

The dismissal of Ms. Renate Weber, the Romanian Ombudsperson

The dismissal of Ms. Renate Weber, the Romanian Ombudsperson, is directed not just against her, but it is an attack on the institution as a whole, an **attack on its independence, a threat and intimidation to all future mandate holders.**

This is an unprecedented and flagrant abuse, it is the first time in the history of the institution, since 1997 until present day, when the annual reports of the People's Advocate Institution are subjected to vote in the Parliament only to be rejected and offer a pretext for dismissal, even if the act itself of subjecting the reports of the People's Advocate to vote exceeds the legal framework.

That's why the Parliament refuses to observe the legal procedure and issue a decision officially acknowledging the vote (situation unique in the history of the Parliament).

The reason why the Parliament refuses to issue this decision is to prevent it to be challenged at the Constitutional Court, since a decision that doesn't exist cannot be challenged. All that in the context in which the Ombudsperson was dismissed on the basis of that vote. The situation is absurd and unprecedented and it totally disregards the Laws and Constitution of the country.

If this situation remains as it is, it will prove to all future mandate holders that that the political power can do as they please as long as they have majority vote in the Parliament and that the Constitution and Laws can't protect the independence of the institution.

Under such intimidation, a core function of the institution which is challenging unconstitutional laws and ordinances to the Constitutional Court will become obsolete.

How could a future Ombudsperson stand for the rights of freedoms of citizens and dare to upset the political power under such threat?

According to the Constitution and the law on the organization of the institution:

- *The People's Advocate is a public authority, autonomous and independent from any other public authority, in accordance with the law;*
- *The People's Advocate cannot be subject to any mandatory or representative mandate;*
- *No one may compel the People's Advocate to comply with their instructions or orders;*
- *In the exercise of its duties, the People's Advocate does not substitute itself for the public authorities.*

All these provisions are the result of the special constitutional position of the institution and explain why, in fact, the **People's Advocate is accountable only to the Parliament**, an accountability which consists in the obligation to submit **reports**¹.

They may contain recommendations for amending legislation or other measures to protect the rights and freedoms of individuals. Through the special reports submitted to the Parliament, the People's Advocate has the opportunity to highlight the serious shortcomings and dysfunctions in the public administration and to draw the public's attention to them.

On May 25, 2021, Ms. Renate Weber participated in the joint meeting of the Legal Committees of the Chamber of Deputies and of the Senate, **during which the Activity Reports of the People's Advocate institution for the years 2018, 2019 and 2020 were debated and rejected**, despite the fact that neither the Constitution nor the law on the organization and functioning of the People's Advocate institution provide for such a procedure.

¹ I. Muraru, E.S. Tănăsescu, Romanian Constitution commentary on articles, C.H. Back publishing house, 2008.

On June 16, 2021, the same joint commissions voted for the dismissal of the Ombudsperson without much debate, and without answering any of the questions addressed to them during the “mock trial” and simulated debate that took place. The Ombudsperson was invited to attend this meeting with less than an hour before the meeting begun.

As a guarantee of the independence of the People's Advocate, neither the Constitution nor the organic law on the organization and functioning of the institution provided for the possibility of approving / rejecting the annual activity report by Parliament's vote, **the only express provision being the presentation of the report in the joint sitting of the two Chambers of Parliament.** According to parliamentary procedures, debate does not mean voting on the report, as debate and voting are separate stages of the parliamentary procedure.

It is for the first time in the history of the institution, from 1997 until today, when a request to reject the activity reports of the People's Advocate is submitted to the Parliament.

So far, neither the report of the Court of Accounts nor of the People's Advocate, institutions of constitutional rank, characterized by the principles of autonomy and independence, have been submitted for approval or rejection by vote in the joint sitting of the Chambers of Parliament.

If the legislator had intended for the Parliament to control the People's Advocate by approving / rejecting its activity report, it would have expressly regulated this form of parliamentary control, specifying the requirement to submit the report to vote, after the end of the debates.

Given that the People's Advocate has the duty to ensure the observance of rights and freedoms by the central and local public administration, it results that the **role of the reports of the People's Advocate is to offer the means by which the Parliament takes note of the activity of the public administration and of the legislative gaps identified as a result of the work of the People's Advocate, so that it can take measures to improve the activity of public administration authorities and legislation.**

The relations of the People's Advocate's with the Parliament are mainly characterized by:

- the right of the Parliament to appoint the Ombudsperson;
- the rights of the Permanent Bureaus of the Chamber of Deputies and the Senate to appoint Deputy Ombudspersons;
- Parliament's right to vote on the institution's organic law;
- the right of the Parliament to listen to the reports of the People's Advocate.

Consequently, given that neither the Constitution nor the organic law provide that the debates are concluded with a vote on approval or rejection, **Parliament's influence over the People's Advocate is different from the parliamentary control exerted over other types of bodies who are under parliamentary control, and in which case the legislation expressly provides the possibility of rejecting / approving the activity report, with the direct consequence of the dismissal of the head of the institution/body whose report was rejected.**

The vote on the rejection of the People's Advocate Reports represents a violation of the provisions of Art. 58 para. (3), Art. 73 para. (3) and Art. 76 para. (1) of the Constitution, because the decision of the Parliament on the rejection of the Report would represent an amendment or addition to Law no. 35/1997, on the organization and functioning of the People's Advocate Institution, republished, which is an organic law, and which cannot be amended or supplemented by an act of inferior legal power such as a decision.

As noted by the Venice Commission **in its Opinion no. 685/2012, adopted on December 17, 2012, CDL-AD(2012)026, compliance with the rule of law cannot be restricted to the implementation of the explicit and formal provisions of the law and of the Constitution**

only. It also implies constitutional behaviour and practices, which facilitate the compliance with the formal rules by all the constitutional bodies and the mutual respect between them.

(...) In order to be effective in the protection of human rights, the Advocate of the People has to be independent, including from Parliament, which elects the office holder. In view of