the criminal proceedings for the crime of “appropriation of the good found”, crime provided and sentenced by art. 216 from the Criminal Code, the commencement of criminal proceedings being confirmed by the Prosecutor’s Office near the Civil Court Buftea. The damage caused was completely recovered and through a statement, the petitioner mentioned that she is no longer a civil part in the criminal trial.

- The Romanian Information Service – General Secretariat informed us that the aspects notified by the petitioner were also the object of a complained previously addressed to the management of the “Henri Coanda” Airport Bucharest. The controls conducted within its personnel, undertaken since the production of the incident, highlighted a part of the aspects mentioned by the petitioner, namely her daughter entered the filter and was subject to security control, and, at the same time, the lack of involvement of its personnel in the production of the event. The investigations undertaken revealed the fact that the situation produced through the disappearance of the mobile phone was processed by the Air Transportation Police within the “Henri Coanda” Airport, the author of the appropriation of the good mentioned being identified as a passenger who passed through the control filter immediately after the petitioner’s daughter, and he “will be subject to legal actions”.

**File No. 168/2009.** Adrian (fictional name) notified the Territorial Office Constanta of the People’s Advocate Institution about the fact that he required the County Police Inspectorate Constanta to provide information about his file for the registration at the Police Academy Bucharest, for which he submitted two requests, the last request being the final option for the registration to the specialization of law, public order and safety, request which was not attached to the file, fact acknowledged by the petitioner in Bucharest, on the day of exam. The petitioner claimed that due to this error, he could not be registered on the list with the candidates admitted for the

specialization chosen and that he received no answer to the request addressed to the County Police Inspectorate Constanta through which he demanded to be notified about the reasons bases on which his request was not included in the registration file.

Following the action undertaken by the Territorial Office Constanta, the County Police Inspectorate Constanta informed us that they solved the request of the petitioner, in his favor, through the disciplinary investigation of the individuals involved.

#### ***IV. PENITENTIARIES***

In 2009, **65 petitions** were registered in the field of army, justice, police, penitentiaries, formulated by the individuals deprived of freedom, focused upon: the transfer to other penitentiaries; discontent related to the means employed for the solution of the requests related to the interruption of the sentence on medical reasons and the parole on medical reasons; social services from which can benefit the individuals with disabilities who are imprisoned; the right to food corresponding to the religion; the participation to social and educative activities, cultural and religious activities; the right to medical assistance; the right to correspondence; the usage for labor of the individuals deprived of freedom; the right to a decent living standard.

The National Administration of Penitentiaries requested the People's Advocate Institution's point of view on the proposal to amend the Law No. 275/2006 regarding the execution of sentences and of the measures delivered by the legal bodies during the criminal trial; subsequently, after their examination, we considered the following proposals as being pertinent:

- Art. 6 paragraph (2) from the proposals to amend the Law No. 275/2006 on the assignment by the president of court of appeal of one or several judges delegated

for the execution of custodial sentences, **with their written consent**, as well as the county clerks, in view of exercising their legal competences.

The amendment proposed complies with: art. 57 paragraph (1) from the Law No. 303/2004 on the status of judges and prosecutors, further amendments and supplements included, according to which “In the event where a civil court, a court or a specialized court cannot function normally due to the temporary absence of some judges, the existence of some vacant positions or to other similar causes, the president of the court of appeal, upon the proposal of the president of that court within the area of that court of appeal, can delegate judges from other courts within the area mentioned, **with their written consent**”; art. 10 paragraph (1) letter j) from the Interior Regulation of the legal courts, approved through the decision No. 387/205 of the Plenary Meeting of the Superior Council of Magistracy, according to which the president of the court of appeal “delegates, **with their consent**, judges from the civil courts, courts or specialized courts within the area of the court of appeal, under the conditions of the law”.

In connection with the assignment of county clerks, we appreciate that the proposal is justified, taking into consideration the legal obligations of the judges delegated for the execution of custodial sentences, as provided under the Law No. 275/2006. In addition, art. 10 paragraph (1) letter n) from the Internal Regulation of the legal courts, approved through the decision No. 387/205 of the Plenary Meeting of the Superior Council of Magistracy, provides the fact that the president of the court of appeal appoints the auxiliary specialized personnel of the courts of appeal and legal courts within its area, approves the transfer, **delegation**, detachment for **category of personnel, under the conditions of the law**.

- Art. 25 paragraphs (5) and (6), art. 26 paragraph (7), art. 38 paragraph (6), art. 74 paragraph (5) from the proposals for the amendment of the Law No. 275/2006 on the **communication of the conclusion of the delegated judge** (related

to: the complaint against the establishment, maintenance and of amendment of the system for the execution of custodial sentences by the Commission for the establishment, amendment, individualization of the system for the execution of custodial sentences; the complaint against the means employed by the administration of the penitentiary related to the exercise of the rights of the individuals deprived of freedom; the complaint against the decision taken by the commission for discipline) **and to the administration of the penitentiary**, so that they have the possibility to **file a contestation** against the conclusion.

We appreciate the proposal mentioned as being justified, because up to present only the detained person can contest the conclusion of the delegated judge, or within the term of art. 21 from the Constitution, the administration of the penitentiary must also benefit from the possibility to contest such a conclusion, if it is considered as unfounded.

- Art. 34 paragraph (2) from the proposals for the amendment of the Law No. 275/2006 related to the insurance, free of charge, by the administration of the penitentiary, of the civil equipment only for the inmates who do not benefit from personal civil equipment and from **financing means**. The proposal for amendment mentioned is justified for the situation in which the inmate benefits from financing means in his personal accounts, but he uses them in other purposes and not for acquiring the personal civil equipment.
- Art. 42 paragraph (1<sup>2</sup>) from the proposals for the amendment of the Law No. 275/2006 according to which individuals without financial means represent the individuals who had not, or had not within the last 60 days, amounts available in their personal account. The proposals for amendment are justified because they establish a criterion for the assessment of the phrase “**without personal financial means**”.
- Art. 65 paragraph (1<sup>1</sup>) from the proposals for the amendment of the Law

No. 275/2006, related to the **mandatory request for the individuals convicted to attend the 8 grades of education**. The legal provisions mentioned as justified, taking into consideration art. 32 paragraph (1) from the Romanian Constitution according to which the right to education **is insured** through the mandatory general education, but with the observance of art. 6 from the education Act No. 84/1995, further amendments and supplements included, according to which the mandatory general education is of 8 grades, and the mandatory attending of the general education of 8 grades ceases at the age of 16.

- Art. 65 paragraph (4) and art. 65<sup>1</sup> from the proposals for the amendment of the Law No. 275/2006 **makes the difference between the educational training and the professional training**, in relationship with the higher education classes. We appreciate that the legal text proposed should define the notion of educational training, in order to avoid the confusions generated through the assimilation of educational training to the participation to the classes of higher education system, not only from the perspective of supporting the expenses generated by the participation to classes.

- Art. 69 paragraph (6) from the proposals for the amendment of the Law No. 275/2006 which **deducts from the execution of sentence the period when the inmate was free after the term established for the presentation following the permission to leave the penitentiary**. The proposal for amendment mentioned is justified, as the execution of the sentence is discontinued from the time when the inmate does not present to the penitentiary upon the expiration of the permission to leave the penitentiary.

- Art. 74<sup>1</sup> and art. 74<sup>2</sup> from the proposals for the amendment of the Law No. 275/2006 through which they **regulate as crimes the avoidance of the execution of sentences** (intentional non-presentation of the inmates from permissions, leaves without authorization from the work place by inmates who

execute labor in open and semi-opened system, lack of respect of the term established for the presentation from the postponing or interruption of the execution or sentence) and the introduction of forbidden goods or items in the penitentiary. We mention that art. 269 Criminal Code provides in general terms the crime of escape, namely escape from the legal condition of retention or imprisonment.

- Art. 76 paragraph (1) letter e) from the proposals for the amendment of the Law No. 275/2006 through which they **grant 30 days executed for the graduation of a school year**, the previous provision being the graduation of a semester. In addition, they consider 30 days as being executed for the graduation of a professional training course or a professional redeployment course, the previous provision granted only 15 days executed. The proposal of amendment is justified in order to insure the finality of the action of educational and professional training, under the conditions where, for example, after the graduation of a semester, the inmate can leave the courses.

### **CASE FILES**

**File No. 4172/2009.** Costel (fictional name), inmate in the Penitentiary Giurgiu, notified the People's Advocate Institution about the fact that his disability pension was suspended since September 2008, based on the reason that he was not present at the medical periodic revision, according to the provisions of art. 92 paragraph (1) letter c) from the Law No. 19/2000 on the public pension system and other social insurance rights, further amendments and supplements included.

Following the action undertaken by the People's Advocate Institution, the Penitentiary Giurgiu informed us that the petitioner was registered at the medical surgery of the penitentiary from the date he was transferred from the Penitentiary Rahova. In view of achieving the disability pension, they had to draft some files which are obtained through the admission in a Penitentiary – Hospital, subsequently

the petitioner was admitted to the Hospital – Penitentiary Jilava, and then he was submitted to the Commission for the Evaluation of Labor Capacity Giurgiu.

**File No. 2547/2009.** Ilie (fictional name), inmate in the Penitentiary Giurgiu, expressed his discontent towards the medical treatment from which he benefited in the penitentiary. In this context, by mentioning his disorders, the petitioner claimed that the chief doctor within the penitentiary did not observe the medical recommendations issued by the doctors within the Ministry of Health, recommendations included in the medical record. At the same time, the petitioner claimed the following in the request formulated: he does not receive medical treatment; the medical tubes were not brought by the medical staff, but by the employees from the penitentiary, who also distributed the medical treatment to inmates with disorders; he was admitted to a section with nursery profile, where there were no doctors or nurses. In addition, the inmate mentioned that he was transferred from the Penitentiary Rahova to the Penitentiary Giurgiu and he was not submitted to the medical surgery, although he requested it several times.

Following the action undertaken by the People’s Advocate Institution, the Penitentiary Giurgiu informed us that the inmate was registered at the medical surgery of the penitentiary, with several disorders, subsequently he was admitted to nursery for a permanent medical surveillance. On his arrival to the Penitentiary Giurgiu, he benefited from a gastric protection alimentary regime, and he was prescribed chronic medical treatment according to his medical record. Based on the information submitted by the Penitentiary Giurgiu, upon his arrival to the penitentiary, the inmate had no medical documents in view of achieving the approval for the months of March – April – May 2009 of the urinary tubes recommended by the specialist doctor, subsequently they elaborated and submitted to the CASA OPSNAJ – Bucharest the documents necessary to achieve the urinary tubes. In order to insure the urinary tubes the inmate needed, based on the cooperation with the

Emergency County Hospital Giurgiu, Service Emergency Admissions, they granted the urinary tubes necessary under the form of a loan. From April 24, 2009 the urinary tubes were bought following the approval of CASA OPSNAJ, and the tubes borrowed from the Service Emergency Admissions were returned to the hospital.

The Penitentiary Giurgiu also mentioned the fact that the inmate could have come voluntarily to the medical surgery, but he previously refused the chronic treatment, taken for years, under the reason that he had no leaflet for the medication. Upon the request of the chief doctor to receive him and to talk to him, the inmate refused. At the same time, they mentioned that the medical activity of the medical surgery for general/family medicine within the Penitentiary Giurgiu was undertaken according to the Order No. 1361/C-1016/2007 on the insurance of medical assistance to individuals deprived of freedom in the custody of the National Administration of Penitentiaries, issued by the ministry of justice and the ministry of public health.

**File No. 7422/2009.** Costin (fictional name) notified the People's Advocate Institution about a possible infringement by the Penitentiary Giurgiu of the constitutional provisions related to the free access to justice, the right to freedom, the secrecy of correspondence, namely the enforcement of justice.

The petitioner informed us that the Chief of the Record Office within the Penitentiary Giurgiu refused to copy the documents he needed for exercising his right to defense within the files undergoing examination at the European Court of Human Rights. At the same time, the petitioner notified the fact that the Record Office within the Penitentiary Giurgiu did not submit to the competent court the appeal he formulated against the civil sentence pronounced by the Court of Appeal Bucharest.

Following the action undertaken by the People's Advocate Institution, the Penitentiary Giurgiu informed us that the requests of the petitioner addressed to the record compartment were promptly solved, by observing the provisions under the Decision No. 449/2007 of the General Director of the Administration of

Penitentiaries. At the same time, the addressed received from the Penitentiary Giurgiu mentioned the fact that the petitioner had the possibility to request the copy of his documents from his personnel file from the penitentiary, and not of other documents he possessed and which were not an integrant part from the individual detention file. Through the solution of the requests formulated by the petitioner, in strict compliance with the legal provisions regarding the activity for the achievement of copies after the documents from the individual file, they assessed that the provisions of art. 44 and art. 46 from the Law No. 275/206 on the execution of sentences and measures delivered by the legal bodies during the criminal trial were not violated, as the content of those articles of law do not imply a general obligation of the penitentiaries' administration to approve the requests related to the photocopy of any documents in the possession of the individuals deprived of freedom.

In relationship with the claims of the petitioner connected to the refuse of the workers within the record office to file an appeal to the Court of Appeal Bucharest, we were informed that, following the evaluation of the individual file, this aspect was not confirmed. In view of a proper enforcement of the jurisdictional activity, the record office, according to the provisions of art. 385<sup>4</sup> paragraph (1), reported to art. 367 paragraph (2) from the Criminal Procedure Code, filed this appeal to the competent legal court.

**File No. 4014/2009.** Felix (fictional name), inmate in the Penitentiary Bucharest Jilava, notified the People's Advocate Institution, expressing his discontent towards the following aspects: rejection of the requests through which he demanded to be used for labor and the requests through which he demanded "to participate to all the social and educative activities, cultural activities, to the development of religious activities"; lack of respect of the right to medical assistance. At the same time, the petitioner mentioned that although he fulfilled the conditions to benefit from an intimate visit from his wife, his request formulated in this matter was not approved,

or a similar request was approved in the previous years, and the legal situation was the same, no amendments being made.

Following the actions undertaken by the People's Advocate Institution, the Penitentiary Bucharest Jilava notified the following:

*a) the usage for labor.* Initially, the inmate was selected for labor, to execute lucrative activities at the Penitentiary Bucharest Jilava, as sentry at the room of detention and through the activity executed he achieved days of income. In the following period: he was transferred for legal affairs to other penitentiaries or he was submitted to the commission for individualization, but he did not request to be selected for lucrative activities; he was submitted to the commission for the selection in view of lucrative activities and was assigned to the working point Cleaning of Detention Sections, then he was retired from labor from operational measures; he was submitted to the commission for the selection in view of lucrative activities, but he was not selected, because at the working points within the detention place there were no requests.

*b) participation to social and educative activities, cultural activities, to the development of religious activities.* The inmate participated to five educational and specific intervention programs (health education – educator, social skills – educator, social skills – social assistant, anti-drug – psychologist, Hobby, magazine of the section – educator) and competed in various sport events, to which he obtained very good results, and he was rewarded on several occasions for his receptivity towards the educational message.

The detained person did not require in writing the attendance to religious activities, but only orally, on two occasions, he requested to attend the moral religious orthodox activities and each time the priest gave him a positive answer. The participation to these meetings is based on a scheduling established by the priest, “reported to the high number of requests and the limited space of the chapel”. An

orthodox chapel is established and operational within the Penitentiary Bucharest Jilava, with a maximum capacity of 20 individuals, where the priest hired by the penitentiary works based on a schedule. The orthodox priest organizes weekly religious services to which the inmates can participate upon demand, as well as individual counseling activities. On the Great Religious Holidays, the priest organizes religious services to which the inmates can participate, the requests being centralized in a table approved by the penitentiary's administration.

The offer for educational programs and activities and psychological and social assistance existing at the level of the Penitentiary Bucharest Jilava was notified several times to the petitioner, the detained person's request to attend the activities corresponding to the legal frame in force being approved by the penitentiary's administration.

*c) the right to medical assistance.* The inmate's right to medical assistance was observed, subsequently he benefited from 7 examinations in 2009.

*d) the intimate visit.* The detained person notified the penitentiary's administration by several requests through which he demanded an intimate visit. The request in view of granting the intimate visit in 2007 was approved by the director of the unit, following the incorrect and incomplete presentation of his legal situation by the clerk responsible appointed within the personnel of the penitentiary. Thus, the request was approved without fulfilling the condition provided of art. 44 paragraph (1) letter b) from the Regulation for the enforcement of Law No. 275/2006 on the execution of sentences and measures delivered by the legal bodies during the criminal trial, approved through Government Decision No. 1897/2006, the inmate being trialed in other criminal causes undergoing examination of the legal courts. Following the examination of the certifications which supported the approval for the intimate visit, the Directorate of the unit notified the Prosecutor's Office near the Court of Bucharest, in writing, in view of examining the crime of that clerk. The

detained person was married within the penitentiary in 2009, and the request for an intimate visit was approved by the director of the unit.

**File No. 2844/3236/2009.** The People's Advocate began an ex-officio inquiry regarding to the following the decease of the Romanian citizen Claudiu Crulic in a penitentiary from Poland, taking into consideration that within the program "Atunci si Acum" broadcasted by TVR national station, the family of the deceased expressed their discontent towards the results of the investigation undertaken by the Polish authorities, and to the fact that the Ministry of Foreign Affairs and the Romanian Government did not answer to the request addressed by the Crulic family.

After referring the matter to itself, the People's Advocate Institution addressed to the Ministry of Foreign Affairs, Prime Minister and the Commission for the Protection of Civil Rights from the Republic of Poland, to Mr. Janusz Kochanowski, in order to obtain additional information necessary to establish the causes and circumstances related to the decease of the Romanian citizen Claudiu Crulic.

After referring the matter to itself, the People's Advocate Institution was notified by the father of Claudiu Crulic who mentioned that his son was retained, being suspect for the theft of a wallet full of documents and bank cards. As a protest to the measures delivered against him, on September 10, 2007, Claudiu Crulic began the hunger strike, the form of protest being notified to Director of the Arrest for Investigation in Kraków and to the Prosecutor's Office Sector Kraków – Śródmieście. The Civil Court of Kraków – Śródmieście delivered the temporary arrest of Claudiu Crulic and on January 17, 2008, the civil court discharged the temporary arrest, following the aggravation of the health of the accused. On January 18, 2008 Claudiu Crulic deceased, as a result of the hunger strike.

According to the documents attached to the petitioner's request, the General Secretariat of Government informed the petitioner that his petition was submitted to the Ministry of Foreign Affairs for a competent solution, and that he will receive

information related to the solution delivered. The General Department for Consular Affairs – Ministry of Foreign Affairs informed the petitioner that two investigations were undertaken in relationship with the decease of his son:

- the file of the Regional Prosecutor’s Office in Tarnow, focused on the legality and accuracy of the investigation and the legal proceedings undertaken by the Departmental Prosecutor’s Office in Cracovia, against the Romanian citizen Crulic Claudiu Daniel;

- the file in which the Departmental Prosecutor’s Office in Cracovia investigated all the possible suspects of guilt, under the form of intent or guilt in the case related to the decease of Claudiu Crulic.

The responses received by the People’s Advocate Institution from the Ministry of Foreign Affairs and the Commission for the Protection of Civil Rights from the Republic of Poland highlighted the fact that the PERFORMED INVESTIGATIONS by the Departmental Prosecutor’s Office from Cracovia, in the file elaborated for the legal and accurate character of the criminal investigation against the Romanian citizen Crulic Claudiu Daniel are included in the “Decision for the dismissal of investigations”. In the file related to the individuals suspected to have contributed, by intention or fault, to the decease of Claudiu Crulic, the Prosecutor’s Office in Cracovia delivered the accusation of three individuals: the chief of the ambulatory within the arrest section, the chief of the medical section of the hospital, and the director of the hospital.

In addition, the Ministry of Foreign Affairs informed the People’s Advocate Institution that the Romanian diplomatic missions in Italy, country where the parents of the citizen Claudiu Daniel Crulic lived, kept in touch with them for various clarifications. In relationship with the appreciation of the Crulic family, that “The Ministry of Foreign Affairs did not respond to the request addressed by the family”, the The Ministry of Foreign Affairs mentioned that the last letter was submitted on March 5, 2009.

The Commissioner for Protection of Civil Right from the Republic of Poland notified the People's Advocate Institution that he referred the matter to himself regarding the decease of the Romanian citizen Claudiu Crulic, requesting information about the results of the preliminary investigations from the District Inspectorate for the Administration of Penitentiaries, the Central Managing Council of the Administration of Penitentiaries, Department of Penitentiaries of the District Court in Cracovia, district prosecutor for professional responsibility within the Regional College of Doctors in Cracovia, the ministry of justice from Poland and the Prime – minister of the Republic of Poland.

The Commissioner for Protection of Civil Right from the Republic of Poland notified the People's Advocate Institution about the conclusions of the investigations undertaken. Thus, *on one hand the results of the preliminary investigations demonstrated the fact that the doctors notified the court with competences for the execution of detention sentence in order to obtain the permission to conduct diagnosis tests against the inmate's will and took measures for his artificial feeding in a way to long delay. On the other hand, another delay was caused by the necessity to wait for the enforcement of the court's decision.*

At the same time, Commissioner for Protection of Civil Right from the Republic of Poland notified that the Office of District Prosecutor from Cracovia elaborated a charge against three medical employees within the preventive detention Center from Cracovia: the chief of the laboratory within the Center of custodial arrest – for the non-execution of his attributions and non – requirement from the competent authority of the agreement necessary to conduct diagnosis tests against the will of the inmate Claudiu Crulic, action which endangered his life; the director of the hospital within the Center of custodial arrest as well as the chief of the Department of internal diseases – for second degree murder, as they were not able to perform the procedures to save the patient's life when there was an immediate threat on his life.

At the same time, the District Court for Cracovia – Śródmieście maintained the decision of the regional prosecutor from Tarnow to conclude the investigation on the non – execution of obligations by the prosecutors who fulfilled the procedures related to the crime committed by Claudiu Crulic. The Office of District Prosecutor from Cracovia undertook independent procedures related to the correctitude of the actions undertaken by the prosecutor who performed the preliminary investigations in the case Claudiu Crulic. In addition, there were criminal procedures in front of the legal court against the medical staff from the Center of Custodial Arrest in Cracovia, accused of non – fulfilling their professional attributions and of second degree murder in the case Claudiu Crulic.

## CHAPTER VIII. THE FIELD OF PROPERTY, LABOR, SOCIAL PROTECTION, TAXES AND FEES

In 2009, **1855 petitions** were submitted to the People's Advocate Institution and were analyzed within the field of activity of property, labor, social protection, taxes and duties, representing a percentage of **22.3%** from the total number of **8295** petitions registered within the institution. These were based on the following problems: the right to private property, the right of the individual injured by a public authority, the right to petition, the right to labor and social protection of labor, the fair assignment of fiscal duties, the right to inheritance, the right to a decent living standard, the economic freedom. In a percentage of **21.8%**, namely in **404** of the petitions analyzed within the field of activity, the People's Advocate undertaken actions at the authorities of the public administration, in view of clarifying the aspects notified by the citizens, subsequently clarifying a percentage of **75.4%** of these aspects.

In certain situations, as the responses received from the authorities notified were not probative, the specialized personnel within the field conducted a number of **17** investigations. At the same time, **5** recommendations were issued to the National Authority for Property Restitution, City Hall of Bucharest, City hall of Afumati, commune Hall Ilfov county, commune hall of Rosia, Sibiu county and Ministry of Public Finance.

At the same time, the field of property, labor, social protection, taxes and duties elaborated the “**Special Report on the observance of the rights of war veterans, war widows and un-remarried widows of war veterans**”. This report was submitted under **No. 3521 from April 6, 2009** to the **presidents of the two Chamber of Parliament, the prime-minister, the ministry of labor, family and social protection, the ministry of finances, the ministry of administration and interior, the president of the National**

**Pension House and Other Social Insurance Rights, the president of the Association of War Veterans in Romania.**

The special report was intended to underline the problems of war veterans, taking into consideration the gratitude we owe them for their heroic and patriotic actions, especially as they are at a respectable age (the average age is of 87 years), having a reduced capacity to defend their interests, which is also accentuated by the lack of an institutional frame which would insure the observance of their rights provided under the **Law No. 44/1994 on war veterans, as well as some rights of individuals with disabilities resulted from the war and the war widows, republished, further amendments and supplements included.** At the same time, the report establishes a series of recommendations for the optimization of the activity for the coordination of their rights.

The problems of war veterans and war widows related to the granting of the rights due were classified under two categories: *legislative gaps* and *administrative dysfunctions*.

***Legislative gaps noticed:***

1. Lack of an institutional and legal frame which would regulate the means for the coordination and control of the activities undertaken by many public local and central authorities with competences for granting the rights of war veterans, war widows and un-remarried widows of war veterans.

2. Non – granting of the exempt from the payment of tax corresponding to the arable land with the surface of up to 5 ha, according to art. 16 letter c) from the Law No. 44/1994, republished, further amendments and supplements included, for war veterans, war widows and un-remarried widows of war veterans. The local authorities motivate the non – granting of this exempt through the fact that the Law No. 517/2003 on the Fiscal Code does not provide this facility, and according to art. 1 paragraph (3) from this

normative document, in the fiscal field, the dispositions of this code prevail over any other provisions from other normative documents; in the event of a conflict between these provisions, the dispositions under the Fiscal Code are applicable.

3. The right to the insurance of free medication, provided under the special law, is subject to the restrictions within the annual frame – contract related to the conditions necessary to insure medical assistance within the system of social health insurances.

4. The granting of tickets for treatment is managed by the territorial pension houses and partially by the county health houses, and war veterans claim the lack of respect related to the percentage of free tickets provided under the law.

*Administrative dysfunctions:*

1. Lack of reassignment of property for war veterans decorated on the battlefield, with 1 ha arable field or 500 m<sup>2</sup> field for building a house.

2. Non – granting by the local councils of some dwellings from the state locative fund for war veterans evacuated.

3. Lack of observance of the right to purchase, upon request, the dwellings from the state locative fund where they live as tenants.

At the same time, we highlight another problem of war veterans who were assigned dwellings from the dwelling fund administrated by the Autonomous Authority “Administration of State Patrimony and Protocol”, namely the extremely high amount of rents calculated based on the **Emergency Government Ordinance No. 9/2008** for the establishment of monthly rent on square meter applicable for the lease of dwellings and their corresponding field, which are within the public and private domain of the state, administrated by the Autonomous Authority “Administration of State Patrimony and Protocol”, as well as the extremely high fees applied for the calculation of utilities. These amounts exceed by far the revenues achieved by war veterans, inflicting upon the right to a decent living standard established through art. 47 from the Romanian Constitution.

At the same time, the report includes a series of recommendations and proposals in order to improve the activity in this field:

**I.** Regulation of an institutional legal frame focused upon the coordination and control of the activity undertaken by many public central and local authorities with competences to assign the rights of war veterans, war widows and un-remarried widows of war veterans.

**II.** Amendment and supplement of art. 284 paragraph (1), paragraph (3) and paragraph (7) from Law No. 571/2003 on the Fiscal Code, further amendments and supplements included, in the sense of the introduction of the provision corresponding to the granting of exemption from tax corresponding to arable fields with the surface of up to 5 ha for war veterans, war widows and un-remarried widows of war veteran in compliance with the special legal provisions, namely art. 16 letter e) from Law No. 44/1994, republished, further amendments and supplements included.

**III.** The insurance of an adequate legal frame for the granting of free medication and prostheses for individuals entitled.

**IV.** The conduction of some controls at national level related to the assignment of property to war veterans decorated on the battlefield, as well as the implementation of some measures in order to grant this right to the applicants, by a public authority with specific competences to defend the rights of war veterans.

**V.** Observance of the right to insure, on priority criteria, dwellings from state locative fund by the local councils.

**VI.** Measures to insure the right of war veterans and war widows to purchase the dwellings assigned from the state locative fund.

## **I. PROPERTY**

In 2009, **1366** petitions were registered in the field of activity of property, labor, social protection, taxes and duties, which were related to the observance by the

authorities of public administration of the right to private property, established by art. 44 from the Romanian Constitution. In addition, throughout 2009, the People's Advocate Institution was notified about the lack of observance by the authorities of public administration of the provisions under the property acts related to the reconstitution of the right to property on fields, reassignment and issue of property titles.

The main aspects solved by the field of property, labor, social protection, taxes and duties, were related to the means undertaken to enforce the following normative documents: Law No. 18/1991 on the land fund, republished, further amendments and supplements included; Law No. 10/2001 on the legal condition of some buildings abusively taken over between March 6, 1945 – December 22, 1989, republished, further amendments and supplements included; Law No. 9/1998 on the granting of compensations to Romanian citizens for the property transferred to the Bulgarian state by enforcing the Treaty between Romania and Bulgaria, signed at Craiova on September 7, 1940, republished, further amendments and supplements included; Law No. 290/2003 on the granting of compensations to Romanian citizens for their properties, sequestrated, retained or which remained in Basarabia, North Bucovina and the Land of Herta, following the state of war and the application of Peace Treaty between Romania and the Allied and Associated Powers, signed in Paris on February 10, 1947, further amendments and supplements included; Law No. 247/2005 on the reform in the fields of property and justice, as well as some additional measures, further amendments and supplements included; the Emergency Government Ordinance 81/2007 for speeding the procedure of granting compensations corresponding to the buildings abusively taken over.

As related to the enforcement of the provisions under **Law No. 18/1991 on the land fund, republished**, further amendments and supplements included, the petitioners notified the People's Advocate Institution about the refuse of the authorities of public administration:

- to analyze or to elaborate the documentation necessary to reassign the property right;
- to issue and deliver the property titles;

- to reassign the property
- to enforce the final and irrevocable decisions which delivered the cancellation or amendment of property titles issues by violating the legal provisions;
- to reassign the property right on ancient locations.

In view of solving the problems of the petitioners, the People's Advocate Institution undertook actions at the level of local and county commissions for the establishment of private property right on fields, requesting the application of the legal measures necessary to solve their problems and the information of the People's Advocate about the decisions taken.

As related to the enforcement of **Law No. 247/2005 on the reform in the fields of property and justice, as well as some additional measures** and the **Emergency Government Ordinance 81/2007 for speeding the procedure of granting compensations corresponding to the buildings abusively taken over**, the petitioners notified our institution about the difficulties related to the assignment of their property rights.

Following the actions undertaken, the People's Advocate noticed that, despite the fact that more than four years passed from the enforcement of the act, some local commission have not finalized the elaboration of the necessary documentation and its submission to the county commissions in view of delivering the property titles.

The main problems notified by the petitioners were based on the following aspects:

- delay in solving the requests submitted based on Act No. 247/2005;
- refuse of local commissions to forward the contestations against the proposals for the validation/invalidation related to the reassignment of property right, by the county commissions, in view of their competent solution;
- unjustified exceeding of the term provided under the Regulation on the establishment, competences and activity of commissions for the establishment of private property right on fields, the model and the means for assigning the property titles, as well as the reassignment of property to the owners, approved

through the Government Decision No. 890/2005 for the solution of contestations by the county commissions.

Regarding the means for the enforcement of **Law No. 10/2001 on the legal condition of some buildings abusively taken over between March 6, 1945 – December 22, 1989, republished**, further amendments and supplements included, the petitioners notified the People's Advocate Institution mainly about the lack of observance by the public administration's competent authorities of the solution to the notifications submitted by the individuals entitled.

In these cases, the People's Advocate Institution requested information from the competent authorities, based on which it noticed that some notifications formulated based on the Law No. 10/201, republished, were not solved within the legal term of 60 days, although more than seven years passed from the expiry of the term for the submission of notifications. By way of consequence, the solution of the files elaborated based on the Law No. 10/2001, republished, over term represents a delay in the establishment of compensations due to the individuals entitled, in the situation where the restitution in kind of the building was not possible.

In connection with the exceeding of the legal term for the solution of the notifications formulated based on the Law No. 10/201 by the competent public authorities and institutions, we noticed dysfunctions at their level due to the low number of personnel, the high volume of notifications submitted based on the Act No. 10/2001, as well as due to the improper cooperation between the various departments and services with competences to solve the notifications.

At the same time, the competent public authorities and institutions informed us that in most of the cases the petitioners submitted incomplete evidences related to the quality of individual entitled or to the right of property and did not use the way of attack in the administrative legal department of the documents through which their notifications were solved, by requesting the solution on administrative way, motivating the lack of financial

resources for a trial. Thus, following the actions undertaken by the People's Advocate Institution related to the clarification of the problems notified by the petitioners, they were requested to supplement their files based on the Law No. 10/2001.

Through the actions undertaken by the authorities of the public administration, the People's Advocate assesses as unacceptable the attitude of some authorities, because although they are bound to exercise their legal competences, to insure the observance of laws and order, these authorities do not fulfill their duties.

Several petitioners, beneficiaries of **Law No. 1/2009 for the amendment and supplement of Law No. 10/2001 on the legal condition of some buildings abusively taken over between March 6, 1945 – December 22, 1989**, notified our institution about the lack of observance of art. II from this act, which provides a term of 30 days upon the enforcement of the act (February 6, 2009) for the Government to amend the Methodological Regulations for the unitary application of the Law No. 10/2001, approved through the Government Decision No. 250/2007. By way of consequence, based on art. 26 paragraph (2) from the Law No. 35/1997, republished, further amendments and supplements included, **through the address No. 1886 from June 3, 2009 we notified the Prime – Minister of Romania**, about the term exceeded up to which the Government had to amend the methodological regulations mentioned, which inflicts upon the rights of the beneficiaries of Law No. 1/2009. Up to the date of this report, we received no response to this address.

In connection with the enforcement of **Law No. 9/1998 on the granting of compensations to Romanian citizens for the property transferred to the Bulgarian state by enforcing the Treaty between Romania and Bulgaria, signed at Craiova on September 7, 1940, republished, and Law No. 290/2003 on the granting of compensations to Romanian citizens for their properties, sequestrated, retained or which remained in Basarabia, North Bucovina and the Land of Herta, following the state of war and the application of Peace Treaty between Romania and the Allied and**

**Associated Powers, signed in Paris on February 10, 1947, further amendments and supplements included**, the petitions notified to the People's Advocate Institution were mainly based upon the problem of late solution of the files, granting compensations within the provisions of the law and the payment of these compensations.

In 2009, a significant number of persons addressed to the Service for the enforcement of Law No. 9/1998 and Service for the enforcement of Law No. 290/2003 within the National Authority for Property Restitution, notifying the following aspects:

- analysis of the decisions received from the county commissions and commission within the Municipality of Bucharest and submission of the proposals for the validation/invalidation of the decisions adopted by the county commissions and the commission within the Municipality of Bucharest to the Chief of the Chancellery of Prime – Minister, who will decide through orders;
- discontent of the petitioners towards the responses submitted by the Service for the enforcement of Law No. 9/1998 and the Service for the enforcement of Law No. 290/2003, these responses being under standard form, with no reference to the petitioners' requests;
- non – payment within the legal term of the compensations granted based on these normative documents.

As the memos addressed to the National Authority for Property Restitution received no answer, the individuals whose rights were violated notified the People's Advocate Institution. In this context, the People's Advocate Institution notified the National Authority for Property Restitution in view of clarifying the situations created. From the responses received from the National Authority for Property Restitution, we established that a high number of files were sent for further analysis and supplementation to the city halls or prefect institutions, and other files were concluded.

A high number of petitions are based on the discontents towards the distribution of the amounts allotted to the National Authority for Property Restitution, with compensation title,

between the three categories of beneficiaries provided by the Law No. 274/2005, Law No. 9/1998 and Law No. 290/2003. Thus, **on July 21, 2009 we conducted an investigation at the level of the National Authority for Property Restitution**, whose result revealed the lack of a methodology related to the distribution of these amounts, the distribution being performed by the president of the institution. Although according to art. 13 from the Law No. 290, the “operational procedures of the county commission and the commission within the Municipality of Bucharest for the enforcement of Law No. 290/2003 and the National Authority for Property Restitution –Service for the enforcement of Law No. 290/2003, administration of funds for compensations, as well as the means of payment will be established through the methodological regulations elaborated by the National Authority for Property restitution and will be approved by Governmental decisions”, these regulations were not elaborated. In connection with the conclusions of the investigation undertaken, the People’s Advocate Institution issued the **Recommendation No. 5/2009** from August 17, 2009 through which the National Authority for Property Restitution was requested to take the necessary measures in order to:

a) elaborate the methodology related to the distribution of the amounts allotted from the state budget, with compensation title, between the three categories of beneficiaries provided by the Law No. 274/2005, Law No. 9/1998 and Law No. 290/2003;

b) issue the methodology related to the criteria and the order based on which the compensations will be granted to the beneficiaries of the Law No. 290/2003.

This recommendation was not observed up to the elaboration of this report.

## **CASE FILES**

**File No. 9709/2008.** Luca (fictional name) notified the People’s Advocate Institution in the context of an alleged violation of the right to private property and the right of the individual injured by a public authority provided of art. 44 and art. 52 from the Romanian Constitution, by Margau commune Hall, Cluj County.

The petitioner notified that through the Decision No. 809 from August 25, 2006 of the County Commission for Land Fund Cluj they validated the reassignment of the property right on the surface of 5.09 ha, and the Margau commune Hall, Cluj County, is going to reassign the property right. Although the petitioner undertook several actions to the city hall, this authority did not respond to his requests.

Following the actions undertaken, through the address No. 291 from January 5, 2009, registered at the People's Advocate Institution under the No. 51 from January 6, 2009, the Margau commune Hall, Cluj County notified the People's Advocate Institution that the petitioner did not submit the drawings with the neighbors of the land, he does not know the locations and the validation was performed only based on the certificate within the Agricultural Register. In addition, the city hall mentioned that there is no specialist for topographic measurements at the Local Commission for Land Fund and it suggested the petitioner to contact a specialized company for the assignment of property rights.

Faced with this answer, which did not solve the petitioner's request and with the documents from the file, we undertook an investigation at the Margau commune Hall, Cluj County, on January 26, 2009.

Following the investigation, we noticed that the file included a drawing with the neighbors of the land, and the mayor admitted that this could be a means to identify the lands. At the same time, he presented the proof that the commune hall organized a contest for the position of topometric expert, but there were no applicants, the situation being similar for the entire area, subsequently the practice is undertaken in the sense that the individual to be reassigned the property right hires an expert to conduct the measurements.

Within the investigations, we established by mutual consent with the mayor from the Margau commune, Cluj County, that the petitioner will be notified in view of identifying the land and a copy of this address will be submitted to the People's Advocate Institution, up to February 1, 2009.

As a result of the fact that the file of the petitioner includes the drawing with the neighbors of the land, the representatives of the city hall decided to attach to the address also the standard forms named “statements of vicinity”, which would be signed by the owners of the neighboring lands and which will contribute to the identification of the land owned by the petitioner.

Through the address No. 301 from January 26, 2009, registered at the People’s Advocate Institution under the No. 1097 from February 2, 2009, we were informed that the petitioner was invited to the commune Hall Margau, for the identification of the lands, and after the establishment of vicinities, he would contact a company specialized in topographic measurements, taking into consideration the absence of a specialist in this field within the commune hall.

**File No. 8911/2009.** Florin (fictional name) notified the People’s Advocate Institution, discontent about the fact that although he is one of the beneficiaries of the Emergency Government Ordinance No. 156/2007 on the compensation of natural entities who contracted deposits at the House for Economies and Consignations –C.E.C. – S.A in view of purchasing vehicles, up to present he was not granted the monetary compensations to which he was entitled.

From the examination of the Emergency Government Ordinance No. 156/2007, we noticed that it was approved with some amendments and supplements through Law No. 232/2008, and it also acknowledged the right to compensations to natural entities who transferred after December 22, 1989 their deposits from the House for Economies and Consignations –C.E.C. – S.A for purchases of vehicles to the Romanian Bank for Development – B.R.D. – S.A, but without establishing the means for granting this compensations. As this fact can inflict upon the rights of the depositors who transferred their deposits established in view of purchasing vehicles in the accounts of the Romanian Bank for Development – B.R.D. – S.A upon the granting of compensations, we notified the

Prime – Minister of Romania about the aspects mentioned through the address No. 8911 from October 20, 2009.

Following the actions undertaken, the General Secretariat of Government submitted a copy of the address No. 624265 from November 9, 2009 from the ministry of finance submitted to the general secretariat of Government, related to this situation. This address reveals the fact that B.R.D. Societe Generale submitted to the Ministry of Public Finance, through the address No. 828 from October 12, 2009 the accurate data on the number of depositors and the total value of the compensations, thus the Ministry of Public Finance was able to elaborate a memo on its authorization to initiate a project of normative document with legal powers which would regulate the actual grant of compensations for the natural entities who transferred their deposits from C.E.C Bank to B.R.D. Group Societe Generale.

On the date of the address, the memo was undergoing certification, following to be subject to debate and approval of the Romanian Government, after the achievement of the certifications necessary.

## **II. LABOR AND SOCIAL PROTECTION OF LABOR**

In 2009, **366** petitions related to the lack of respect by the authorities of public administration of the right to labor and social protection of labor, provided of art. 41 from the Romanian Constitution were analyzed in the field of activity of property, labor, social protection, taxes and fees.

In most of the cases notified, the petitioners invoked alleged abuses related to the professional classification, employment granting of the financial rights and the overwork without the payment of the compensations due, the refusal to provide the record of the professional experience at the conclusion of the labor contracts, granting of legal annual leaves or the compensation in money of the leaves untaken.

In order to clarify the aspects notified by the petitioners, the People's Advocate Institution, according to the competences provided through the Law No. 35/1997, republished, further amendments and supplements included, addressed to the authorities of the public administration and, in the event where the citizenship rights and liberties of the petitioners were inflicted upon by the employers – legal entities, the petitioners were guided either towards the territorial labor inspectorates, or to the material and territorial competent courts of justice.

### **CASE FILE**

**File No. 10089/2009.** Nicolae (fictional name), electronics engineer in a company, notified the People's Advocate Institution about an alleged violation of his right to labor and social protection of labor. Thus, the petitioner expressed his dissatisfaction related to the fact that his employer refused to pay the overtime and to compensate in money the leave untaken and he notified the Labor Territorial Inspectorate Teleorman. As this public institution refused to inform the petitioner about the result of the controls undertaken at that company, the petitioner notified the People's Advocate Institution for the solution of his problems.

Faced with this situation, we notified the Labor Territorial Inspectorate Teleorman, requesting the clarification of the aspects notified by the petitioner. Following the action undertaken, through the address No. 12982 from November 9, 2009, the labor inspectorate informed the People's Advocate Institution that, through the documents presented by the company (evidences related to the calculation of salary rights and collective attendance charts for September 2008 – October 2009), there was no information that the petitioner worked overtime. In addition, we were informed about the fact that for the period worked in 2008 and 2009, the petitioner did not benefit from leave and from its compensation in money since the conclusion of his individual labor contract, subsequently the inspectorate established terms for the payment of his monetary rights.

At the same time, the Territorial Labor Inspectorate Teleorman submitted to the People's Advocate Institution a copy of the control minutes.

## **II. TAXES AND FEES**

In 2009, the People's Advocate Institution received **127** petitions related to the failure of the public authorities to observe the right settlement of the fiscal charges, provided of art. 56 paragraph (2) from the Romanian Constitution.

The petitioners notified the People's Advocate Institution about the flawed calculation method for taxes and fees collected by the central and public administration authorities, the unjustified refuse to register and issue some documents and the documents issued in a late period, the delay in issuing tax decisions and the compensation of some debits.

In order to clarify the problems raised by the petitioners, the field of property, labor, social protection, taxes and duties addressed to the departments for local taxes and fees, public financial administrations, local city halls, prefect institutions.

The object of the petitions was the dissatisfaction of the petitioners towards the legal regulations related to the calculation of pollution tax, the compulsory payment of the monthly fee for public radio service and public television service, the introduction of the standard tax – aspects which exceed the competences of the People's Advocate Institution. In these situations, for the solution of their problems, the petitioners were informed about the legal procedures to be followed.

Another significant problem notified by the petitioners was the lack of conformity existing between various normative documents with identical legal power, or the lack of some regulation for the enforcement of certain facilities granted by the law to certain social or professional groups. For this purpose, we mention the necessity to amend and supplement art. 284 paragraph (1), paragraph (3) and paragraph (7) from the Law No.

571/2003 on the Fiscal Code, further amendments and supplements included, in compliance with the fiscal facilities granted through special laws to war veterans, war widows and widows of war veterans who did not remarried, individuals persecuted from political reasons by the dictatorship established since March 6, 1945, individuals deported abroad or imprisoned. In connection with these aspects, **the People's Advocate notified, since last year, the presidents of the two Chamber of Parliament, through the address No. 2819/April 21, 2008, with no result**, and this year through the **Special Report on the observance of the rights of war veterans, war widows and un-remarried widows of war veterans.**

In addition, the petitioners notified our institution about the fact that the owners of forest lands are asked to pay a tax for the security of the forest, although according to the legal regulations in force, the costs corresponding to the administration of the forests are insured integrally from the state budget. Thus, art. 99 from the **Law No. 46/2008 regarding the Forest Code, further amendments and supplements included**, provides that the methodological regulations for assignment, usage and control of annual amounts provided in order to cover these costs are approved through Government decision, upon the proposal of the central public authority responsible for silviculture, within a term of 90 days upon the enforcement of the code (March 30, 2008). Through the **address No. 4530 from June 3, 2009**, the People's Advocate Institution addressed to the Prime Minister of Romania, notifying this legislative gap, but it received no answer up to the elaboration of this report. At the same time, the Ministry of Agriculture, Forests and Rural Development, through the address No. 252704/June 19, 2009, registered at the People's Advocate Institution under the No. 6054/June 23, 2009, informed us that the ministry elaborated the project for Government Decision on the approval of the Methodological Regulation for assignment, usage and control of annual amounts allotted for the durable administration of forest fund private property of natural and legal entities and forest fund private and public property from the territorial administrative units, project approved by the Ministry of

Agriculture, Forests and Rural Development and by the Ministry of Public Finances, and undergoing approval by the Ministry of Justice and Civic Freedoms, at the date of the address.

A problem notified by many petitioners is related to the lack of information regarding the compulsory payment of the contribution to health insurances for the revenues achieved from the assignment of goods, and for the taxable revenues achieved by the individuals who perform independent activities subject to tax on revenue. Thus the petitioners complained about the fact that, although they pay the tax for these revenues on term, they were not informed about the mandatory payment of the contribution to health insurances for these revenues. The payment notifications are submitted by the public authorities involved, often after three – four years from the date of maturity, the amounts due being supplemented by the penalties for delay, the final amount being extremely high. In some cases, the amount due under this title exceeds the revenues achieved, due to the fact that the law provides a minimum contribution.

#### **CASE FILES**

**File No. 8911/2009.** Dan (fictional name) notified the People's Advocate Institution about the fact that the Administration of Public Finances from Sector 2 Bucharest issued the Annual Taxation Decision for 2003, on May 28, 2005, notified on April 27, 2009. The decision mentions that the amount due has to be paid in a maximum period of 60 days upon the date of notification, and the penalties for delay will be calculated for the tax unpaid within this term. Despite all this information, on the date of the payment, he was calculated penalties for delay for five years, starting with the issuing date of that decision, and not with the date of the notification.

Following the undertaken actions, the public authority informed us that, according to the legal provisions in force, for the taxation decision notified on April 30, 2009, the petitioner has to pay penalties for delay beginning with June 29, 2009.

**File No. 3670/2009.** Constantin (fictional name) notified our institution about the City hall of Buzau Municipality – Economic Directorate, as he was not granted the exempt from the payment of local taxes and duties, to which he is entitled in his quality of fighter in the anticommunist resistance. We mention that the individuals who have the quality of fighter in the anticommunist resistance benefit from the rights provided in the Decree – Law No. 118/1990, republished, further amendments and supplements included, based on art. 7 paragraph (1) letter b) from the Emergency Government Ordinance No. 214/1999 on the assignment of the quality of fighter in the anticommunist resistance to the individuals sentenced for political crimes, individuals against which were delivered, from political reasons, abusive administrative measures, as well as individuals who participated to armed actions and forced elimination of the communist regime established in Romania, further amendments and supplements included, benefiting from the rights.

However, the City hall from the Municipality of Buzau issued the writ of execution No. 35648/August 27, 2007, cancelled through the civil sentence No. 5217/October 9, 2008 of the Civil Court City Buzau, final and irrevocable. Although the court established that the provisions of art. 6 from the Decree – Act. 118/1990, republished, further amendments and supplements included, are applicable, the City hall from the Municipality of Buzau – Economic Directorate issued the address No. 94/January 30, 2009 which established the debts of the petitioner.

Following the intervention of the People’s Advocate Institution, in a first stage the City hall from the Municipality of Buzau informed us that the petitioner was exempted from the payment of tax on buildings and their corresponding land and that he has to pay the tax for the land outside the built –up area, with the surface of 25000 square meters. Following a new request addressed to the City hall from the Municipality of Buzau to enforce art. 6 from the Decree – Law No. 118/1990, republished, further amendments and supplements included, according to which the petitioner benefits from exemption to the

payment of tax for the land outside the built – up area, the public institution established the exempt of the petitioner from the payment of all local taxes and duties.

## CHAPTER IX. THE ACTIVITIES OF THE TERRITORIAL OFFICES OF THE PEOPLE'S ADVOCATE INSTITUTION

In order to provide the access of citizens not living in Bucharest to the services offered by the People's Advocate Institution, from 2003, the territorial offices of the institution were established. Currently, there are 14 such offices in all the cities with courts of appeal, namely: Alba-Iulia, Bacau, Brasov, Constanta, Cluj-Napoca, Craiova, Galati, Iasi, Oradea, Pitessti, Ploiesti, Suceava, Targu-Mures and Timisoara and have a personnel of 32 people, among which 7 counselors and 26 experts.

Subsequently, the territorial offices play, at local level, the constitutional and legal role of the institution, namely defending the rights and freedoms of the citizens in their relation with the public authorities.

Their activity consists of: mediating conflicts between citizens and the public administrative authorities, directing and informing the citizens in order to solve the problems they are facing with, contribution to the identification and prevention of the local phenomena generating violations of the civic rights and freedoms and continuous improvement of public administration activity.

In 2009, the efficiency of the activity of territorial offices was materialized in the solution of a total number of **3031 petitions**, conduction of **9 inquiries**, granting of **13164 audiences**, recording of **3794 telephone calls** to the dispatch service, in the following manner:

**Alba Iulia:** 567 audiences, 191 petitions, out of which 66 files were elaborated, 144 telephone calls, 19 informative activities.

**Bacau:** 723 audiences, 171 petitions, out of which 68 files were elaborated, 166 telephone calls, 20 informative activities.

**Brasov:** 864 audiences, 158 petitions, out of which 65 files were elaborated, 229 telephone calls, 38 informative activities.

**Cluj – Napoca:** 868 audiences, 207 petitions, out of which 104 files were elaborated, 351 telephone calls, 12 informative activities.

**Constanta:** 740 audiences, 198 petitions, out of which 83 files were elaborated, 204 telephone calls, 41 informative activities.

**Craiova:** 1531 audiences, 346 petitions, out of which 181 files were elaborated, 817 telephone calls, 27 informative activities.

**Galati:** 510 audiences, 117 petitions, out of which 33 files were elaborated, 164 telephone calls, 18 informative activities.

**Iasi:** 852 audiences, 321 petitions, out of which 170 files were elaborated, 279 telephone calls, 57 informative activities.

**Oradea:** 725 audiences, 185 petitions, out of which 66 files were elaborated, 204 telephone calls, 11 informative activities.

**Pitesti:** 1332 audiences, 357 petitions, out of which 256 files were elaborated, 151 telephone calls, 22 informative activities.

**Ploiesti:** 880 audiences, 194 petitions, out of which 151 files were elaborated, 163 telephone calls, 8 informative activities.

**Suceava:** 1233 audiences, 111 petitions, out of which 44 files were elaborated, 151 telephone calls, 17 informative activities.

**Targu – Mures:** 1536 audiences, 244 petitions, out of which 147 files were elaborated, 426 telephone calls, 23 informative activities.

**Timisoara:** 803 audiences, 231 petitions, out of which 134 files were elaborated, 345 telephone calls, 15 informative activities.

In 2009, the territorial offices undertook **328 informative activities**, under the form of sustained media coverage of the competences of the People's Advocate Institution.

For a prompt solution of the problems notified by the citizens to the People's Advocate Institution, the territorial offices maintained a permanent cooperation with the authorities of the public administration. Thus we mention: the conclusion of a Cooperation Protocol between the Prefect Institution from the County of Tulcea and the Territorial Office Constanta of the People's Advocate Institution; the meeting with the deputy prefect from the County of Gorj for debates on common subjects related to the violation of rights and freedoms of the citizens in the County of Gorj by the local public administration, as well as the means necessary to limit and prevent the actions of incorrect administration; the meeting with the general director of the General Department for Social Assistance and Child Protection Dolj for debates on commune subjects related to the observance and protection of child's rights and the intensification of the cooperation between the Territorial Office Craiova of the People's Advocate Institution and the County Council Gorj - General Department for Social Assistance and Child Protection Dolj; meeting with the Prefect from the County of Dolj in view of signing a cooperation protocol between the Prefect Institution from the County of Dolj and the Territorial Office Craiova of the People's Advocate Institution; the meeting with the general director of the County Pension House Dolj in view of signing a cooperation protocol between the County Pension House Dolj and the Territorial Office Craiova; the meeting with the director of the Department for Labor and Social Integration Dolj, in view of a better cooperation and in view of signing a cooperation protocol with the Territorial Office Craiova; the session of the technical operational group within the Project START of the Romanian – Dutch Network for the implementation of politics on alcohol, organized by the City hall from the Municipality of Pitesti; the informal meeting of the representatives from the Territorial Office Pitesti with the prefect from the county of Arges; the meeting with the prefect from the county of Botosani, following the conclusion of the cooperation protocol with the Territorial Office Suceava; the informal meeting of the representatives from the Territorial Office Targu – Mures with the prefect

from the county of Harghita; the conclusion of a Cooperation Protocol between the Prefect Institution from the County of Caras – Severin and the Territorial Office Timisoara; the meeting with the deputy prefect from the county of Bihor, Cristian Bitea, in view of signing a cooperation protocol between the Prefect Institution Bihor and the Territorial Office Oradea.

In 2009, the People's Advocate continued the **improvement of the activity** undertaken by the territorial offices, through logistic actions of endowing the territorial offices and through the extension of their competences under the aspect of increasing the number of authorities of public administration that they can notify. One of the major objectives of the People's Advocate was to insure the quality of services provided to the citizens by the personnel within the territorial offices.

Thus, during June 25 – June 27 2009, we organized in Alba - Iulia the fourth training of the coordinators for the territorial offices of the People's Advocate Institution. The People's Advocate Institution was represented by: Professor Ioan Muraru, PhD., People's Advocate, Erzsebet Rucz and Alexandru Balanescu, assistants of the People's Advocate, Andreea Baicoianu, counselor, Ligia Craciunescu, Irina Peters and Florentina Dumitrescu, experts, and the 14 coordinators from the territorial offices of the People's Advocate Institution.

At this meeting, the following subjects were debated: *Conclusions resulted from certain basic controls and the control of the files from the territorial offices of the People's Advocate Institution; Procedure of addressing to the superior hierarchic institutions related to the petitions on property line; Aspects related to the solution of the petitions against legal decisions; Last legislative steps for the protection of children; Involvement of the People's Advocate Institution in the elimination of some discriminating legal provisions; Procedures and relationships with the authorities from the field; Financial measures imposed by the enforcement of Emergency Government*

*Ordinance No. 34/2009 related to the budget rectification for 2009 and the Ombudsman's Perspective for army.*

The presentation of the works was followed by some debates, where the representatives of the territorial offices were actively involved, mentioning the cases or problems they processed.

**Internally**, we have to mention the participation and the presentation of works within various **seminaries, conferences**, round tables and public debates: the Seminary "Implementation of the European Law within the National Legislations", organized by the University Wroclaw – Poland; the International Conference Law and the Challenges from the Second Millennium – University "1 Decembrie 1918" Alba – Iulia; the Seminary organized by the Scholar Center for Integrated Education Bacau occasioned by the International Autism Day; the Meeting of European Information Multipliers organized by the Prefect Institution Bacau; participation to the action organized by the Prefect Institution from the County of Bacau, occasioned by the Constitution Day; participation with the article "*Identification and Constitutional Explanation of Terminology related to the Executive within the Constitutions of some European States*" at the Center of Legal Research within the University "Petre Andrei" from Iasi; public debate with the subject "*Observance and Insurance of Fundamental Rights of the Child*", organized by the Association Catharsis from Brasov; Workshop with the subject "*Book and Copyright Day*", organized by the Association GIL CORONA from Brasov, occasioned by the International Day of Intellectual Property; the International Conference "*History, Culture, Citizenship in the European Union*", second edition, Pitesti, organized by the Faculty of Law and Administrative Sciences within the University of Pitesti; the International Conference "*Justice and Community Integration*" second edition, Brasov, organized by the Faculty of Law and Sociology within the University Transilvania from Brasov; the International Conference "*Challenges in Higher Education and Research in the 21<sup>st</sup> Century*", seventh edition, organized by the Technical University in Sofia and the

University *Transilvania* from Brasov in Sozopol, Bulgaria; the public debate with the subject “*Observance and Insurance of Fundamental Rights of the Child*”, organized by the Prefect Institution from Brasov and the Association Catharsis from Brasov; the National Conference with the subject “*Constitutional Perspectives in Romania*”, occasioned by the 150 anniversary from the establishment of Faculty of Law in Bucharest, by: the Doctoral School of the Faculty of Law, the Center for Constitutional Law and Political Institutions and the People’s Advocate Institution; the International Scientific Conference “*Organization Based on Knowledge*”, fifteenth edition, organized by the Academy of Land Forces “*Nicolae Balcescu*” Sibiu; the third German – Romanian Conference of Criminal Law, organized by the Foundation Konrad Adenauer and by the Romanian – German Association of Jurists and the Faculty of Law within the University Babes – Bolyai from Cluj; the seminary with the subject “*People’s Advocate and the Free Access to Public Interest Information*”, organized by the European Law Students’ Association – ELSA; the international seminary with the subject “*Legislation and Procedures related to the crimes within the Environmental Field*”, organized by the Environment Guard and the Romanian – Italian Phare Project Twinning Light Project; the national symposium with the subject “*Scientific Contributions in Technologies and Equipments for the Evaluation and Protection of the Environment*” – fifth edition; round table with the subject “*European Practices in the Romanian Public Administration*”, organized by the Association Pro Democratia; the meeting organized with the General Department for Social Assistance and Child Protection Cluj, occasioned by the Day of Professional Maternal Assistant; the meeting organized by the General Department for Social Assistance and Child Protection Cluj, occasioned by the International Day of Children Rights; the annual scientific session with the subject “*Importance of the Public Participation to the Procedure for the Evaluation of Impact upon the Environment*”, organized by the Romanian Academy, branch Cluj – Napoca, the History Institute “*George Baritiu*”, the Department of Social and Human Research; the International

Conference with the subject *“Social and Legal Protection of Human Right”*, organized by the University Ovidius from Constanta; the action organized by the Military Marine Unit 2003 Constanta, on the Romanian Army Day; the training with the subject *“Public Speech, Communication Means and Techniques at the level of Public Institutions”*, organized by the University Ovidius from Constanta; the action for the launching of the International Organization of Human Rights Constanta; the seminary with the subject *“Rights and Freedoms of Youth, Insured by the Romanian Constitution”*, organized by the University Ovidius from Constanta; the participation at the National Festival *“From the Ancient Tradition – Customs and Traditions for the Winter Holidays”*, action organized by the City hall from the commune of Cumpana, county Constanta; the seminary with the subject *“Surveillance of Children Exploited or at Risk of Exploitation through Labor, Means for Identification and Intervention in the Situations related to Children Traffic*, organized by the General Department for Social Assistance and Child Protection Dolj; the Round Table with the subject *“Children within the Community in Family Fostering, the Family Abandon, the Scholar Abandon”* organized by the General Department for Social Assistance and Child Protection Dolj; the Symposium with the subject *“Fundamental Rights and Freedoms. Constitutional Warranties”*, organized by the University of Craiova – Faculty of Law and Administrative Sciences, the Chamber of Deputies and the organization for the Protection of Human Rights; the conference with the subject *“Storage of Electronic Communications – Pros or Cons?”*, organized by the University of Craiova – Faculty of Law and Administrative Sciences and the European Law Students’ Association – ELSA Craiova; the Round Table with the subject *“Observance of the Rights of Individuals with Disabilities”*, organized by the County Council Dolj, and the General Department for Social Assistance and Child Protection Dolj; the seminars *“Insurance of Children Welfare and their Protection in a Health and Functional Family Environment”*; *“Equal Chances for Individuals with Disabilities”*; *“Information of Children on the Importance of Exercising the Right to Request and*

*Receive Information, to Express their Opinion, to File Complaints, to Associate and to Participate to the Life of the Community, to Maintain the Ethnic and Cultural Specific*"; *"Promotion of Child's Rights in Maternal Assistance"*; *"Promotion of Child's Rights – Right to Protection against Torture, Inhuman Treatments and Prevention of Freedom"*; *"Promotion of Child's Rights –Right to Health and Medical Services"*, organized by the County Council Dolj – the General Department for Social Assistance and Child Protection Dolj; participation to the Evaluation of the activity undertaken by the County Gendarme Inspectorate Iasi for 2009, action organized by the Romanian Gendarmerie; the Round Table with the subject *"European Practices in the Romanian Public Administration"*, organized by the Association Pro Democratia; the Conference *"Oradea and Debrecen in the European Union – development and cooperation strategies"*, organized by the City hall from the Municipality of Oradea and the County Council Oradea, in cooperation with the local administration in Debrecen; the annual scientific communication session within the Faculty of Law and Administrative Sciences Pitesti; the seminary *"A well Conducted Policy of Social Action, for Quality Services"*, organized by the County Council Arges; the event *"Child's Rights, a Priority"*, organized by the General Department for Social Assistance and Child Protection Arges, occasioned by the celebration of the Universal Day of Children Rights and 20 years from the adoption of the Convention for the children' rights by the General Meeting of UNO; the seminary *"Don't violation my Rights!"* within the scholar project on the rights of children *"What We Know about Our Rights?"*; the operational group for inter-institutional consultancy, organized by ANITP – Regional Center Suceava, in partnership with the Institute Ludwig Boltzmann for Human Rights in Austria, the German Foundation for International Legal Cooperation an the European Center for Public Law in Greece; the public debate *"Education of Parents for the Benefit of Children"*, organized by Salvati Copii Romania and Salvati Copii Branch Suceava, in partnership with the County School Inspectorate Suceava and the General Department for Social Assistance and Child Protection Suceava;

the action “*I Care...Do You?*”, organized by the County Police Inspectorate Suceava occasioned by the World Day of Missing Children; the jury of the contest “*My Anti-drug Message*”, sixth edition, organized by ANA – CPECA Suceava; the Round Table with the subject “*Debate. Acknowledgment. Involvement.*”, organized by the Ministry of Justice and Civic Freedoms, within the Project “*Continuous Development of Probation System in Romania*”; the debate with the subject “*General Aspects on the Prevention and Fight against Human Traffic*”, organized by ANITP – CR Suceava in partnership with the Association of Educators in Suceava; the debate with the subject “*Will you be there when I need you?*”, organized by Salvati Copii Branch Suceava, in partnership with the Sportive High school Suceva; the exhibition “*Have A Prison Art Break*”, as a result of the educational project and the partnership for social integration “*Different, but still Equal !*”, initiated and supported by ISJ Suceava, Penitentiary Botosani, Children Palace Suceava, Probation Service near the Court of Suceava and Iulius Mall; the public debate on the necessity to amend the Act No. 272/2004 on the protection and promotion of child’s rights, organized by Salvati Copii Branch Suceava, in partnership with DGASPC Suceava; the meeting organized by Salvati Copii Branch Suceava, in partnership with DGASPC Suceava with the subject “20 years from the Conclusion of UNO Convention on the Children Rights”; seminary with the subject “*Role and Attributions of the people’s Advocate Institution*”, organized by the Faculty of Law within the West University of Timisoara; the International Conference with the subject “*Fundamental Rights and Freedoms under the Global Economic Crisis*”, organized by the League for Protection of Human Rights – LADO Romania; participation to the action for laying of crowns and to the symposium organized by O.A.D.O. at the 61<sup>st</sup> anniversary from the signature of the Universal Declaration of Human Rights.

In addition, at the internal level we must mention the **visit of the delegation of People’s Advocate from the Republic of Albania at the Territorial Office Pitesti**. Ermir Dobjani, the People’s Advocate from the Republic of Albania, undertook an

official visit in Romania, upon the invitation of Professor Ioan Muraru, PhD., People's Advocate, during October 11 – October 14 2009.

In the second day of the visit, the Albanian delegation visited the Territorial Office Pitesti of the People's Advocate Institution. At the meeting from the Territorial Office Pitesti, beyond the representatives from the central and local offices of the institution, also participated representatives of the local authorities: Tudor Pendiuc, Mayor of the Municipality of Pitesti and Florin Tecau, vice – president of the County Council Arges.

At the meeting with the county and local authorities, Mr. Ermir Dobjani, the People's Advocate in Albania, presented the activity of his institution, as well as the situations notified to the People's Advocate in Albania: problems with discrimination related to the insurance of social assistance or support, problems related to the laws of reassignment of property, as well as the lack of transparency of the state institutions. In addition, Mr. Ermir Dobjani mentioned that the People's Advocate Institution from this country is faced with a high reluctance from the authorities; subsequently his attempts to establish territorial offices faced the refuse of the local administrations.

On November 12, 2009 the Territorial Office of the People's Advocate Institution received a O.S.C.E delegation which included Vadim Zhdanovich, Vahram Adadjian, Paavo Pitkanen and Cristoph Freiherr von Feilitzsch. During the meeting we presented the legal frame of the activity undertaken by the People's Advocate Institution, as well as the means for solving the petitions employed by the Territorial Office Brasov, by presenting examples from the cases processed this year.

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*At international level*, during October 2-October 5 2009, Ioan Ganfalean, coordinating counselor for the Territorial Office Alba Iulia of the People's Advocate Institution participated to the General Meeting of the European Ombudsman Institute (EOI) organized in Florence - Italy.

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In relationship with other actions undertaken, we have to mention that on July 31, October 15 and November 12, 2009, the representatives from the Territorial Office Constanta, the Territorial Office Alba – Iulia and the Territorial Office Bacau, participated to the actions in view of granting social benefits from the fund available for the People’s Advocate for a number of **145 children** from: the General School with I – VIII Grades from the commune of Cumpana, county of Constanta; General School with I – VIII Grades from the locality of Strungari, commune of Pianu de Sus, county of Alba and General School “Ionita Sandu Sturza” from the commune of Saucesti, county of Bacau.

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The territorial offices of the People’s Advocate Institution also initiated **cooperation agreements** with certain universities in view of establishing some training stages for students. Thus, we mention: the counseling of a number of 5 students from the Faculty of Law “Nicolae Titulescu” within the University of Craiova, by the Territorial Office Craiova; training stage at the Territorial Office Targu – Mures for 5 students from the University “Petru Maior” from Targu – Mures – Faculty of Economic, Legal and Administrative Sciences and from the Faculty of Legal and Administrative Studies – University “Spiru Haret”; training stage at the Territorial Office Timisoara for two students within the West University of Timisoara – Faculty of Law; the conclusion of a Cooperation Protocol between the Territorial Office Pitesti and the Faculty of Law and Administrative Sciences, on the organization of some training stages for students at the office.

At the same time, we mention the cooperation of the Territorial Office Constanta with the Faculty of European Administration, Public Institutions and Politics within the

University Ovidius from Constanta for the organization of some seminars on the People's Advocate Institution for students and master degree students and the cooperation agreement between the Territorial Office Suceava and the Sportive High school Suceava for the scholar project on the rights of children, “ *What Do We Know about Our Rights?*”, project developed in March – June 2009.

On November 11, 2009 the Territorial Office Targu – Mures organized a meeting with 11<sup>th</sup> grade pupils from the Department of Social Sciences within the College “Al. Papiu Ilarian” from Targu – Mures. At this meeting, we presented the organization and functioning of the People's Advocate Institution and of the Territorial Office Targu – Mures.

We can state that in 2009, the activity of the territorial offices was considerably improved, both qualitatively and quantitatively, as compared to the previous years (from **2464 audiences** granted in **2004** to **13164 audiences** granted in **2009**) – their local cooperation with the public institutions and authorities registering significant achievements.

From the statistics related to the activity from the territorial offices, we notice that they enjoy an increasing popularity within the citizens, which corresponds to the reason for the establishment of these offices, namely the facile access to the services provided by the People's Advocate Institution.

## **CHAPTER X. THE ACTIVITY OF THE PEOPLE'S ADVOCATE INSTITUTION IN THE FIELD OF CONSTITUTIONALITY CONTROL OF LAW AND ORDINANCES**

The activity of People's Advocate Institution in the field of constitutionality control of laws and ordinances, provided in Romania by the Constitutional Court materialized in 2009 through the formulation of **1905 points of view related to the exceptions of unconstitutionality** and through the direct submission to the Constitutional Court of **4 exceptions of unconstitutionality**.

### **I. Points of view related to the exceptions of unconstitutionality**

The provisions of art. 19 from Act No. 35/1997 on the organizing and functioning of the People's Advocate Institution, provide that, in the event of a notification regarding the exception of unconstitutionality of laws and ordinances related to rights and freedoms of the citizens, the Constitutional Court should also request the point of view of the People's Advocate Institution. In addition, the provisions of art. 30 paragraph (1) from Act No. 47/1992 on the organization and functioning of the Constitutional Court, republished, establish that the president of the Constitutional Court will notify the conclusion through which the Constitutional Court was notified, to the presidents of the two Chambers of Parliament, Government and People's Advocate, by indicating the date up to which they can submit their points of view.

Based on the legal provisions mentioned above, the People's Advocate formulated a number of **1905 points of view related to the exceptions of unconstitutionality**.

The cases in which the point of view of People's Advocate was requested focused mainly on the alleged contradicting feature of some legal provisions related to: principle of free access to justice, including the right to a fair trial (433), principle of equality of rights

(388), private property right (206), categories of laws (202), legislative delegation (104). (Enclosure No. 6). The lowest percentage (under 1%) in the period analyzed was recorded in the case of points of view regarding the alleged inconsistency between some legal provisions and constitutional regulations related to the foreign citizens and stateless individuals (art. 18 from the Constitution), the right to the protection of health (art. 34 from the Constitution), the right to a health environment (art. 35 from the Constitution), the protection of individuals with disabilities (art. 50).

The provisions of art. 298 paragraph (2) last line from the Labor Code; the provisions of art. I, II and III from the Emergency Government Ordinance No. 75/2008 on the establishment of measures for the solution of some financial aspects in the justice system; art I points 2 and 3 from the Emergency Government Ordinance No. 151/2008 for the amendment and supplement of Government Decision No. 15/2008 for the salary increases which will be granted in 2008 for the personnel within the educational field and art. 2 and art. 3 from the Emergency Government Ordinance No. 1/2009 on some measures of waging for the personnel within the budget field; art. 278 and the following from the Criminal Procedure Code; some provisions under the Act No. 19/2000 on the public pension system and other social insurance rights, further amendments and supplements included, from the Act No. 146/1997 on the legal stamp taxes, further amendments and supplements included, from the Act No. 10/2001 on the legal condition of some buildings abusively taken over during March 6, 1945 – December 22, 1989, republished, from the Act No. 554/2004 of the administrative service further amendments and supplements included, from the Government Ordinance No. 2/2001 on the judicial system of contraventions, from the Emergency Government Decision No. 195/2002 on the circulation on public roads, from the Act No. 85/2006 on the procedure of insolvency, were often the object of some exceptions of unconstitutionality for which the Constitutional Court requested the point of view of the People's Advocate Institution.

In the **case** of some exceptions of unconstitutionality, it was found out that the

conclusion through which the Constitutional Court was notified did not contain the opinion of the law court regarding the exception invoked. In some cases, the lack of expression of an opinion was motivated by the fact that “the court can express its opinion only if the exception must or must not be submitted to the Constitutional Court, but it cannot express its opinion on the basis of the exception, namely if the text invoked is or is not compatible with the dispositions of the Constitution. The establishment of the fact that a text from a law or ordinance is or is not compatible with the constitutional dispositions represents the exclusive competence of the Constitutional Court” (*in this purpose, the Conclusion from March 18, 2009, delivered by the Court of Alba – Civil Section, in the file No. 7787/107/2008*).

Under this aspect, we notice that, according to the imperative dispositions of art. 29, paragraph (4) of Act No. 47/1992 on the organizing and functioning of the Constitutional Court, republished, “The notification of the Constitutional Court is provided by the instance before which the exception of unconstitutionality has been initiated, through a conclusion that will include the points of view of the parties, the opinion of the instance on the exception, and will be accompanied by evidences submitted by the parties. If the exception has been initiated ex-officio, the conclusion must be justified, containing both the parties’ support and the required evidences.”

At the same time, in some **cases**, for the support of the unconstitutionality of some legal provisions, the author of the exception did not indicate the provisions from the Constitution allegedly breached through the notified text; or, art. 10 paragraph (2) from the Act No. 47/1992, republished, establishes that the notifications addressed to the Constitutional Court are submitted in written form and must be supported by arguments.

In other cases, the claims of the author of exception did not raise constitutionality issues, but only issues of interpretation and enforcement of the law whose solution exceeds the competences of the Constitutional Court.

At the same time, in the conclusion of the notification of Constitutional Court, the

law court retained in some cases that, by invoking the exception of unconstitutionality, its author followed only the delay of the trial resolution.

We present some **examples** from the practice of the People's Advocate Institution in the formulation of points of view requested by the Constitutional Court.

The Constitutional Court requested the point of view of the People's Advocate about the exception of unconstitutionality of the provisions of art. I and art. II from the Emergency Government Ordinance No. 75/2008 on the establishment of measures for the solution of some financial aspects in the justice system, which established procedural rules on the solution of requests based on the assignment of some salary rights formulated by the personnel within the justice system. In his point of view, the People's Advocate assessed that the legal procedures under criticisms were unconstitutional, because they did not comply with the constitutional provisions of art. 115 paragraphs (4) and (6) and art. 21 paragraph (3). The provisions of art. I and art. II from the Emergency Government Ordinance No. 75/2008, which amended the competence of solution for litigation based on the assignment of some salary rights to the personnel within the justice system, inflicted upon the regime of a fundamental state institution, the High Court of Cassation and Justice, whose constitutional status is provided of art. 126 paragraph (4) from the Constitution, according to which "The organization of the High Court of Cassation and Justice and its functional rules are established through organic law". The establishment within the competency of the supreme instance of the solution of appeals against the decisions delivered by first instance courts of appeal had as object the extension of its range of competency and the over-dimensioning of its activity, inflicting upon the prompt solution of the causes and on the quality of the act of justice.

Through the Decision No. 104/2009, published in the Official Gazette of Romania, Part I, No. 73 from February 6, 2009, the Constitutional Court established that the legal provisions indicated were **unconstitutional**.

In another **case**, the Constitutional Court requested the point of view of the People's

Advocate about the exception of unconstitutionality related to the provisions of art. 44 from the Act No. 303/2004 on the status of judges and prosecutors. The People's Advocate assessed that the legal provisions under criticism, according to which for the calculation of the professional experience that the judges and prosecutors must have in order to attend the contest to be promoted to the immediately superior courts or prosecutor's offices, the period when the judge or prosecutor worked as an attorney will also be taken into consideration, do not take into consideration the fact that the acquirement of the quality of magistrate was performed following the promotion of the contest for admission within the magistracy, by fulfilling the conditions under the law, among which the conditions related to the minimum professional experience necessary in legal positions, including the one in the position of legal counselor. In contradiction with the principle of equality in rights of the citizens, at the exam for the promotion of magistrates, the period when the judge or prosecutor worked as an attorney was also taken into consideration. By way of consequence, for the individuals in the same situation, judges and prosecutors who promoted the contest for the admission in the magistracy, by fulfilling the conditions under the law, a different legal treatment is applied in relationship with the promotion to the immediate superior courts or prosecutor's offices, the principle of equality in rights being infringed.

Through the Decision No. 785/2009 published in the Official Gazette of Romania, Part I, No. 404 from June 15, 2009, the Constitutional Court **admitted** the exception of unconstitutionality of the provisions of art. 44 from the Act No. 303/2004 on the status of judges and prosecutors.

The provisions of art. I points 2 and 3 from the Emergency Government Ordinance No. 151/2008 for the amendment and supplement of Government Decision No. 15/2008 for the salary increases which will be granted in 2008 for the personnel within the educational field were often the object of some exceptions of unconstitutionality for which the Constitutional Court requested the point of view of the People's Advocate. In

his point of view, the People's Advocate assessed that the legal texts under criticism are unconstitutional, by invoking the principle issued that were at the basis of the Decision of the Constitutional Court No. 1221/2008 on the exception of unconstitutionality under the provisions of the Emergency Government Ordinance No. 136/2008 on the establishment of some salary measures for the personnel within the educational field in 2008. Thus, the People's Advocate indicated that by the issue of the Emergency Government Ordinance No. 151/2008, the Government tries to stand in a position conflicting and opposed to the Parliament which, within the three powers, has a primordial position, establishing the legislative function and administrating the decisional process. The executive function undertaken by the Government is obviously subordinated to and controlled by the Parliament, its role being to enforce the laws, and not to obstruct their enforcement. Under these conditions, the ordinance under criticism was presented as an explicit refuse of the Government to enforce the law voted by the Parliament and promulgated by the President of Romania. It infringed the loyal constitutional conduct which resulted from the principle of separation and balance of powers.

In his point of view, the People's Advocate institution also claimed that the Emergency Government Ordinance No. 151/2008 infringed the constitutional provisions on the legislative delegation. This constitutional measure is used by the Government to issue regulations with the power of an act in the situations in which the Parliament cannot fulfill its legislative function and it does not imply the right of the executive to oppose to the legislative, to counteract it, thus generating a constitutional conflict. The People's Advocate assessed that paragraph (6) from art. 115 from the Constitution is opposed to the normative act under criticism, because the emergency government cannot inflict upon the right to salary as a fundamental right.

Through the Decision No. 842/2009, published in the Official Gazette of Romania, Part I, No. 464 from July 6, 2009, the Constitutional Court **admitted** the

exception of unconstitutionality of the provisions of art. I point 2 and 3 from the Emergency Government Ordinance No. 151/2008.

In another **case**, the Constitutional Court requested the point of view of the People's Advocate Institution, related to art. 57 paragraph (5) final thesis from the Act of Local Public Administration No. 215/2001 and art. 2 from the Emergency Government Ordinance No. 108/2005 on some measures in the salary field of the individuals occupying public functions, elected and appointed, from the local public administration. The People's Advocate considered that the texts of law under criticism are unconstitutional, because they allow the competent authorities to prevent some category of individuals of their rights to labor under special conditions, in the situation where they perform their activity under the same conditions with the persons with an individual labor contract and benefit from these premiums. The legal different treatment established by the legislator in the evaluation of some similar situation violates the principle of equality in rights and the principle of non – discrimination, without having an objective and rational motivation.

Through the Decision No. 487/2009, published in the Official Gazette of Romania, Part I, No. 371 from June 2, 2009, the Constitutional Court **rejected** the exception of unconstitutionality of the provisions of art. 57 paragraph (5) final thesis from the Act of Local Public Administration No. 215/2001 and art. 2 from the Emergency Government Ordinance No. 108/2005 on some measures in the salary field of the individuals occupying public functions, elected and appointed, from the local public administration. In the motivation of the decision, the Constitutional Court retained that “the premiums, prizes and other stimulants, granted to dignitaries and other employees through normative documents, represent additional salary rights and not fundamental rights, established and insured by the Constitution. The difference between the indemnities and basic wages for dignitaries and other employees within the budget field represents the free option of the legislator, by taking into consideration the

importance and complexity of various positions. At the same time, the legislator is entitled to establish some premiums for the indemnities and basic wages, periodic prizes and other stimulants, which he can vary according to the categories of personnel to which they are assigned, he can modify them within various time periods, and he can suspend or even cancel them”.

In his point of view related to the exception of unconstitutionality of the provisions of art. 99 paragraph (2) thesis I from Act No. 182/2000 on the protection of national mobile cultural patrimony, republished, the People’s Advocate indicated that the legal provisions subject to constitutionality control violation the provisions of art. 21 and art. 44 paragraph (2) from the Constitution. According to the legal texts under criticism, one cannot claim the mobile cultural goods taken over by the state authority before September 6, 1940. Through the interdiction to return the mobile cultural goods to their owners, regardless the means by which they were taken over by the state authorities, the legal provisions violation the right to private property, provided of art. 44 paragraph (2) from the Constitution according to which the private property is equally insured and protected, regardless the owner.

At the same time, the free access to justice is limited, in the conditions where the owner of the mobile cultural goods under the state patrimony does not have access to the procedural means for the enforcement of justice. The Constitutional Court regulated that the legislator can establish, by taking into consideration the special conditions, special procedure rules as the means employed to exercise the procedural rights, the principle of free access to justice implying the unlimited possibility to use these procedures, under the forms and means established by the law. Thus, the rule of art. 21 paragraph (2) from the Constitution according to which no rule can limit the access to justice, implies the fact that the legislator cannot exclude from the exercise of the rights he established, any social category or group (Decision of the Plenary Meeting of the Constitutional Court No. 1/1994). Subsequently, as the private property is equally protected, the equal protection

also means equal process protection.

In addition, before the amendment and supplement of the Act No. 182/2000 through the Act No. 314/2004 on the approval of the Emergency Government Ordinance No. 16/2003 for the amendment and supplement of Act No. 182/2000, in complete compliance with the constitutional provisions, the legislation allowed the free access to justice of the individuals entitled, for the defense of the property right on mobile cultural goods, thus, according to art. 80 from the Act No. 182/2000, “The mobile cultural goods, taken over by the state authorities, regardless the means, and claimed by the owners entitled, will be returned to their owners by those institutions, based on a final legal decision”.

The constitutional legal court is going to pronounce on the exception of unconstitutionality of art. 99 paragraph (2) thesis I from Act No. 182/2000 on the protection of national mobile cultural patrimony, republished.

## **II. Exceptions of unconstitutionality**

In the exercise of his constitutional and legal competences, the People’s Advocate submitted directly in front of the Constitutional Court **4 exceptions of unconstitutionality** with the following objects:

- **Emergency Government Ordinance No. 230/2008 for the amendment of certain normative documents in the field of pensions from the public system, state pensions and labor pensions, published in the Official Gazette of Romania, Part I, No. 4 from January 5, 2009;**
- **Art. 5, art. 6, art. 7 and art. 8 from the Emergency Government Ordinance No. 149/2007 on the approval of certain measures within the field of public finances published in the Official Gazette of Romania, Part I, No. 882 from December 21, 2007;**
- **Emergency Government Ordinance No. 94/2009 in view of insuring the**

**continuous activity of some structures within the Government's operative body, published in the Official Gazette of Romania, Part I, No. 602 from August 31, 2009;**

- **Art. I point 1 from the Emergency Government Ordinance No. 42/2009 for the amendment of the Civil Procedure Code, published in the Official Gazette of Romania, Part I, No. 324 from May 15, 2009;**

We briefly present the unconstitutionality aspects subject to criticism sustained by the People's Advocate in the 4 exceptions of unconstitutionality submitted directly to the Constitutional Court.

- For the support of the exception of unconstitutionality of the **Emergency Government Ordinance No. 230/2008 for the amendment of certain normative documents in the field of pensions from the public system, state pensions and labor pensions**, the People's Advocate supported three main reasons of unconstitutionality:

1. The normative document under criticism was opposed to art. 115 paragraph (6) from the Constitution, because it inflicted upon the fundamental rights, namely the right to labor and the right to pension, provided of art. 41 and art. 47 paragraph (47) first thesis from the Fundamental Act. In this purpose, according to the provisions established by the Constitutional Court in the Decision No. 1.189/2009, the legal sense of the verb "to inflict upon" includes several meanings, as "to suppress", "to infringe upon", "to prejudice", "to harm", "to damage" or "to determine negative consequences". Or, according to these connotations, the interdiction imposed to pensioners for age limit, as well as to the pensioners within the justice, defense, public order and national safety system to cumulate the pension with the revenues achieved from a position paid from the state budget, inflicted upon the right to labor and the right to pension in their substance. In addition, through their content, these are complex rights which also include the right to salary and the right to reasonable living standard, which insure a civilized and decent living standard of the citizens.

Based on the same criticism related to the violation of the right to labor, the People's Advocate considered that art. 20 from the Constitution was also infringed by report to the provisions of art. 6 point 1 from the International Pact on the economic, social and cultural rights, which recognizes and insures the right to labor.

Based on all these texts, the right to labor of an individual cannot be the object of any violation or limitation, each individual being free to work according to his physical and intellectual possibilities that he can assess by himself.

2. The Emergency Government Ordinance No. 230/2008 was opposed to art. 135 paragraph (2) letter f) from the Fundamental Act, which establishes that the state is responsible for the obligation to create the conditions necessary for the improvement of life quality.

At the same time, the provisions of art. 44 from the Constitution were also infringed, which were related to the right to private property, as well as the provisions of art. 1 paragraph 1 from the First Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, which establishes and protects the right to property. In this sense, the People's Advocate indicated, according to the legal precedents of the European Court of Human Rights pronounced in the cause Buchen against Czech Republic -2002, that the notion of "goods" includes any interest of private law of a individual which has an economic value, thus the right to salary and the right to pension can be assimilated to a property right. Subsequently, the interdiction to cumulate the pension with the salary was basically the equivalent of an expropriation, contrary to art. 44 paragraph (3) from the Constitution.

In addition, the People's Advocate Institution also considered that the normative act under criticism cannot eliminate a right owned, as long as the right to pension is a right insured by art. 47 paragraph (2) first thesis from the Fundamental Act.

3. Through the lack of observance of the mentioned fundamental rights, the provisions of art. 1 paragraph (5) from the Fundamental Act, which establishes the compulsory

observance of the Constitution and its supremacy, were also infringed. Under these conditions, the financial reasons on which the issue of the ordinance was based, could not justify the violation of the constitutional provisions mentioned.

Through the Decision No. 82/2009, published in the Official Gazette of Romania, Part I, No. 33 from January 16, 2009, the Constitutional Court **admitted** the exception of unconstitutionality submitted directly by the People's Advocate and acknowledged that the Emergency Government Ordinance No. 230/2008 is opposed to art. 115 paragraph (6) from the Constitution.

- For the support of the exception of unconstitutionality of the provisions of art. 5, art. 6, art. 7 and art. 8 from the **Emergency Government Ordinance No. 149/2007 on the approval of certain measures within the field of public finances**, the People's Advocate claimed that they were opposed to the constitutional provisions of art. 44 paragraph (1) on the right to private property and art. 135 paragraph (2) letter b) according to which the state must insure the defense of national interests in the economic, financial and foreign currency activity, as well art. 1 paragraph 1 from the First Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

According to art. 480 from the Civil Code, the right to property is both an absolute right exercised through its 3 prerogatives, *usus, fructus and abusus*, and an exclusive right from the point of view of the owner, who can exercise them freely, but with the observance of public order and of the imperative legal provisions. Or, if according to the Constitution, the right to private property is insured, then it is insured with all its three prerogatives. Subsequently, the legal texts under criticism, which establish the payment of salary rights through cards, infringed two of the prerogatives of the property right, namely the possession and usage. According to the legal precedents of the European Court of Human Rights, the notion of "goods" includes any interest of private *law* of a individual which has an economic value. Thus the salary can be assimilated to a good protected by Article 1 of the first Additional Protocol to the Convention.

The People's Advocate also claimed that, for the salaries paid through cards, the credit institutions which perform these payments do not pay interests, leading to an unjustified enrichment of these institutions. In addition, in the virtue of the property right which includes everything produced by the good, the owner can request to the third party who possesses the good to restitute the income produced by it.

Moreover, the People's Advocate noticed that art. 8 from the emergency ordinance under criticism allows the exception from the rule of salary payment through card, but such a measure is to be evaluated by the ministry of finances.

Through the Decision No. 859/2009, published in the Official Gazette of Romania, Part I, No. 520 from July 29, 2009, the Constitutional Court **admitted** the exception of unconstitutionality submitted directly and noticed that the provisions of art. 5-8 from the Emergency Government Ordinance No. 149/2007 on the approval of certain measures within the field of public finances are unconstitutional to the extent where it implies that the payment of salary rights through card is compulsory.

- By examining the provisions under the **Emergency Government Ordinance No. 94/2009 in view of insuring the continuous activity of some structures within the Government's operative body**, the People's Advocate noticed that they include regulations opposed to the constitutional provisions of art. 1 paragraph (4), art. 115 paragraphs (4), (6). For the support of the exception of unconstitutionality of the Emergency Government Ordinance No. 94/2009, the People's Advocate indicated that by delegating the competency to control **all** the central public institutions to the Control Body of the prime – minister, the provisions under criticism determine an interference of the executive power in the activity of the legislative, thus violating the provisions of art. 1 paragraph (4) from the Constitution, according to which “the state is organized according to the principle of separation and balance of powers – legislative, executive and legal – within the constitutional democracy”. The fact that an authority situated on an inferior step in the constitutional hierarchy would control an authority situated on a superior step of the

constitutional hierarchy is obviously outside the constitutional order.

In addition, the People's Advocate claimed that, in contradiction with art. 115 paragraph (4) from the Constitution, the adoption of the Emergency Government Ordinance No. 94/2009 was not justified from the perspective of an extraordinary situation whose regulation could not be postponed.

In the preamble of the emergency ordinance mentioned, the existence of a situation whose regulation could not be postponed and its emergency were justified by the Government through the fact that the structures within the operational body, which undertook a series of activities derived from the competences established through the Emergency Government Ordinance No. 3/2009, as well as the labor report with the personnel employed cannot insure the continuity of the activities in view of fulfilling the obligations assumed during their functioning. To accept such a motivation means to accept the perpetuation of the unconstitutionality condition, already sanctioned by the Constitutional Court, through the Decision No. 1039/2009, through which it established that the Act for the approval of the Emergency Government Ordinance No. 3/2009 on the amendment and supplement of some normative documents related to the organization and functioning of some structures within the Government's operational body, is unconstitutional and subsequently the ordinance related to this act ceased to produce legal effects.

In addition, the emergency ordinance did not reveal an extraordinary situation, because the Government's operational body, its organizational frame existed upon the issue of the ordinance, the structures it regulated were, in some cases, new only by their name.

The Emergency Government Ordinance No. 94/2009, through its regulation object, intervened in the organization and functioning of a fundamental state institution – the Court of Accounts, thus disregarding the provisions of art. 115 paragraph (6) from the Constitution, according to which “the emergency ordinances (...) cannot inflict upon the regime of state fundamental institutions” and of art. 140 on the Court of Accounts.

The Court of Accounts is under parliamentary control, thus the establishment of the control attributions on the activity of the Court of Accounts in the charge of the Control Body of prime – minister, as well as the transfer of some personal attributions of the Court of Accounts to other structures “inflicted” both upon the regime of the Court of Accounts, and upon the reports between the two fundamental state authorities, which has to be governed by the constitutional principle of separation and balance of powers.

Through the Decision No. 1555/2009, published in the Official Gazette of Romania, Part I, No. 916 from December 28, 2009, the Constitutional Court **admitted** the exception of unconstitutionality submitted directly and indicated that the provisions of the Emergency Government Ordinance No. 94/2009 are unconstitutional.

- For the support of the exception of unconstitutionality of the provisions of art. **I point 1 from the Emergency Government Ordinance No. 42/2009 for the amendment of the Civil Procedure Code**, the People’s Advocate indicated that the legislative solution according to which “For the request for approval, the president of the executor court pronounces though conclusion delivered in the chamber of council, without summoning the parties” is in obvious conflict with art. 21 paragraph (3) from the Fundamental Act, art. 6 from the Convention for the Protection of Human Rights and Fundamental Freedoms and art. 10 from the Universal Declaration of Human Rights, because it does not establish a term for the solution of the request for the approval of forced execution, thus it does not insure the complete observance of the right of the parties to a fair trial and to the solution of the cause within a reasonable term. In the absence of a term when the legal court must pronounce upon the request for the approval of forced execution, the legal regulations deviate from the constitutional provisions mentioned, and, contrary to the principle of reasonable term, they generate unjustified delays of the civil trial. Or, the execution of a sentence, delivered by any court, must be considered as an integrant part from the “process” in the sense of art. 6 (the European Court of Human Rights, cause SC Ruxandra Trading against Romania, 2007, Hornsby against Greece, 1997). Subsequently, it

results that the execution of a legal sentence must also observe the exigencies of the reasonable time.

In the current regulation, the dispositions of art. I, point 1 from the Emergency Government Ordinance No. 42/2009, beyond their unconstitutional character, they also involve negative consequences on the value of the interests held by the parties of the civil trial, for example: the long delays for the solution of the requests for the approval of forced execution (3-5 months); the postponing of the moment for the recovery of creditor's debts; the prejudice of creditors, up to the recovery of debts.

Under such conditions, the creditor's right to fulfill the obligation established through a writ of execution in the charge of the debtor becomes one theoretic and illusory, because it does not benefit from a concrete and effective jurisdictional protection.

Moreover, the establishment of the trial terms are beneficial for a better administration of justice, as well as for the necessity to apply and observe the rights and guarantees of the parties, while the lack of such terms create an insecurity conditions of the civil circuit, contrary to the right of the individual to a fair trial, judged within a reasonable term.

In addition, this solution is fund in the proposals of the Commission for the elaboration of the project for a new Civil Procedure Code, on art. 644<sup>1</sup> paragraph (2), according to which "The request for the approval of forced execution is solved by the court, in a term of up to 3 days from its registration to the civil court, through conclusion given in the chamber of council, without summoning the parties".

At the same time, the procedure of forced execution must be promptly characterized and it must equally protect the private and public property. Or, the legal text under criticism does not insure the same promptitude with the one existing in the procedure for the execution of fiscal debts, which, in the opinion of the People's Advocate, infringes the constitutional provisions of art. 135 paragraph (2) letter a), according to which the state must insure the freedom of trade, the creation of the favorable frame for the valorization of all production factors.

By way of consequence, only the establishment of some terms for the solution by the legal courts of the requests for the approval of forced executions insures the trial warranties which must characterize the right to a fair trial solved within a reasonable term, representing an efficient method to prevent the abusive extension of the procedure and to defense equally the rights of the creditors and the rights of the debtors.

Through the Decision No. 1644/2009 (still unpublished in the Official Gazette of Romania), the Constitutional Court **rejected** the exception of unconstitutionality of art. I point 1 from the Emergency Government Ordinance No. 42/2009 for the amendment of the Civil Procedure Code.

## CHAPTER XI. MATERIAL AND BUDGET RESOURCES USED IN 2009

For the development of the activity in 2009, the People's Advocate Institution was assigned, through the **Act No. 18/2009 on the state budget for 2009**, credits in the amount of **8,414.000 lei**, with the following structure:

- For the First Title. Expenses with the personnel: 6,753.000 lei
- For the Second Title. Goods and services: 1,398.000 lei
- For the Seven Title. Other transfers: 8,000 lei
- For the Twelve Title. Non – financial assets: 255,000 lei

Following the budget amendments throughout 2009, the People's Advocate Institution was withdrawn credits in the amount of **1,518.000 lei**, subsequently on September 14, 2009 the budget of the institution was reduced to **6,896.000 lei**. The situation of the budget credits assigned and used by the People's Advocate Institution in 2009 is presented in the following table:

Budget execution on December 31, 2009 is in the amount of 94.37%,

Title	Initial budget Act No. 18/2009	Budget amendment EGO 34/April 11, 2009	Budget amendment EGO 19/August 29, 2009	Budget approved on September 1, 2009	Budget used from December 12, 2009	Achieved %
<b>Total, out of which:</b>	<b>8,414.000</b>	<b>-843,00</b>	<b>-675,000</b>	<b>6,896.000</b>	<b>6,507.610.31</b>	<b>94.37</b>
<b>Expenses with the personnel</b>	<b>6,753.000</b>	<b>-557,000</b>	<b>-446,000</b>	<b>5,750.000</b>	<b>5,365.660.00</b>	<b>93.31</b>
<b>Goods and services</b>	<b>1,398.000</b>	<b>-260,000</b>	<b>0</b>	<b>1,138.000</b>	<b>1,136.000.00</b>	<b>99.82</b>
<b>Transfers</b>	<b>8,000</b>	<b>0</b>	<b>0</b>	<b>8,000</b>	<b>5,950.31</b>	<b>74.38</b>
<b>Capital</b>	<b>255,000</b>	<b>-26,000</b>	<b>-229,000</b>	<b>0</b>	<b>0</b>	<b>0</b>

and we assess it as very good, compared to the concrete, difficult conditions in 2009, when the Romanian Government Decided to reduce the volume of budget expenses to a

level which would allow the observance of the internal and international agreements, including the level of budget deficit.

The initial budget for 2009 was well dimensioned for all types of expenses. However, throughout 2009, normative documents were issued, which imposed economies, especially for the First *Title, expenses related to the personnel*. Subsequently, the *Commission for studies and proposals related to the enforcement of some eventual budget constraints measures provided through laws, ordinances or decisions of the Romanian Government* was established at the level of the institution. This commission analyzed the budget execution throughout 2009 and set measures focused upon:

- the suspension of quarterly premiums, merit salaries, the bonus for the scientific title of PhD for the individuals who also receive this bonus from another institution;
- the temporary suspension of the bonus for hazardous conditions;
- the compensation of extra hours with leaves paid;
- the vacancy of a position of referent following the accomplishment of the retirement conditions of the employee;
- the reduction of bonuses for the complexity of labor to 15%;
- the reduction of compensation for managerial positions to 15%.

In view of enforcing the provisions of art. 10 paragraph (1) from the *Act No. 329/November 5, 2009 on the reorganization of some public authorities and institutions, rationalization of public expenses, support of business environment and observance of frame agreements with the European Commission and the International Monetary Fund*, within the People's Advocate Institution we decided to provide 4 free unpaid days for all the employees of the institution. Following the enforcement of this action, the institution observed the percentage for the reduction of the expenses with the personnel of 15.5%.

Due to all these measures, at the end of 2009, the total of credits used under this title of expenses was in the amount of 381,000 lei.

Under the *Second Title. Goods and Services* and under the *Seven Title. Other Transfers*, the budget execution was very good and no amounts were used.

Under the *Twelve Title. Non – financial Assets*, the institution had an initial provision of 255 thousand lei, which was completely withdrawn in August 2009.

## CHAPTER XII. AUDIT AND RISK MANAGEMENT

The methodological and procedural frame necessary for the development of the activity of public internal audit within the People's Advocate Institution is subjected to the legislation in force, the public entity adopting and certifying the personal methodological regulation related to the public internal audit, the Charter of the Internal Audit and the Code on the Ethic Conduct of the Internal Auditor. Procedural guides adapted to the specific of the institution are also elaborated and updated.

At the level of the People's Advocate Institution, one auditor undertakes his activity, being subordinated directly to the People's Advocate, and his status is contractual personnel. In the activity of internal audit, the provisions under the Act No. 672/2002 on the internal audit are observed.

The internal auditor systematically monitors the risks of the People's Advocate Institution through the Registry of risks, where he identifies the major risks that can affect the efficiency and accuracy of operations, the observance of rules and regulations, the reliability of financial information, protection of goods, based on the prevention and identification of eventual frauds.

The activity of public internal audit takes into consideration the objective insurance and the counseling in order to improve the systems and activities of the institution, in compliance with its objectives, a special attention being placed on the improvement of systems for managerial control at the level of all organizational structures and fields of activity. Obviously, the evaluations of systems for financial and accountancy management and for the administration of the institution's patrimony represented the priority auditable area.

The missions of internal audit in 2009 were undertaken according to the **Annual Plan for Internal Audit**, approved by the management. For the localized situation, we

mention the fact that we also undertook counseling missions, which mainly aimed the provision of counseling for the employment and usage of budget credits for the chapter ‘Expenses with the personnel’ used in 2009 based on the proper financial administration, by taking into consideration the governmental policy for the restraint of the budget expenses and for a better approach of the budget deficit in the context of the economic crisis.

The audits established the fact that the **administration** and the **accountancy system** is reliable, insuring the chronologic and systematic registration, processing and storage of information in compliance with the legal provisions and it is able to issue concrete information to the credit coordinator related to the patrimony under administration. The institution elaborates quarterly and annual financial situations, according to the regulations established by the Ministry of Public Finances.

The preventive **financial control** from the People’s Advocate Institution was organized and exercised under the following forms: personal preventive financial control and preventive financial control delegated for the surveillance of financial operations, through a control officer delegated by the Ministry of Public Finances. The assignment of the visa for preventive financial control was performed according to the legislation in force, by observing the fulfillment of principles, procedural and methodological rules which are applicable to the categories of operations which include the operations under control (regular control); it observed the classification within the limits and the destination of budget credits (budget control). In 2009, no refuse of visa was registered from the individual assigned to exercise the personal preventive financial control.

The operations related to the **annual inventory** observed the legal frame and achieved the objective of registration and confirmation of the value of assets and liabilities from the institution’s patrimony. No extras, lacks and depreciation of goods were registered, and no damages determined by the expiration of terms for the prescription of debts or from other causes.

The activity of contracting **public acquisitions** was functional; the decisions adopted observed the national legislation and considered the principles generally accepted in the European Union in this field, namely the principles of free competition, efficient usage of public funds, transparency, equal treatment, confidentiality. The annual program of public acquisitions corresponded to the real, justified, budgeted and programmed necessities.

The activity of **human resource management** is organized in such a manner which insures the recruitment of competent personnel, the establishment of salary rights in compliance with the legislation in force, support for the professional evolution of the personnel, continuous professional training and the correct administration of professional files.

The institution pays a special attention to the functionality of the computer system, to the security and confidentiality of data bases, as well as to the achieving of documents.

The main audit **recommendations** underlined the necessity to develop the internal procedural frame, to improve the systems for managerial control and to continue the efforts to implement the management standards within the public entities, provided in the Order of the Ministry of Public Finances No. 946/2005 for the approval of the Code for Internal Control.

In order to improve the organizational and institutional capacity of the People's Advocate Institution, we established the Commission for the Development of Systems for Managerial Control, which included the Assistants of the People's Advocate, the General Secretary and the chief of the economic and administrative service. The commission elaborated a Development Program for the system of managerial control within the institution, which takes into consideration the implementation of the internal control standards at the level of the public entity.

We mention that throughout 2009, the People's Advocate Institution was subject to an **external audit** undertaken by the Romanian Court of Accounts, which concluded its mission by certifying the conformity of the execution account for 2008. It expressed an

opinion without reservations, subsequent to the fact that the financial situations were elaborated and presented according to the laws and regulations in force and it provides a real and accurate perspective under all the significant aspects.

### CHAPTER XIII. INVOLVEMENT OF THE PEOPLE'S ADVOCATE INSTITUTION IN THE INTERNAL AND INTERNATIONAL MANIFESTATIONS

The People's Advocate Institution has permanently extended its cooperation with similar institutions in the country and abroad, which triggered a significant increase of the institution's image, both internally and internationally.

**At the internal level**, within the visits received by the People's Advocate Institution of some delegations representing Romanian authorities and institutions, as well as delegations from other countries, we presented the reports between the People's Advocate Institution and other state institutions and the civil society, underlining the actions undertaken this year for a better information of the citizens in the problems under the competency of the People's Advocate Institution.

**At the external level**, in 2009 the People's Advocate Institution intensified its activity related to the improvement of bilateral relationships with similar institutions from Europe and other countries, in order to consolidate the cooperation at regional and international level between the Ombudsman institutions in various countries.

#### *Hosting, visits and other official events at the internal level:*

\* On June 16, 2009, we organized the meeting of the People's Advocate, Professor Ioan Muraru, PhD., with the **representatives from the Commission for Civil Society**. The meeting took place at the headquarters of the People's Advocate Institution and it was attended by: attorney Ioan Prodan, commissioner, Dumitru Nedelcu, general secretary and Adrian Samoila, vice – president. The People's Advocate Institution was

also represented by: Erzsebet Rucz and Mihail Gondos, assistants of the People's Advocate and Andreea Baicoianu, counselor.

Within the meeting, the representatives of the Commission for Civil Society awarded a **Diploma of Excellence to the People's Advocate**.

\* On May 22, 2009, upon the request of the Romanian Constitutional Court, **we received, at the headquarters of the People's Advocate Institution, the visit of the delegation of Constitutional Council from the Islamic Republic of Iran**, led by Ayatollahul AHMAD JANNATI, President of the Council of Security Guards. The delegation also included: Hojatoleslam val Moslemin Mohammad Reza Modarresi, member of the Clerical Group of the Council of Security Guards, Hojatoleslam val Moslemin Abbas Ka'bi, member of the Group of Jurists Council of Security Guards, Abbas Ali Kadkhodayi, Deputy of the Executive Directorate and Electoral Affairs, spokesman of the Council of Security Guards, Ahmad Fahima, Deputy of the Department for Parliamentary Affairs within the Ministry of Foreign Affairs, Jafar Ahmadzadeghan, Department for Parliamentary Affairs within the Ministry of Foreign Affairs and Mahmud Basir Nejad.

His Excellence Mr. Hamid Reza Arshadi, Ambassador and Mr. Ahmad Reza Fallah, counselor, participated from the Embassy of the Islamic Republic of Iran in Bucharest.

The Constitutional Court was represented by Mr. Augustin Zegrean, judge.

The People's Advocate Institution was represented by: Professor Ioan Muraru, PhD, the People's Advocate, Erzsebet Rucz and Mihail Gondos, assistants of the People's Advocate and Andreea Baicoianu, counselor.

The debates within the meeting were based on the aspects related to the organization and functioning of the People's Advocate Institution, its competences, the cooperation reports with the Constitutional Court in Romania.

The meeting was extremely important for the exchange of information and expertise between the two institutions, as well as for the development of cooperation reports

between the People's Advocate Institution and the Constitutional Council of the Islamic Republic of Iran.

\* On May 26, 2009, upon the request of the Ministry of Justice, **we organized at the headquarters of the People's Advocate Institution a meeting with Mr. Rainer Litten, PhD., German counselor, former judge in the Land of Inferior Saxony and former State Secretary in the ministry of justice from the two German lands.** The meeting was based on the legal aspects related to the notifications of the citizens about the functionality of the legal system, in order to shape a structured vision for the modernization and improvement of the Romanian legal system. Mr. Rainer Litten, PhD., was accompanied by Mihaela Mereuta, counselor for European affairs. The People's Advocate Institution was represented by: Professor Ioan Muraru, PhD, the People's Advocate, Simina Gagu, Magda Stefanescu, Eugen Dinu and Andreea Baicoianu, counselors.

\* On June 16, 2009, upon the request of the Ministry of Foreign Affairs, **we received, at the headquarters of the People's Advocate Institution, the visit of Special UNO Rapporteur for the rights of migrant workers, Mr. Jorge A. Bustamante.** The Special Rapporteur was accompanied by Mrs. Mireya Maritza Pena Guzman, officer for human rights within the High Commissioner for Human Rights of the United Nations.

The Ministry of Foreign Affairs was represented by Mrs. Livia Puscaragiu, second secretary – DDOCE.

The People's Advocate Institution was represented by Mrs. Erzsebet Rucz and Mr. Mihail Gondos, assistants of the People's Advocate and Andreea Baicoianu, counselor.

Within the meeting, the Special UNO Rapporteur presented his mission, his preoccupations related to the situation of women, children and vulnerable groups, as well as the problems related to the human traffic and violence against women.

The debates were focused upon aspects related to the organization and functioning of the People's Advocate Institution, its fields of activities, competences, the cooperation reports with the Constitutional Court in Romania, the preoccupations of the People's Advocate Institution for the situation of Romanian citizens who work on the territory of other states. The representatives of the People's Advocate Institution underlined the fact that unless they are accurately informed about the rights and obligations they will have on the territory of certain states, about the documents they have to own, the legislation in that country, etc., the workers represent the most vulnerable category of immigrants.

In addition, we highlighted the role and the importance of ombudsman in the internal and international institutional frame, in the promotion and protection of human rights and freedoms, as well as the activity undertaken by the Special UNO Rapporteur.

\* On September 10, 2009, the Palace of Parliament - the Hall Human Rights hosted **the public debate with the subject 'Does the Unitary Waging Act create Discrimination?'**, organized by the Commission for Equality of Chances between Woman and Men within the Chamber of Deputies. The People's Advocate Institution was represented by Erzsebet Rucz, Assistant of the People's Advocate.

\* On September 23, 2009, Ionel Oprea, Assistant of the People's Advocate, attended the **Round Table with the subject "European Practices in the Public Romanian Administration"**. The event was organized by the Association Pro Democratia.

\* On September 24, 2009, the Council Hall of the Faculty of Law in Bucharest hosted **the National Conference with the subject *Constitutional Perspectives in Romania***, occasioned by the 150<sup>th</sup> anniversary from the establishment of Faculty of Law in Bucharest, by: the Doctoral School of the Faculty of Law, the Center for Constitutional Law and Political Institutions and the People's Advocate Institution. The conference was attended by: Professor Ioan Muraru, PhD., the People's Advocate, as well as experts and counselors within the institution. The Faculty of Law within the University of Bucharest

was represented by Professor Flavius Baias, PhD., Dean of the Faculty of Law, Professor Simina Tanasecu, PhD., and PhD. Candidates in law.

\* During October 11 – October 14, 2009, **Mr. Ermir Dobjani, the People's Advocate from the Republic of Albania, accompanied by Mrs. Aida Dobjani and Mr. Artur Lezebeu, chief of cabinet**, undertook a visit in Romania, upon the invitation of the People's Advocate.

Mr. Ermir Dobjani had meetings at the People's Advocate Institution with Professor Ioan Muraru, PhD., he also visited the Constitutional Court and the Territorial Office Pitesti.

In the first day of the visit, Mr. Ermir Dobjani, the People's Advocate from the Republic of Albania was received by Professor Ioan Muraru, PhD., the People's Advocate. The debates were focused on the organization and functioning of the People's Advocate Institution, its attributions, the cooperation reports with the Romanian Constitutional Court, the legal authority, the Parliament and the Executive.

At the same time, there were debates with the coordinators of the forth fields of activity within the People's Advocate Institution. Thus, we presented the activity of each field of activity, highlighting the most important cases, their solution the difficulties from the authorities.

In the last day of the visit, the People's Advocate from Albania had a meeting at the Constitutional Court. The guest was welcomed by the president of the Constitutional Court, Professor Ioan Vida, PhD. At this meeting, they presented in detail the role and competences of the Constitutional Court, underlying the extremely successful cooperation between the Constitutional Court and the People's Advocate Institution.

The visit of Mr. Ermir Dobjani, the People's Advocate from Albania, was extremely important for the exchange of information and expertise between the two institutions, as well as for the development of cooperation reports between the People's Advocate Institution in Romania and the People's Advocate Institution in Albania. The

guest appreciated the professional means for presenting the People's Advocate Institution and the exercise of its attributions, the fact that there is a serious preoccupation for the defense of civic rights and freedoms.

\* On December 10, 2009, the House of United Nations hosted the **Debate with the subject "Tell the Truth"**, organized by the National Penitentiary Administration and the UNO Information Center for Romania, occasioned by the International Day of Human Rights. The People's Advocate Institution was represented by Magda Stefanescu, counselor.

\* On December 11, 2009, **Professor Ioan Muraru, PhD., the People's Advocate, had a meeting with Ioan Bala, chief commissioner – general director of the National Penitentiary Administration** and with Ionel Cel – Mare, chief commissioner – deputy general director. The meeting was also attended by Alexandru Balanescu, assistant of the People's Advocate and Claudia Sora, counselor. The debates within the meeting focused upon the territorial competences of legal courts, the regime of the individuals deprived of freedom, the provisions under the Act No. 275/2006 on the execution of sentences and measures delivered by the legal bodies during the criminal trial, the right to petition of the individual deprived of freedom.

***Participations to ceremonies:***

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The participation to the public ceremony and the manifestations occasioned by the National Flag Day, at the Piata Tricolorului from the Palace of National Military Circle in Bucharest, on June 26, 2009. The People's Advocate Institution was represented by Cristian Cristea, general secretary.

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The participation to the public ceremony and the manifestations occasioned by the National Anthem Day, at the Piata Tricolorului from the Palace of National Military Circle in Bucharest, on July 29, 2009. The People's Advocate Institution was represented by Ionel Oprea, assistant of the People's Advocate.

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The participation to the public ceremony of deposition of crowns and the manifestations occasioned by the Romanian Army Day, at the Thumb of Unknown Soldier from the Park Carol I, on October 25, 2009. The People's Advocate Institution was represented by Ionel Oprea, assistant of the People's Advocate and by Dorel Bahrin, counselor.

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The participation to the manifestations occasioned by the National Day of Romania and to the deposition of crowns from the Park Carol I, on December 1, 2009. The People's Advocate Institution was represented by Ionel Oprea, assistant of the People's Advocate and by Dorel Bahrin, counselor.

*Participations to meetings, conferences, symposiums and international reunions at the external level*

In 2009 the People's Advocate Institution intensified its activity to consolidate the cooperation reports with similar bodies and authorities, within bilateral, regional or international dialogues.

The international active presence of the representatives of People's Advocate Institution to the debates focused on the defense and promotion of human rights was also supported through the distribution of some reference documents, among which the Report of Activity of the People's Advocate for 2008, the Informative Bulletin of People's Advocate and the various specialization works drafted by counselors and experts.

We mention:

- The participation of Ioan Muraru, Ph.D. Professor, the People's Advocate, upon the invitation of the President of the European Court of Human Rights, to the 50<sup>th</sup> anniversary of the European Court of Human Rights and to the ceremony for the official opening of the legal year of the Court, **Strasbourg – France**, January 30, 2009.

- The participation to the International Conference with the subject: Freedom of Expression: Achievement of the Difficult Balance of Ombudsman", occasioned by the 10<sup>th</sup> anniversary from the establishment of the institution of Public Defender (Ombudsman) in the Republic of Georgia, **Tbilisi – Georgia**, February 11 – February 12, 2009. The People's Advocate Institution was represented by Elena Comsa, expert.

- The participation to the seventh Seminary of National Ombudsmen in the EU member States and in the Candidate States, **Paphos, Cyprus**, April 5 – April 7, 2009, organized by the Commissioner for Administration (Ombudsman) from Cyprus, Mrs. Eliana Nicolaou, in cooperation with the European Mediator, Nikiforos Diamandouros. The People's Advocate Institution was represented by Simina Gagu, counselor.

- The participation to the International Ombudsman Conference for Army Forces, **Berlin – Germany**, May 10 – May 12, 2009. The event also celebrated the 50<sup>th</sup> anniversary of operation for the institution of German Parliamentary Commissioner for Army Forces, reuniting for the first time at international level the ombudsman institutions

responsible for the surveillance of army forces in Austria, Belgium, Bosnia and Herzegovina, Canada, Estonia, Finland, Germany, Ireland, Kingdom of Netherlands, Norway, Poland, Romania, Slovenia, Slovakia, Sweden, the United Kingdom of Great Britain, the United States of America. The People's Advocate Institution was represented by Ioan Muraru, Ph. D. Professor, the People's Advocate, Erzsebet Rucz, assistant of the People's Advocate and Simina Gagu, counselor.

The program of the Conference included the presentation of the comparative study of Ombudsman Institutions with competences in the protection of soldiers, elaborated by the Center for Democratic Control of the Army Forces in Geneva, based on the form filled in by the attending institutions. This presentation was followed by forums on various themes, where all the attending institutions were involved. Thus, within the theme "Independence of Ombudsman Institutions for Army Forces", was highlighted the experience of Germany, Ireland, Austria, the participants to the forum expressing ideas related to the sufficiency of the competences assigned to the ombudsman institutions for the protection of soldiers, their credibility within the soldiers and the possible ways to improve their activity.

Within the theme related to "The Attributions of Ombudsman Institution to Investigate the Petitions and Military Deployments Abroad" was highlighted the experience of Germany, France, Norway and Romania, starting from the idea of the challenges that the ombudsmen are faced with for the solution of the petitions from areas under military operations abroad, the eventual limits related to the solution of these petitions, the actual capacity of ombudsman to process such petitions.

The participants expressed their intent to encourage a mutual perspective, related to the military personnel, both from the point of view of the obligation to obey the orders, and to observe the rights of the soldiers, as independent citizens, with their own rights.

In this purpose, the idea of elaborating a commune document was embraced, the Declaration of Ombudsman Institution for Army Forces. In essence, the Declaration

underlines that the exercise of the surveillance function of the army forces in the democratic states has an important role, through the creation of transparency and promotion of confidence in the army forces; that the principle of obedience to order must be guided by the observance of human rights internationally recognized; that they intend to encourage a commune perspective for the military personnel, not only from the point of view of the obligation to obey the orders, but also to observe the rights of the soldiers, as independent citizens, with their own rights; that they intend to continue to invite the states which want to establish the democratic control of their army forces to participate to a dialogue, and to grant consultancy and assistance; that they intend to continue the exchange of information and experience, periodically, in order to intensify further cooperation.

- The participation to the Conference of Ombudsmen Network for Children in the South and Eastern Europe (CRONSEE), with the subject “Access of Children to National, International and European Justice”, **Dubrovnik – Croatia**, May 19 – May 20, 2009, organized by the Ombudsman for Children in the Republic of Croatia and the Organization Save the Children Norway. The People’s Advocate Institution was represented by Raluca Teodorescu and Andreea Baicoianu, counselors.

The Conference was organized in two days, and in the first day the program included the following subjects:

- *Children and Custodial Trials*, where a presentation was performed on the impact of custodial trials on children;

- *Children and Conflict Divorces*, where an expert within the Ombudsman Institution for Children in France presented the important role played by the family mediation within the conflict divorces. Mr. Hugues Feltesse, expert, mentioned the recommendations that the Ombudsman for Children in France makes in the situation of conflict divorces, namely: the information on the family mediation should be provided to parents before the

start of procedures in front of courts, and the child has the rights to be heard about the divorce or the separation of parents.

- *The Access of Children to National, International and European Justice*, which presented examples from the legislation and practice of several states related to the custodial trials. The conclusion of the presentations was that in no attending state the ombudsman can intervene in the process for the assignment of the child, but in some countries, for examples countries within the space of the former Yugoslavia, he has the possibility to monitor and control the social assistance centers, which conduct the evaluation of parents in the custodial trials.

The second day of the conference marked the signature of the Cooperation Memorandum. Through the signature of the Memorandum the establishment of the Ombudsmen Network for Children in the South and Eastern Europe-CRONSEE was formalized. On the behalf of the People's Advocate Institution, the Cooperation Memorandum was signed by Raluca Teodorescu, counselor.

The Cooperation Memorandum was also signed by: the People's Advocate from the Republic of Albania, the Ombudsmen for Human Rights from the Federation Bosnia Herzegovina, Nada Grahovac, the Ombudsman for Children from the Republic of Srpska, the Ombudsman for Children from Cyprus, the Commissioner for Children Rights from Cyprus, the Deputy of the Ombudsman from Greece, the Ombudsman from Kosovo, the Deputy of the Ombudsman from Macedonia, the Protector of Civic Rights and Freedoms in Montenegro, the Deputy of the Ombudsman for Children from Serbia, the Ombudsman from Voivodina and the Ombudsman for Human Rights from the Republic of Slovenia.

The signature of the Cooperation Memorandum has as object the contribution to the defense and promotion of children rights at national and international level, by facilitating the exchange of experience and the distribution of information between the members, through cooperation and through the adoption and publishing of some commune statements on the rights of children.

g. The participation to the Council and General Meeting of European Ombudsman Institute (EOI), Florence – Italy, October 4 – October 5, 2009. The People's Advocate Institution in Romania was represented by Ioan Muraru, PhD Professor, People's Advocate, Simina Gagu and Ioan Ganfalean, counselors.

The EOI Council from October 4, 2009, presided over by Ulrich Galle, President of EOI, had the following agenda: 1) Approval of the minutes for the meeting in Berlin on November 2, 2008; 2) Report of EOI's President; 3) Report of the Executive Council of EOI; 4) Report of treasurer and presentation of the current financial situation of EOI; 5) Final preparations for the General Meeting of EOI; 6) Amendments in the structure of Council and Executive Council; 7) Admission of new members; 8) Miscellaneous.

Upon the opening of the General Meeting of EOI on October 5, 2009, the President of the Toscana Region, Riccardo Nencini, PhD., the Ombudsman for Toscana, Giorgio Morales, PhD, and the European Ombudsman, Nikiforos Diamandouros, presented addresses.

The following individuals were elected based on the vote of 58 members:

- The President of EOI – Ulrich Galle, Regional Ombudsman for Rhineland – Palatine, Germany.
- The Vice – Presidents of EOI: Notburga Volgger, Ombudswoman for Southern Triol, Austria and Guido Schuermans, Federal Ombudsman of Belgium.
- The Council of EOI, including 18 members. The People's Advocate, Professor Ioan Muraru, PhD., was also elected in the Council of EOI.

The new Council elected the members of the Executive Council, including the President, the two vice – presidents, the treasurer, the secretary, the general secretary, and other members.

The General Meeting also approached the theme of Public Petition. The concept of electronic public petition was initiated in Scotland and is currently operational in Germany. The experience of the Commission for petition of Bundestag was highlighted,

which insured on its official website a space for the presentation of public petitions. The importance of public petitions in the notification of various problems that occur at the level of the society was also underlined. They appreciated that the public petition is also an instrument through which the politicians are notified about the problems within the society they manage, but also a way to involve in the political life and in the solution of problems. The answer to any public petition is public.

h. The participation to the International Colloquium with the subject “Administration and Freedoms under European Influences: Ombudsman’s Role”, **Strasbourg – France**, November 3, 2009, organized by the University of Strasbourg and by Jean – Paul Delevoye, Mediators of the French Republic. The People’s Advocate Institution was represented by Mihaela Enache, counselor. The following subjects were approached within the colloquium:

- the adaptation of the administrative mechanisms of the European Union;
- the rules which regulate the administrative conduct in the legal precedents of the European Court of Human Rights;
- the influence of community law on the freedoms of citizens;
- the foreseen impact of the legal precedents of the European Court of Human Rights on the national legislations.

During the debates they mentioned that the national institutions of ombudsman have a primordial importance for the Protection of Human Rights. In addition, they focused on the implementation by the Member States of the Recommendation (2004) 5 of the Committee of Ministers on the control of compatibility of government bills, of the laws in force and of the administrative practices with the standards imposed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

At the same time, they mentioned that the most efficient and direct defense of rights and freedoms provided under the Constitution must be insured at the national level. This obligation concerns all the state bodies: especially the courts, the administration or the

legislative. The prior condition for the Convention to insure effectively the human rights is that the Member States enforce the Convention in their legal order. This implies the fact that they must insure the compliance of the laws and practice with the Convention.

As related to the influence of community law on the freedoms of the citizens, they mentioned that, resulting from the personal nature of the Community, the supremacy of the constitutional law on the national is a condition sine qua non of the integration. Subsequently, the community regulation prevail over all the national regulations, even ulterior and – aspect extremely important – regardless the nature or the rank of that national texts (constitution, act, decree, decision), or the community text (treaty, regulation, direction, decision).

The conclusions of the colloquium were the following:

- the national legislation of each Member State must comply with the exigencies established by the legislation of the European Union and they must take into account the legal precedent of the European Court of Human Rights under the aspect of the reasoning and the decisions taken;

- in order to avoid the high number of trials in front of the European Court of Human Rights, both from financial reasons, and from political reasons, the Member States of the European Union must have a dynamic approach related to the impact of the decisions delivered by the community jurisdictions and by the European Court of Human Rights.

- The participation to the thematic Meeting of the Ombudsmen Network for Children in South and Eastern Europe -CRONSEE, **Zagreb – Croatia**, December 1, 2009. The People's Advocate Institution was represented by Raluca Teodorescu, counselor. The object of the meeting was "Child's Right to be Heard", established by art. 12 from the UNO Convention on the rights of children. At this meeting was also elected the new coordination of the Ombudsmen Network for Children in South and Eastern

Europe –CRONSEE, who was the Ombudsman for Children from the Republic of Srpska, Mrs. Nada Grahovac.

- The participation to the Forth Training Session of the Center for Training and Experience Exchange in the field of Mediation from Rabat, **Rabat – Morocco**, December 2 – December 4, 2009, organized by the Association of Francophone Ombudsmen and Mediators (AOMF) and the institution Diwan Al Madhalim (Moroccan Ombudsman), with the support of the International Organization of the Francophonie. The People’s Advocate Institution was represented by Daniela Marinescu, expert.

The training session reunited representatives of ombudsman institutions from 11 countries, namely: Senegal, Niger, Burkina Faso, Mali, Benin, Ivory Coast, Central African Republic, Morocco, Romania, Moldavia and Lebanon.

The training included the following **modules**: *Intervention means of the mediation institutions and their role for the consolidation of civic administration*, which included a presentation of the Mediator from the French Republic – characterization, area of competency, human and budget resources, intervention means of the Mediator from the Republic; *Intervention means during the solution of petitions*, which included a presentation based on the following subjects: means of access to the information, the investigations, injunctions (means provided in some legislations for the complaints which have as object the refuse of an administrative authority to enforce a final legal decision) and the requests for sanctions; *Amiable solution*, which included a presentation of the mediation notion, the requests and the procedure for amiable solution; *Conditions and instruments for research and investigation*, which included a presentation of the method of investigation used by the Protector of Citizens in Quebec, Canada. The following aspects were approached: the bases of the method, the main features of the investigational process proposed, the stages of the investigation, the formulation of recommendations and the surveillance of their incorporation; *Annual report*, which included a presentation of the necessity of annual reports, their content and valorization; *Special reports*, which

included a presentation of an investigation plan related to the governmental management of the listeriosis crisis, the special report in this purpose and the press releases of the Protector of Citizens; *Recommendations (practical cases)*.

The eighth module represented an *exchange of experience* on the subjects analyzed. The representative of the People's Advocate in Romania sustained an intervention within this module, through which she presented the organization and attributions of the People's Advocate Institution, its competences and the operational means for the solution of the petitions.

The training session ended with a ceremony for the distribution of attendance certificates, to which Mr. Moulay Mhamed IRAKI, Wali Al Madhalim of the Kingdom of Morocco was also present, accompanied by other representatives of the institution.

- The participation to the Round Table on the conditions of detention in the European Union, **Brussels –Belgium**, December 8, 2009, organized by the European Commission – General Department for Justice, Freedom, Security. The People's Advocate Institution was represented by Alexandru Balanescu, assistant of the People's Advocate and by Eugen Dinu, counselor. The meeting reunited 64 participants from the 27 countries of the European Union, as well as representatives from the European Council.

At the meeting, the representatives of some institutions with competences for control within prisons and detention centers presented materials. After the presentation of materials to the plenary meeting, they presented the operational mechanisms of the European Committee for the Prevention of Torture and the operational mechanisms of the Subcommittee of the United Nations for the Prevention of Torture. The presentation revealed that even since 1992 Europe registered the prison overpopulation phenomenon, which is in contradiction with art. 3 from the Convention.

In addition, the participants presented the experience from their own states, as well as the official position of state towards the ratification of the Optional Protocol to the

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (passed on December 18, 2002 within the fifty seventh session of the General Meeting of United Nations through the Resolution A/RES/54/199).

- The participation to the International Conference with the subject “Human Rights, Adequate Ombudsman Administration and Functioning “, **Tirana – Albania**, December 10, 2009, occasioned by the 10<sup>th</sup> anniversary from the establishment of the People’s Advocate Institution in Albania and the 61<sup>st</sup> anniversary from the signature of the Universal Declaration of Human Rights. The People’s Advocate Institution was represented by Doriana David, expert.

The Conference reunited personalities from Albania and participants from the United States of America, Kingdom of Denmark, Sweden, Bulgaria, Spain, Ukraine, Holland, Greece, Kosovo, Montenegro, as well as representatives of some non – governmental organizations in Albania.

The first part of the Conference was dedicated to the ceremony of 10<sup>th</sup> anniversary of activity undertook by the People’s Advocate Institution in Albania. The second part of the Conference was dedicated to the subject “Human Rights, Adequate Ombudsman Administration and Functioning “, chaired by Professor Xhezair Tamo – member of the Constitutional Court. The last part of the Conference was based on the subject “Experiences and Good Practices of Other Ombudsman Institutions” and was chaired by Professor Hans Gammeltof Hansen, Ombudsman in the Kingdom of Denmark.

- The participation to the International Conference “Ombudsman and the Cultural Dialogue in a Shifting Society” organized by the European Ombudsman Institute (EOI) and the National Center for Human Rights from Egypt, **Cairo – Egypt**, December 17 – December 18, 2009. The People’s Advocate Institution was represented by Mihaela Enache, counselor.

The Conference was attended by the representatives from several states: Zambia, Lebanon, Bahrain, Qatar, Malta, India, Belgium, Turkey, Palestine, Jordan, Hungary, Sudan, France, Spain, Morocco, Pakistan, Spain, Egypt, etc.

The objectives of the Conference were the following: the exchange of experience of Ombudsman institutions in Europe, Middle East, Africa and Asia; - defense of natural entities, especially in front of the public administration, defense of rights for the individuals who consider themselves victims of an injustice from the public administration; - the distribution of the culture of human rights and of democratic concepts and principles; - the creation of a regional network (Middle East and Africa) and an international cooperation in order to maintain an update of the most recent international evolutions for development and policies.

In 2009, the People's Advocate Institution continued the cooperation with the **European Ombudsman**. Likewise, taking into account the adhesion of Romanian to the European Union and the acquisition of the quality of member state, the European Ombudsman elaborated the Report of Activity for 2008 also in Romanian, along with a series of posters and postal cards.

We also mention the **12 letters** through which certain petitioners who addressed to the European Ombudsman for the solution of some requests were advised to address to the People's Advocate Institution in Romania for a competent solution of their problems.

### ***The practice of students***

In the context of cooperation reports with other institutions, we must mention the cooperation with the Faculty of Law within the University of Bucharest – Program ELSA, where **17 students** performed training stages at the People's Advocate Institution (in the following periods: March 23 – April 3, 2009; July 27 – August 7, 2009; September 14 – September 25, 2009; November 16 – November 28, 2009).

Upon the conclusion of each training stage, the students filled in the evaluation charts of this program, which included questions and suggestions related to the development of the training stage. The students assessed as positive the activities included in the training state, some of them being interested in a future career within the People's Advocate Institution.

During April 27- May 8, 2009, a number of **17 legal auditors** from the National Institute of Magistracy undertook a training state at the People's Advocate Institution.

On May 5, 2009, Professor Ioan Muraru, PhD., the People's Advocate organized a meeting with a group of **30 law students** within the University Babes – Bolyai from Cluj – Napoca. The meeting was also attended by Erzsebet Rucz, assistant of the People's Advocate, and Andreea Baicoianu, counselor. The debates were focused on the aspects related to the organization and functioning of the People's Advocate Institution, the attributions, cooperation reports with the legal authority, the Romanian Constitutional Court, the Parliament and the Executive.

## CHAPTER XIV. LAW SUITS, JUDICIAL ISSUES OF THE INSTITUTION

### *Causes where the People's Advocate Institution was a party during the judicial year 2009*

In 2009, the People's Advocate Institution had the quality of a party in a number of **32 trials**. Among these, 4 were labor litigations (actions promoted by former and current employees), and 28 causes represented actions formulated at administrative legal courts by a series of petitioners who were not satisfied about the responses sent by the institution.

The act through which the People's Advocate notifies the individual about the means for the solution of his request is the address. Subsequently, an address through which a public authority expresses a point of view related to the interpretation of a normative document does not produce legal effects by itself, thus it does not represent an administrative document.

In the causes that were based on the disagreement of petitioners about the actions undertaken by the institution, the point of view of the People's Advocate Institution was that being an ombudsman institution, the People's Advocate contributes to the solution of conflicts between the natural entities and the authorities of the public administration, amiably, through mediation and dialogue.

In addition, in a large number of files, the institution was summoned to trial without being the issuer of the documents under contestation or without being connected to the alleged violated right. In these causes, for the exercise of the right to defense, we invoked the absence of passive trial quality.

The individuals who promote requests to summon to trial the People's Advocate Institution do not take into consideration the fact that the People's Advocate Institution acts as a surveillance authority, and has no legal means to coerce, bind or sanction another public authority, aspect clearly highlighted by the provisions of art. 13 letter c) from the Act No. 35/1997, republished, further amendments and supplements included, according

to which (the People's Advocate) aims the legal solution of the requests received and asks the authorities or the clerks of that public administration to reassign the rights of the petitioners and to repair the damages, as well as by the provisions of art. 21 paragraphs (1) and (2) which establish that "in the exercise of his competences, the People's Advocate issues recommendations that cannot be subject to parliamentary or legal control. Through the recommendations issued, the People's Advocate notifies the authorities of the public administration about the illegality of administrative documents or actions".

From the total of **32** causes, for **18** were pronounced legal decisions and the rest of **14** files are on the role of the legal courts.

## CHAPTER XV. MEDIA COVERAGE, BULLETIN, RADIO, ROMANIAN ACTUALITY

### 1. RELATIONSHIPS WITH MASS – MEDIA

#### 1.1 Public Television and Radio

##### a. The headquarters of the People’s Advocate Institution

The *TV stations Antena 3* and *Antena 1*, broadcasted the interview of Professor Ioan Muraru, PhD., the People’s Advocate, about the exception of unconstitutionality related to the Emergency Government Decision No. 230/2008 for the amendment of certain normative documents in the field of pensions from the public system, state pensions and labor pensions.

Ioan Muraru, PhD Professor, the People’s Advocate, was interviewed by the *TV Station TVRI* for the show “Signs” on the issue of “Bible and Justice” and “Trial of Jesus”.

Ioan Muraru, PhD Professor, the People’s Advocate, granted an interview to the *TV Station OTV* on the subject - The recommendations issued by the People’s Advocate Institution and their observance in Romania.

Ioan Muraru, PhD Professor, the People’s Advocate, had a telephonic intervention within the program “Lawyer of the House” from the station *Radio Romania Actualitati*.

Ioan Muraru, PhD Professor, the People’s Advocate, granted an interview to the *TV Station PRO TV* following the issue by the People’s Advocate Institution of a press release related to the measures foreseen by the government decisional factors in view of eliminating the effects of the economic and financial crisis.

In addition, the representatives of the People’s Advocate Institution granted interviews, where they represented the attributions, the role of the institution and its reports

with the authorities of the public administration, the new Civil Code, for the radio station *Vocea sperantei*, *TV Speranta*, *Radio Romania Actualitati*. They also granted an interview to the radio station *Europa FM*, about the role of the People's Advocate institution, as well as the position of the institution towards the introduction of the standard tax. *The television station VER 2* presented the interview with the report of activity for 2008 of the People's Advocate Institution.

#### **b. Territorial offices of the People's Advocate Institution**

*The Territorial Office Bacau* granted an interview to station *Radio Radical FM Bacau*, with the subject – Right to Private Property in the Context of the Land Fund Laws. The *Television station CNS Roman* broadcasted the interview “About the Competency of the People's Advocate Institution”. Another interview was granted to the station *TV Bacau* with the subject – “Competency of the People's Advocate Institution”. The station *Realitatea TV* broadcasted the program “About the Role and Competency of the People's Advocate Institution” and the news “Santa Clause Came Earlier for the Children in Saucesti” – related to the action for granting social benefits to the School from the commune of Saucest, county of Bacau.

*The local television station RTT Brasov* broadcasted the program about the attributions and the activity of the *Territorial Office Brasov*. *The station NOVA TV* broadcasted the interview with the subject constitutional principle of equality in rights and possible cases of violation by the authorities of the public administration; programs which presented the People's Advocate Institution and the Territorial Office Brasov; *the local TV Station Radio Nova Brasov* broadcasted programs which presented the activity of the People's Advocate Institution, its attributions and cases processed throughout this year.

*Territorial Office Constanta*. *The stations TV Neptun and Favorit* presented the action for granting social benefits organized by the People's Advocate to the School with I-VIII

Grades from the commune of Cumpana, county of Constanta. *Radio Constanta* presented the interview “The People’s Advocate Helps the Children from Cumpana” and an interview on the activity of the Territorial Office Constanta in 2009. *The station Radio Sky* presented cases solved by the Territorial Office Constanta.

The local station *Radio Oltenia Craiova* presented the activity of the People’s Advocate Institution and the activities of the ***Territorial Office Craiova***.

*The station RTV Galati – Braila* broadcasted the program “Presentation of Unconstitutionality Reasons of the Emergency Government Ordinance No. 230/2008”, with the participation of the representatives from the ***Territorial Office Galati***. The program also presented the activity of the territorial office.

***The Territorial Office Iasi*** participated to the programs of *TV station TV Life* on the following subjects: “Attic Rooms and the Right to Property”; “Status of Romany Population and Romany Rights”; “Crimes and Offenders”; “Protection of Homeless”. The representatives of the territorial office attended the program “Good Morning” from the *Station TVR Iasi*.

The activity of the ***Territorial Office Pitesti*** was presented by the *local TV station VTV Curtea de Arges*. *TV stations Antena 1 Pitesti and Alpha TV* presented in the news bulletins the meeting of the territorial office with the prefect of the county in order to improve the institutional cooperation to the benefit of the citizens.

The stations *Prahova TV, Alpha TV, Prahova TV*, presented the attributions of the ***Territorial Office Pitesti***, its competences and the cooperation with the institutions of the public administration.

***The Territorial Office Targu – Mures*** attended the live program with listeners “Your Opinion Matters” from the station *Radio Targu – Mures*. They presented the activity of the Territorial Office at *Radio Targu – Mures* and *TV Regional*. The program *Televiziunea Maghiara* broadcasted the interview “The Rights of Minorities”, with the participation of

the representatives from the Territorial Office Targu – Mures. Participation live with the listeners “Your Opinion Matters” from the station *Radio Targu – Mures*.

The stations *TV Timisoara 89 and Analog TV* broadcasted reports about the cooperation of the **Territorial Office Timisoara** with the Office for Consumer Protection Timis. The stations *TV Timisoara 89 and Radio Resita* presented the activity of the Territorial Office Timisoara. Participation to *Radio Timisoara*, on the subject Report of Activity 2009 – direct phone calls from the listeners.

## 1.2 Written Press

### c. The headquarters of the People’s Advocate Institution

Ioan Muraru, PhD Professor, the People’s Advocate, granted an interview published in *Flacara lui Adrian Paunescu*, about the exception of unconstitutionality related to the Emergency Government Ordinance No. 230/2008.

Professor Ioan Muraru, PhD., the People’s Advocate, granted an interview published in *Ziarul Unirea*, “The People’s Advocate Institution, A Friend of the Citizens Facing Problems”.

The daily newspapers *Gandul, Jurnalul National, Cotidianul* published a series of articles related to the elimination by the People’s Advocate of the exception of unconstitutionality related to the Emergency Government Ordinance No. 230/2008.

The daily newspaper *Ziua* published the article “Law of Interceptions at the People’s Advocate”.

As related to the written press, we must mention "*Actualitatea Romaneasca Ziarul Romanilor de Pretutindeni*" which published responses given by the experts and counselors from the People’s Advocate Institution, to the questions asked by the Romanians abroad. At the same time, the newspaper "*Actualitatea Romaneasca*" also published articles of general interest for the citizens: “Lack of Observance of the Right to private Property in the Context

of Enforcing the Property Laws”; “Right to a Decent Living Standard for the Individuals with Disabilities”; “Interventions of the People’s Advocate Institution for the Correct Enforcement by Public Authorities of the Laws with Compensatory Title on the Reconstitution of the Right to Private property on the Buildings Abusively Taken over during the Communist Regime”; “The Intervention of the People’s Advocate Institution in view of Observance by the Public Authorities of the Final and Irrevocable Legal Decisions on the Reconstitution of the Right to Private Property”; “The Observance of the Right of Youth to Build a Dwelling Personal Property”; “The Role of the People’s Advocate in the Elimination of some Legal Discriminatory Provisions”; “The Intervention of the People’s Advocate Institution for the Observance of the Rules Related to Real Estate Advertising”; “The Spiritual Dimension of Human Rights Reflected in the Petitions Addressed to the Ombudsman in Romania”; “The Crulic Case in the Attention of the People’s Advocate”; “Special Report on the Observance of the Rights of War Veterans, War Widows and Un-remarried Widows of War Veterans”; “The Right to Petition in Romania – Actuality and Perspectives. The Role of the People’s Advocate Institution”.

#### **d. Territorial offices of the People’s Advocate Institution**

The territorial offices of the People’s Advocate Institution in Alba-Iulia, Bacau, Brasov, Constanta, Cluj-Napoca, Craiova, Galati, Iasi, Oradea, Pitessti, Ploiesti, Suceava, Targu-Mures and Timisoara, received many notifications from the local press.

The newspaper *Informatia de Alba* published articles of the ***Territorial Office Alba – Iulia***, “Granting of Compensations, A long and Difficult Road”; “Approach with Happy End”; “Two Months of Waiting for a Simple Xerox Copy”; “Grant of Rights to Pension, a Road way too Long”; “A Successful Action”; “A Decision Long Delayed”; “Avalanche of Decisions”; “Gifts from the People’s Advocate for the Children in Strungari”; “Waiting for the Pension Increased”. The newspaper *Cronica Politiei* published the article “The People’s

Advocate at Strungari”. The *Revista Romana de Executare Silita No. 3/2009* published the article “Incidental Issues in the Procedure of Contestation Formulated against Administrative and Fiscal Documents, also Related to the Procedure of Contestation against the Amounts Collected with the Title of Tax for the First Registration and Tax for Pollution”.

*Ziarul de Roman* published the articles of the ***Territorial Office Bacau***, “The People’s Advocate on Report” “The People’s Advocate was under Assault”; “When and How to Notify the People’s Advocate”. The *online* edition of *Adevarul de Molvoda* published the article “Thousand of Moldavians Abused by the Authorities”. The newspaper *Desteptarea* published the article “The People’s Advocate Brings Gifts in Saucesti”.

***The Territorial Office Brasov***. The daily newspapers *Cuvantul Nou*, *Transilvania Expres* published the cases solved by the territorial office and the articles “Petitions Equivocated, Pensioners on Roads”; “Ancient issues. Endless Discontents of Citizens related to Reassignment of Property Rights”; “When the Doors Are Closed in front of the Petitioners, the People’s Advocate Institution Takes Action – Problems of Citizens Promptly Analyzed and Solved”; “With the Support of the People’s Advocate, a Citizen in Brasov Won the Fight with Ownership Association”.

***The Territorial Office Constanta*** published several articles in the *newspaper Replica de Constanta*, *Observer*, *Obiectiv de Tulcea*, among which: “The People’s Advocate Assaulted by Petitions”; “The People’s Advocate, Institution for Common Individuals”; “The Pension of a Repatriated – Reassigned by the People’s Advocate”; “Inmate Damaged by the Pension House Constanta”, “The People’s Advocate Celebrates his Anniversary”; “The People’s Advocate, the Final Solution”; “The People’s Advocate Assaulted by Claims”; “The People’s Advocate Assaulted by Petitions”; “170 Petitions Submitted to the People’s Advocate”; “Cased Favorably Solved by the People’s Advocate Institution”.

***The Territorial Office Craiova***. The daily newspapers *Panoramic Mehedintean*, *Gorjanul*, published the articles: “The People’s Advocate, an Institution for the Support of

the Citizen”; “The People’s Advocate, Mediator between the Citizen and the State Institutions”. The paper with the title “The People’s Advocate, Guarantor for the Observance of Civic Rights and Freedoms” was published in the book *Fundamental Rights and Freedoms. Constitutional Warranties*.

**The Territorial Office Galati.** *The newspapers Monitorul de Galati, Realitatea,* published the articles: “We Learn from the People’s Advocate – Issues for 2008”; “How the People’s Advocate Can Help You”; “New Forms for the Defense of the Elderly”; “We Learn from the People’s Advocate: The Right of the Individual Injured by a Public Authority”; “We Learn from the People’s Advocate: About the Right to Property”; “We Learn from the People’s Advocate: Elimination of the Exception of Unconstitutionality by the People’s Advocate”; “We Learn from the People’s Advocate: Issues in 2008”; “We Learn from the People’s Advocate: About the Rights of War Veterans”. The article “The People’s Advocate Defends You against the Abuses of Public Clerks” was published in the newspaper *Impact*.

**The Territorial Office Iasi.** *Ziarul de Iasi* published a series of articles, among which: “The Increasing Number of the Notifications Addressed to the Territorial Office Iasi of the People’s Advocate Institution”; “Retirement, Between Unconstitutionality and Legality”; “When can We Invoke the Unconstitutionality”; “How Important it is to Exercise the Right to Information”; “How We Can Acquire a Property through Usucapion”; “The Right to a Decent Living Standard”; “The Right of the Individual Injured by a Public Authority”; “How the Laws for the Reassignment of Property Affect the Right to Inheritance”; “The Right to Preemption Regulated by the Act No. 10/2001”; “The Term for the Contestation of a Decision formulated Based on the Act No. 10/2001”; “Cumulating the Anticipated Pension with Other Revenues”; “Indemnities for Raising a Child”; “The Obligation to Enforce the Decisions of CEDO”; “The Rights of the Individuals Politically Convicted”; “What Categories of Indemnities can be Cumulated with the Salaries from the Public

System”; “Important Amendments Related to the Defense and Promotion of Rights of Individuals with Disabilities”; “Right of Temporary Location in Romania”.

*The newspaper Crisana* published the articles “Boc Ordinance Massively Contested”; - a group of 75 military employees notified the **Territorial Office Oradea** and requested the notification of the Constitutional Court about the Emergency Government Ordinance No. 239/2008; “Six Full Months at the People’s Advocate”. The *daily newspaper Crisana* published the article “More and More Inhabitants from the County of Bihor Know on the People’s Advocate Door”. The *daily newspaper Informatia Zilei* published the article “12 Inhabitants from Satu – Mare Are Waiting for Justice from the People’s Advocate”.

**The Territorial Office Pitesti** signaled the publication of articles in *Orizont Economic Argeșean*, *24 de minute*, *Argesul*, *Ghidul locatarului*, among which: “Balance for 2008 of the Territorial Office Pitesti of the People’s Advocate”; “Inhabitants from Arges and Valcea Complain to the People’s Advocate”; “The People’s Advocate Was by Your Side”; “Cases Solved by the Territorial Office Pitesti of the People’s Advocate”; “Competency of the People’s Advocate on Notifications based on Transactions with real Estates”; “violation of Constitutional Rights in the Attention of the People’s Advocate from Arges”.

The activity of the **Territorial Office Ploiesti** was presented through the articles published in *Monitorul de Prahova*, *Adevarul de seara*, *Ziarul Ploiesti*, *Ziarul Adevarul*.

The activity of the **Territorial Office Suceava** was presented through the articles published in *Evenimentul de Botosani*, *Monitorul de Botosani*, *Evenimentul Regional al Moldovei*. The article “The Right to Property at the People’s Advocate” was published on *the news portal City News*.

**The Territorial Office Targu –Mures** submitted articles for publication in the daily newspapers *Punctul*, *City News Mures* and *Metropol*, among which: “2008 Was the Year for the Consolidation of the People’s Advocate Institution”; “The People’s Advocate Institution Helped Us”.

The newspaper *Renasterea Banateana* published articles related to the Cooperation of the *Territorial Office Timisoara* with the Office for Consumer Protection Timis, “The City halls on the Top of Discontents”. The article “The Activity of the Territorial Office Timisoara in the Field of Right to Labor and Social Protection of Labor” was published in the Agenda of the Local Council Timis.

## **2. COOPERATION WITH OTHER AUTHORITIES AND NON – GOVERNMENTAL ORGANIZATIONS**

### **2.1 Cooperation initiate by the territorial offices of the People’s Advocate Institution with other authorities**

Based on the Cooperation Protocol signed by the *Territorial Office Brasov* with the Association GIL CORONA, the seminary “*Book and Copyright Day*” was organized. The participation to the debate with the subject “*Observance and Insurance of Fundamental Rights of the Child*”, organized by the Association Catharsis from Brasov. A O.S.C.E delegation was present at the headquarters of the Territorial Office Brasov.

The representatives from the *Territorial Office Craiova* organized a meeting with the Prefect from the County of Gorj and with the general director of the General Department for Social Assistance and Child Protection Dolj, with the director of the Department for Labor and Social Integration Dolj. Five students from the Faculty of Law and Administrative Sciences – University of Craiova undertook a training stage at the Territorial Office Craiova. A meeting was established with the Prefect from the County of Dolj and the general director of Pension House Dolj in view of signing a cooperation protocol. A meeting was organized with the director of the County Agency for Labor Force Distribution Dolj in view of signing a cooperation protocol. The representatives of

the Territorial Office Craiova organized a meeting with the Prefect from the County of Harghita. The meeting with 11<sup>th</sup> grade pupils from the Department of Social Sciences within the College “Al. Papiu Ilarian” from Targu – Mures on the organization and functioning of the People’s Advocate Institution.

A meeting was organized with the representatives from the Department for Social Assistance and Child Protection Cluj in view of establishing cooperation with the *Territorial Office Cluj – Napoca*, for the promotion and defense of the rights of children.

*The Territorial Office Constanta* signed a Cooperation Protocol with the Prefect Institution from the County of Tulcea. A meeting was established with the dean from the University Ovidius of Constanta for the organization of some training states of students at the territorial office. A meeting was established with the prefect from the county of Constanta on the cooperation between the two institutions.

The meeting with the deputy prefect from the county of Bihor, in view of signing a cooperation protocol between the Prefect Institution from the county of Bihor and the *Territorial Office Oradea*.

*The Territorial Office Pitesti*, upon the invitation of the City hall Pitesti, attended to the Session of the Operational Group within the Project START of the Romanian – Dutch Network for the implementation of politics on alcohol. They concluded the Cooperation Protocol with the Faculty of Law and Administrative Sciences Pitesti, on the organization of some training stages of students at the territorial office. The participation to the project “Children with No Identity” will be organized.

*The Territorial Office Suceava* signed a cooperation Protocol with the Sportive High school Suceava for the Scholar Project on the rights of children, “What *Do We Know about Our Rights?*”. Following the conclusion of the cooperation protocol in 2008, a meeting was organized with the Prefect from the county of Botosani. The participation to the debates organized by AANITP – CR Suceava and Salvati Copiii, in partnership with the Sportive High school Suceava.

A training stage was performed at the Territorial Office Targu – Mures by 5 students from the Faculty of Legal and Administrative Studies – University “Spiru Haret”, Faculty of Economic, Legal and Administrative Sciences- University “Petru Maior” from Targu – Mures, Faculty of Law –University of Bucharest.

The *Territorial Office Timisoara* signed a Cooperation Protocol with the Prefect Institution from the county Caras –Severin. The training stage at the Territorial Office Timisoara for students within the West University of Timisoara – Faculty of Law and Administrative Sciences.

## **2.2 The cooperation between the People’s Advocate and the European Ombudsman**

The specific problems that the People’s Advocate in Romania is faced with were presented in the materials published in the Informative Bulletin of European Ombudsman and they were elaborated by experts and counselors within the People’s Advocate Institution. We mention: the spiritual dimension of human rights reflected in the petitions submitted to the People’s Advocate, the right of youth to build a dwelling personal property, the role of the People’s Advocate in the elimination of some legal discriminatory provisions, the intervention of the People’s Advocate in the defense of rights of veterans: exempt from the payment of taxes corresponding to arable lands with the surface of up to 5 ha, the intervention of the People’s Advocate Institution in view of observance by the public authorities of the final and irrevocable legal decisions on the reconstitution of the right to private property, the intervention of the People’s Advocate Institution for the observance of the rules related to real estate advertising, the right to free circulation, the Territorial Office of Ombudsman in the service of the citizens.

### **3. PUBLICATIONS**

#### **3.1 The annual report of the People's Advocate Institution, the leaflet of the institution, the informational materials**

In order to facilitate the relationship between the public and the institution, the People's Advocate provided to the petitioners the annual report addressed to the Parliament, statistics related to the activity of the institution, the leaflet of the institution. The informative materials related to the People's Advocate Institution are also available under electronic form on the website of the People's Advocate Institution: [www.avp.ro](http://www.avp.ro).

#### **3.2 The Quarterly Informational Bulletin of the People's Advocate Institution**

Through personal financial efforts, the People's Advocate Institution edited the Quarterly Informative Bulletin, which includes detailed aspects from the activity undertaken, appreciations submitted by the petitioners and public authorities to the People's Advocate Institution, cases solved through the intervention of the People's Advocate.

#### **3.3 Press releases**

For a better transparency to mass-media, the People's Advocate Institution informed the press about its activity through the **13 press releases** which presented the development of some special internal and external events.

#### **3.4 Online communications**

The Internet page of the People's Advocate Institution includes information about the presentation and structure of the institution, statistics, contact data, legislation, and a section of useful links of the European Commission, thus facilitating the access to a wide range of consultations and debates.

At the section “From the Issues of the People’s Advocate Institution” on the web site, we published cases solved by the People’s Advocate Institution.

#### **4. ACTIONS UNDERTOOK BY THE PEOPLE’S ADVOCATE INSTITUTION FOR THE AWARD OF SOCIAL BENEFITS**

Another aspect of the media activity is already a familiar practice of the People’s Advocate Institution to award social benefits, actions organized by the field of rights of children, family, youth, pensioners, individuals with disabilities and which were presented in Chapter VII of this Report.

**ENCLOSURE No. 1 - GENERAL AMOUNT OF ACTIVITY**

<b>No.</b>	<b>Index</b>	<b>Total works performed</b>
<b>1.</b>	<b>Audiences granted to the citizens at the headquarters of the People's Advocate Institution and at the territorial offices</b>	<b>16561</b>
<b>2.</b>	<b>Petitions registered at the People's Advocate Institution and at the territorial offices, related on the violation of some civic rights and freedoms</b>	<b>8295</b>
<b>3.</b>	<b>Telephone calls registered through the dispatch services at the People's Advocate Institution and at the territorial offices</b>	<b>5978</b>
<b>4.</b>	<b>Performed investigations by the People's Advocate Institution</b>	<b>30</b>
<b>5.</b>	<b>Recommendations issued by the People's Advocate Institution</b>	<b>6</b>
<b>6.</b>	<b>Special Report</b>	<b>1</b>
<b>7.</b>	<b>Points of view on the exceptions of unconstitutionality of laws and ordinances related to the civic rights and freedoms expressed upon the request of the Constitutional Court</b>	<b>1905</b>
<b>8.</b>	<b>Exceptions of unconstitutionality submitted directly by the People's Advocate Institution</b>	<b>4</b>

**ENCLOSURE No. 2 - STATISTICS OF THE PETITIONS REGISTERED  
RELATED TO THE RIGHTS AND FREEDOMS violation ED**

<b>No.</b>	<b>Name of the right (article of the Constitution)</b>	<b>Petitions registered</b>
1.	Equality in rights (art. 16)	126
2.	Foreigners and stateless individuals (art. 16)	7
3.	Right to asylum, extradition, deportation ( art. 19)	-
4.	Free access to justice (art. 21)	833
5.	Right to life and to physical and mental integrity (art. 22)	17
6.	Individual freedom (art. 23)	9
7.	Right to defense (art. 24)	37
8.	Right to free circulation (art. 25)	5
9.	Right to intimate, family and private life (art. 26)	16
10.	Inviolability of domicile (art. 27)	1
11.	Secrecy of correspondence (art. 28)	4
12.	Freedom of conscience (art. 29)	6
13.	Freedom of expression (art. 30)	10
14.	Right to information (art. 31)	1396
15.	Right to education (art. 32)	12
16.	Access to culture (art. 33)	2
17.	Right to health protection (art. 34)	50
18.	Right to a healthy environment (art. 35)	17
19.	Right to vote (art. 36)	16
20.	Right to be elected (art. 37)	7
21.	Right to be elected in the European Parliament (art. 38)	-
22.	Freedom of assembly (art. 39)	-
23.	Right to association (art. 40)	3
24.	Right to labor and social protection of labor (art. 41)	358
25.	Right to strike (art. 43)	-
26.	Private property right (art. 44)	1568
27.	Economic freedom (art. 45)	5
28.	Right to inheritance (art. 46)	35
29.	Right to a decent living standard (art. 47)	947
30.	Family and the right to marriage (art. 48)	16
31.	Protection of children and youth (art. 49)	59
32.	Protection of individuals with disabilities (art. 50)	116

<b>33.</b>	<b>Right to petition (art. 51)</b>	<b>1282</b>
<b>34.</b>	<b>Right of the individual injured by a public authority (art. 52)</b>	<b>767</b>
<b>35.</b>	<b>Restraint of exercise for some rights or freedoms (art. 53)</b>	<b>15</b>
<b>36.</b>	<b>Right to a fair trial (art. 6 from CEDO)</b>	<b>63</b>
<b>37.</b>	<b>Other rights</b>	<b>490</b>
	<b>TOTAL</b>	<b>8295</b>

## ENCLOSURE No. 3 - STATISTICS OF THE PETITIONS ON COUNTIES

No.	COUNTY	No. PETITIONS
1.	Alba	174
2.	Arad	81
3.	Arges	447
4.	Bacau	228
5.	Bihor	171
6.	Bistrita -Nasaud	47
7.	Botosani	131
8.	Braila	81
9.	Brasov	208
10.	Bucuresti	1532
11.	Buzau	59
12.	Caras –Severin	71
13.	Calarasi	59
14.	Cluj	206
15.	Constanta	289
16.	Covasna	26
17.	Dambovita	91
18.	Dolj	344
19.	Galati	159
20.	Giurgiu	59
21.	Gorj	105
22.	Harghita	39
23.	Hunedoara	121
24.	Ialomita	24
25.	Iasi	349
26.	Ilfov	85
27.	Maramures	87
28.	Mehedinti	51
29.	Mures	239
30.	Neamt	103
31.	Olt	72
32.	Prahova	273

33.	Salaj	37
34.	Satu Mare	41
35.	Sibiu	47
36.	Suceava	126
37.	Teleorman	30
38.	Timis	288
39.	Tulcea	32
40.	Vaslui	73
41.	Valcea	44
42.	Vrancea	59
	<b>TOTAL*</b>	<b>6788</b>

**\*Observation:** To the total number of petitions submitted to the People's Advocate Institution from the country, on hard copy, a number of 1362 petitions submitted by email must be added

**ENCLOSURE No. 4 - STATISTICS OF THE PETITIONS RECEIVED FROM  
ABROAD**

<b>No.</b>	<b>COUNTRY</b>	<b>No. Petitions registered</b>
1.	Albania	1
2.	Austria	2
3.	Belgium	3
4.	Canada	6
5.	Cyprus	1
6.	Switzerland	2
7.	Finland	1
8.	France	4
9.	Germany	26
10.	Greece	3
11.	Ireland	3
12.	Israel	13
13.	Italy	10
14.	Lithuania	1
15.	Great Britain	2
16.	Holland	1
17.	Portugal	1
18.	Republic of Moldavia	12
19.	Serbia	1
20.	Spain	2
21.	United States of America	6
22.	Sweden	2
23.	Turkey	2
24.	Hungary	40
	<b>TOTAL</b>	<b>145</b>

**ENCLOSURE No. 5 - ACTIVITY OF THE TERRITORIAL OFFICES OF THE  
PEOPLE'S ADVOCATE INSTITUTION**

No.	Territorial office	Audiences	Petitions registered	Telephone calls	Informative activities
1.	Alba – Iulia	567	191	144	- 15 articles published in the local press; - 14 collaborations with NGOs and other authorities.
2.	Bacau	723	171	166	- 9 radio –TV programs; - 5 articles published in the local press; - 6 collaborations with NGOs and other authorities.
3.	Brasov	864	158	229	- 13 radio –TV programs; - 11 articles published in the local press; - 14 collaborations with NGOs and other authorities.
4.	Cluj - Napoca	868	207	351	- 1 article published in the local press; - 11 collaborations with NGOs and other authorities.
5.	Constanta	740	198	204	- 6 radio –TV programs; - 23 articles published in the local press; - 12 collaborations with NGOs and other authorities.
6.	Craiova	1531	346	817	- 3 radio –TV programs; - 3 articles published in the local press; - 21 collaborations with NGOs and other authorities.
7.	Galati	510	117	164	- 2 radio –TV programs; - 15 articles published in the local press;

					- a collaboration with NGOs and other authorities.
8.	Iasi	852	321	279	- 6 radio –TV programs; - 49 articles published in the local press; - 2 collaborations with NGOs and other authorities.
9.	Oradea	725	185	204	- 3 articles published in the local press; - 8 collaborations with NGOs and other authorities.
10.	Pitesti	1332	357	151	- 4 radio –TV programs; - 7 articles published in the local press; - 11 collaborations with NGOs and other authorities.
11.	Ploiesti	880	194	163	- 3 radio –TV programs; - 4 articles published in the local press; - a collaboration with NGOs and other authorities.
12.	Suceava	1233	111	151	- 17 collaborations with NGOs and other authorities.
13.	Targu - Mures	1536	244	426	- 12 radio –TV programs; - 4 articles published in the local press; - 7 collaborations with NGOs and other authorities.
14.	Timisoara	803	231	345	- 6 radio –TV programs; - 3 articles published in the local press; - 6 collaborations with NGOs and other authorities.
	<b>TOTAL</b>	<b>13164</b>	<b>3031</b>	<b>3794</b>	<b>328</b>

**ENCLOSURE No. 6 - STATISTICS OF THE POINTS OF VIEW EXPRESSED BY  
THE PEOPLE'S ADVOCATE ON THE EXCEPTIONS OF  
UNCONSTITUTIONALITY**

<b>No.</b>	<b>Field of point of view</b>	<b>No. points of view</b>
1.	Constitutional state (art. 1)	19
2.	Universality; Principle of non – retroactivity of law; Criminal law or more favorable contraventional law (art. 15)	72
3.	Trade unions, associations of employers and professional associations (art. 9)	2
4.	Principle of equality in rights (art. 16, art. 4)	388
5.	Foreign citizens and stateless individuals (art. 18)	1
6.	Propriety of international regulations (art. 11, art. 20)	23
7.	Free access to justice; Fair trial (art. 21)	433
8.	Right to life, physical and mental integrity (art. 22)	16
9.	Individual freedom (art. 23)	47
10.	Right to defense (art. 24)	75
11.	Free circulation (art. 25)	5
12.	Intimate, family and private life (art. 26)	15
13.	Inviolability of domicile (art. 27)	2
14.	Secrecy of correspondence (art. 28)	3
15.	Freedom of conscience (art. 29, art. 30, art. 40)	10
16.	Right to information (art. 31)	3
17.	Right to education (art. 32)	3
18.	Right to health protection (art. 34)	1
19.	Right to a healthy environment (art. 35)	1
20.	Right to vote (art. 36); Right to be elected (art. 37); Right to be elected in the European Parliament (art. 38)	6
21.	Right to labor and social protection of labor and the interdiction of forced labor (art. 41, art. 42)	29
22.	Property right (art. 44, art. 136)	206
23.	Economic freedom (art. 45); Economy (art. 135)	20
24.	Right to inheritance (art. 46)	4

25.	<b>Right to a decent living standard (art. 47)</b>	<b>5</b>
26.	<b>Family (art. 48)</b>	<b>1</b>
27.	<b>Protection of children and youth (art. 49)</b>	<b>3</b>
28.	<b>Protection of individuals with disabilities (art. 50)</b>	<b>1</b>
29.	<b>Right to petition (art. 51)</b>	<b>3</b>
30.	<b>Right of the individual injured by a public authority (art. 52)</b>	<b>7</b>
31.	<b>Restraint of exercise for some rights or freedoms (art. 53)</b>	<b>71</b>
32.	<b>Exercise of rights and freedoms (art. 57)</b>	<b>1</b>
33.	<b>Public authorities (art. 61-art. 72)</b>	<b>15</b>
34.	<b>Categories of laws (art. 73); Legislative initiative (art. 74); Adoption of laws and decisions (art. 76); Enforcement of laws (art. 78)</b>	<b>202</b>
35.	<b>Legislative Council (art. 79)</b>	<b>3</b>
36.	<b>Other attributions of the President of Romania (art. 94)</b>	<b>1</b>
37.	<b>Acts of Government (art. 108)</b>	<b>2</b>
38.	<b>Legislative delegation (art. 115)</b>	<b>104</b>
39.	<b>Public local administration (art. 120 – art. 123)</b>	<b>5</b>
40.	<b>Enforcement of justice (art. 124)</b>	<b>25</b>
41.	<b>Legal courts (art. 126-art. 127)</b>	<b>20</b>
42.	<b>Usage of ways of attack (art. 129)</b>	<b>16</b>
43.	<b>Status of prosecutor (art. 131 – art. 132)</b>	<b>7</b>
44.	<b>Superior Council of Magistracy (art. 133, art. 134)</b>	<b>1</b>
45.	<b>Financial contributions (art. 56); National public budget (art. 138), Taxes, duties and other contributions (art. 139)</b>	<b>4</b>
46.	<b>Competences of the Constitutional Court (art. 146); Decisions of the Constitutional Court (art. 147)</b>	<b>4</b>
47.	<b>Integration in the European Union (art. 148)</b>	<b>5</b>
48.	<b>Transitory dispositions (art. 155)</b>	<b>14</b>
49.	<b>Exceptions where the constitutional text violation was not specified</b>	<b>14</b>
	<b>TOTAL</b>	<b>1905</b>

*\* 1505 points of view include several fields, and the significant field was taken into consideration for the statistics.*

## ENCLOSURE No. 7 - PERFORMED INVESTIGATIONS

No.	Object of the investigation undertaken	No. of performed investigations	Authority of public administration where the investigation was undertaken	Results of the performed investigations
1.	Observance of private property right	2	<p>City hall from the Municipality of Turda</p> <p>City hall from the commune of Finta, county of Dambovita</p> <p>City hall from the commune of Posesti, county of Prahova</p>	<p>The aspects presented by the petitioners were not confirmed.</p> <ul style="list-style-type: none"> <li>- Confirmation of the aspects presented by the petitioner</li> <li>- Information of the petitioner about the fact that the field requested cannot be reassigned.</li> <li>- Confirmation of the aspects presented by the petitioner</li> <li>- Invitation of the petitioner for the elaboration of minutes for reassignment.</li> </ul>
2.	Observance of private property right and the right to petition	3	City hall from the Municipality of Bucharest (2)	- Confirmation of the aspects presented by the petitioners regarding the delay related to the solution of notifications formulated based on the Act No. 10/2001

			<b>National Authority for Property Restitution</b>	- Solution of the petitioner's request in the sense of issuing the compensation title within a month
<b>3.</b>	<b>Observance of private property right and the right of the individual injured by a public authority</b>	<b>11</b>	<p><b>City hall from the commune of Margau, county of Cluj</b></p> <p><b>City hall from the commune of Cotmeanca, county of Arges</b></p> <p><b>City hall from the Municipality of Bucharest – Department judicial, administrative and legislation (2)</b></p> <p><b>City hall from the commune of Rosia, county of Sibiu</b></p>	<p>- Confirmation of the aspects presented by the petitioner and the favorable solution of the request for the assignment of land</p> <p>- Confirmation of the aspects presented by the petitioner and the issue of a recommendation</p> <p>- Confirmation of the aspects presented by the petitioners regarding the delay related to the solution of notifications formulated based on the Act No. 10/2001</p> <p>- Confirmation of the aspects presented by the petitioner</p> <p>- Issue of a recommendation</p>

			<p><b>City hall from the commune of Vedea, county of Arges</b></p>	<p>The aspects presented by the petitioners were not confirmed.</p>
			<p><b>City hall from the Municipality of Bucharest (2)</b></p>	<p>- Confirmation of the aspects presented by the petitioners regarding the delay related to the solution of notifications formulated based on the Act No. 10/2001.</p>
			<p><b>National Authority for Property Restitution</b></p>	<p>- Submission of response - Proposal to issue a recommendation</p>
			<p><b>National Authority for Property Restitution</b></p>	<p>The aspects presented by the petitioners were not confirmed, his file was incomplete.</p>
			<p><b>National Authority for Property</b></p>	<p>- Identification of the stage for the solution</p>

			<b>Restitution</b>	of the petitioner's file - Information of the petitioner about the fact that the validation decisions from the National Authority for Property Restitution will be submitted to the address of the beneficiaries.
4.	Observance of private property right and the right to information	1	The Prefect Institution from the county of Ilfov	- Confirmation of the aspects presented by the petitioners regarding the delay related to the solution of notifications formulated based on the Act No. 10/2001.  - Issue of a recommendation to the Mayor from the commune of Afumati, county of Ilfov
5.	Observance of the right to a decent living standard, the right to petition and the right of the individual injured by a public authority	1	The Local Pension House Sector 1 Bucharest	The Local Pension House Sector 1 Bucharest responded to the notifications of the People's Advocate and solved the cases notified by the petitioners.
6.	Observance of the right to a decent living standard and	2	The Local Pension House Sector 6 Bucharest	The aspects presented by the petitioners were not confirmed - Confirmation of

	<b>the right to petition</b>			<b>equivocation related to the solution of the petitioner's request</b> - <b>issue of a recommendation</b>
7.	<b>Observance of the right to a decent living standard, and the right of the individual injured by a public authority</b>	<b>1</b>	<b>The Pension House from the Municipality of Bucharest</b>	- <b>Confirmation of the aspects presented by the petitioner</b> - <b>Issue of two decisions for the revisal for community pension rights</b>
8.	<b>Observance of the right to health protection and the right to petition</b>	<b>1</b>	<b>The Public Health Directorate of the Municipality of Bucharest</b>	<b>Confirmation of the lack of response to the petitioner, as well as the difficulties existing in connection with the functioning of the commission for surveillance and professional competence for malpractice</b>
9.	<b>Control related to the observance of the right to health protection and the protection of children and youth</b>	<b>1</b>	<b>Family Fostering Center No. 8 "Speranta"- Huedin, county of Cluj</b>	- <b>Confirmation of negligence in the activity undertaken by the employees from the Family Fostering Center No. 8</b> - <b>the General Department for Social Assistance and Child Protection delivered some sanctions for the employees of the Center</b>

10.	Control related to the observance of the right to health protection, the right to information, the right to petition, the secrecy of correspondence and the right to a decent living standard	1	The Maximum Security Penitentiary Craiova	<p>- Confirmation of the aspects related to the lack of observance of the right to petition, as the authorities notified did not respond to the petitions submitted</p> <p>- The aspects presented by the petitioners related to the quality of prison life were not confirmed</p> <p>- the inclusion in the “cameral documentary portfolio” of Act No. 35/1997 on the organization and functioning of the People’s Advocate Institution</p>
11.	The observance of the equality in right, of the provisions of the international treaties on the human rights and the access to justice	1	The Department of Consular Relationships within the Ministry of Foreign Affairs	The aspects presented by the petitioners were not confirmed, they did not resister requests for the reassignment of citizenship at the Ministry of Foreign Affairs
12.	The observance of the right to information and the right of the individual injured by a public	1	The Territorial Labor Inspectorate from the Municipality of Bucharest	The aspects presented by the petitioners were not confirmed

	<b>authority</b>			
<b>13.</b>	<b>The observance of the right to labor and social protection of labor</b>	<b>1</b>	<b>The National Agency for the Distribution of Labor Force</b>	<b>The clarification of the aspects notified by the petitioner, in the sense of the establishment of legal impossibility of retroactive affiliation to the system of unemployment benefits in Romania</b>
<b>15.</b>	<b>The observance of the right to petition</b>	<b>2</b>	<b>Ministry of Justice and Civic Freedoms</b>  <b>Local Pension House Sector 6 Bucharest</b>	<b>Clarification of the stage for the solution of the request in view of requiring the Romanian citizenship</b>  <b>- Issue of debit decision</b> <b>- Formulation of a response to the People's Advocate, which explained the concrete situation of the pension file of the petitioner</b>
<b>TOTAL</b>		<b>30</b>		

**ENCLOSURE No. 8 - RECOMMENDATIONS ISSUED BY THE PEOPLE'S  
ADVOCATE**

<b>No.</b>	<b>No. and issuing date of the recommendation. Object of recommendation</b>	<b>Public authority to which the recommendation was addressed</b>	<b>Brief content of the recommendation</b>
1.	1 / February 2, 2009 violation of the provisions of art. 44 from the Constitution on the right to private property	Mayor from the commune of Afumati	<ul style="list-style-type: none"> <li>- professional examination of the requests related to the reconstitution of property right and assignment of possession, for the observance of the right to private property in the matter of land law</li> <li>- adoption of legal measures for the observance of the legal frame in the matter and the information of the People's Advocate about the measures undertaken</li> </ul>
2.	2/February 13, 2009 violation of the provisions of art. 137 paragraph (2) from the Constitution and art. 1 paragraph (3) from the Act No. 348/2004, further amendments and supplements included, on the name of national currency	Ministry of Public Finances	<ul style="list-style-type: none"> <li>- adoption of measures necessary for the observance of the constitutional and legal frame established by art. 137 paragraph (2) from the Constitution and art. 1 paragraph (3) from the Act No. 348/2004, further amendments and supplements included</li> <li>- information of the People's Advocate</li> </ul>

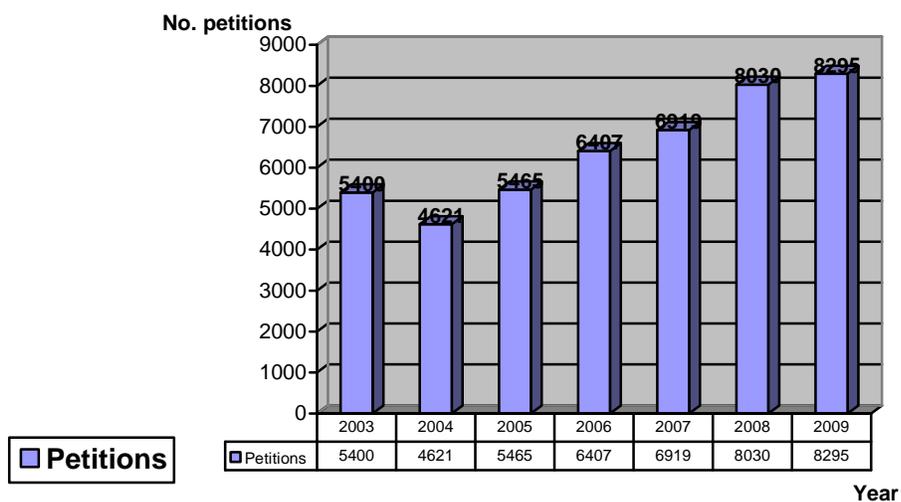
			about the measures undertaken
3.	3 /June 10, 2009 violation of the right to private property provided of art. 44 from the Constitution	Mayor from the commune of Rosia, county of Sibiu	- adoption of measures necessary to: * register and solve the contestations filed against the Local Commission for the establishment of private property right on the lands of commune reported to the provisions under the Government Decision No. 890/2005; * information of the People's Advocate about the measures undertaken.
4.	4/June 4, 2009 violation of right to private property provided of art. 44 from the Constitution and the right of the individual injured by a public authority provided of art. 52 from the Constitution	Mayor from the commune of Cotmeanca, county of Arges	- in the exercise of the attributions granted under the law, to decide the examination of urbanistic documentations for the observance of private property right; - adoption of measures necessary to: * eliminate the urbanistic documents, as well as the General Urbanism Plan of the Commune of Cotmeanca; * submission for the approval of the local council of the proposal to issue decisions on

			the network of main and secondary streets, as well as the decisions related to the discipline in constructions, with the observance of the right to private property; * information of the People's Advocate about the measures undertaken.
5.	5/August 10, 2009 violation of right to private property and the right of the individual injured by a public authority provided of art. 44 and art. 52 from the Constitution	National Authority for Property Restitution	- adoption of legal measures necessary to: * elaborate a methodology related to the distribution of the amounts allotted from the state budget with compensatory title, on the three categories on beneficiaries provided under Act No. 247/2005, Act No. 9/1998, and Act No. 290/2003; - elaborate a methodology related to the criteria and order for the assignment of compensations to the beneficiaries of Act No. 290/2003, according to art. 13 from this act. * information of the People's Advocate about the measures undertaken.
6.	6/November 4, 2009 violation of the right to a	Coordinating Director of the Pension House from	- in the exercise of the attributions granted by

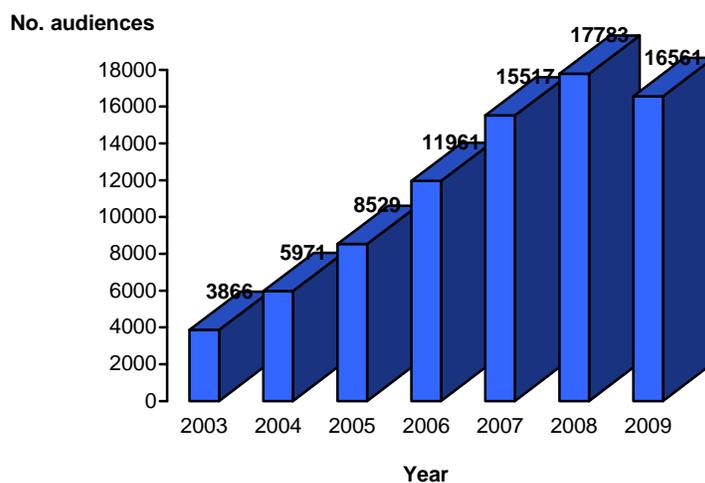
	decent living standard and the right of the individual injured by a public authority provided of art. 47 and art. 52 from the Constitution	the Municipality of Bucharest	the legislation in force, he will undertake the prompt and professional solution of the request related to the right to pension, in view of observing the right to a decent living standard, provided of art. 47 from the Romanian Constitution.
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**ENCLOSURE No. 9 - CHARTS RELATED TO THE INDEXES REGISTERED IN  
THE ACTIVITY OF THE PEOPLE'S ADVOCATE INSTITUTION**

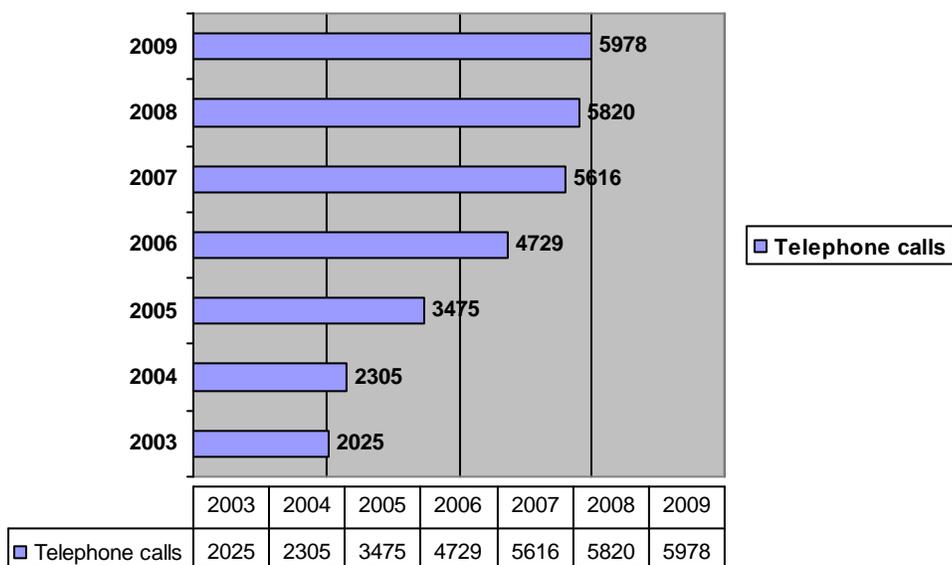
**Petitions addressed to the People's Advocate Institution**



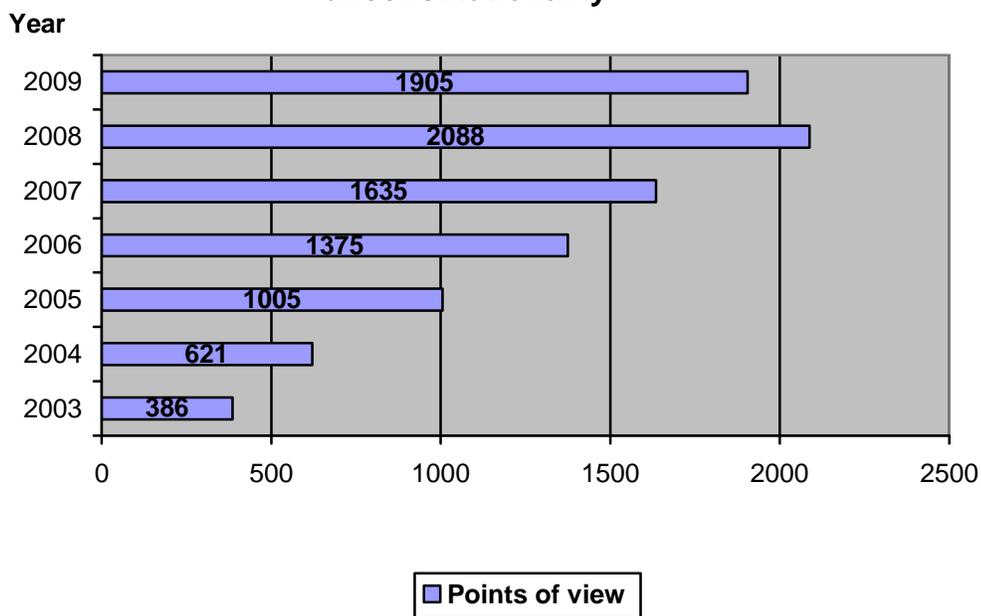
**Audiences**



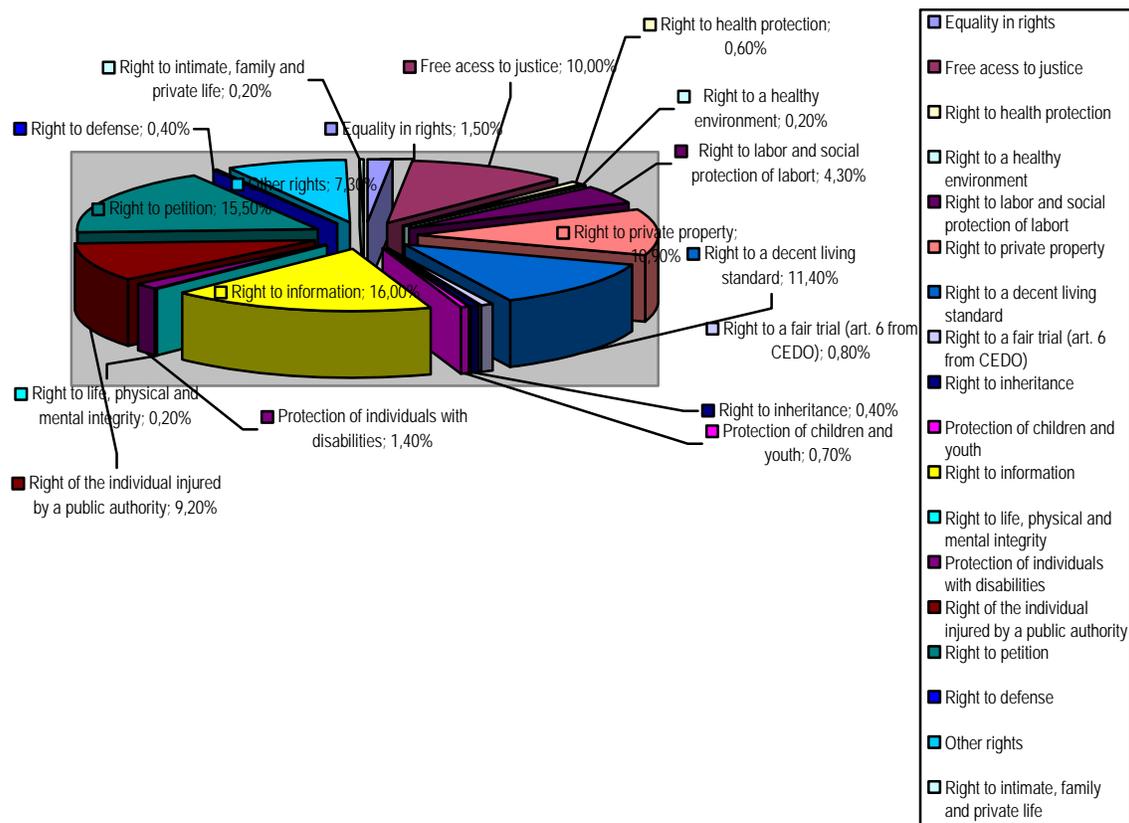
Telephone calls



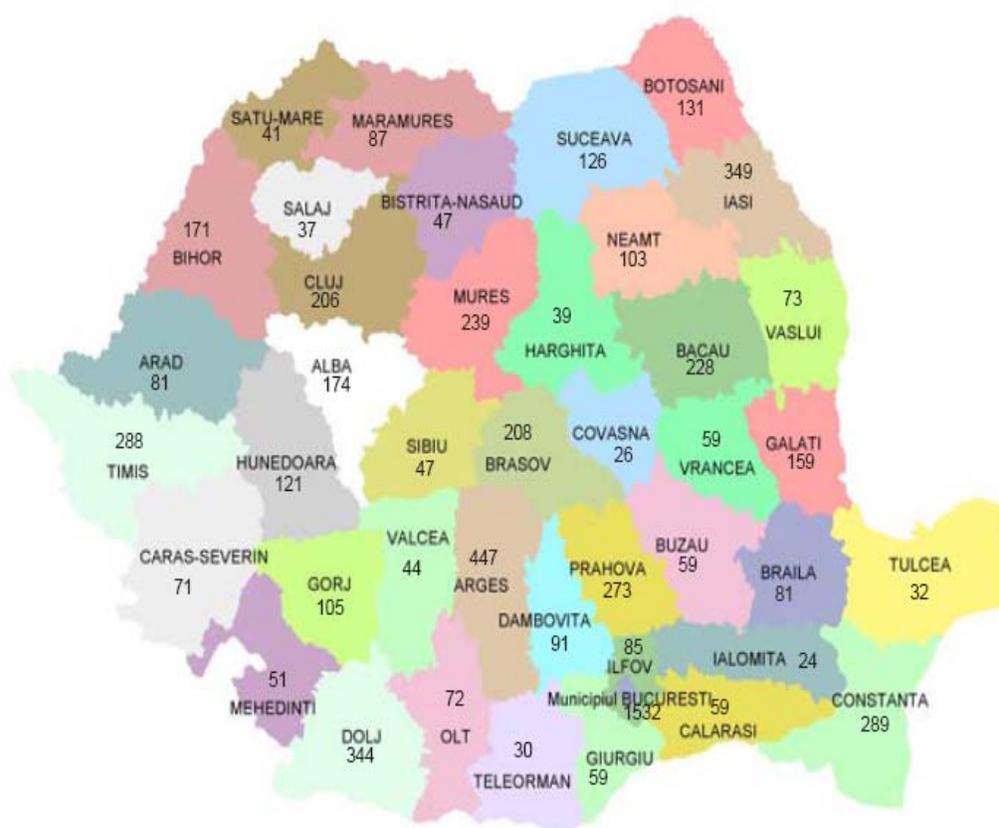
Points of view related to the exceptions of unconstitutionality



### Statistics of petitions related to the alleged right breached



## STATISTICS OF PETITIONS ON COUNTIES



Total petitions received through mail from the country (hard copy): 6788

Petitions received through email: 1362

Petitions received from abroad: 145

Total petitions received: 8295

**NOTE: The following contributed to the elaboration of this report: Erzsebet Rucz, Alexandru Balanescu, Mihai Gondos, Ionel Oprea, Cristian Cristea, Simina Gagu, Claudia Sora, Ecaterina Mirea, Bianca Draghici, Magda Stefanescu, Luminita Avramescu, Anda Gheorghiu, who are responsible for the accuracy of data and information.**

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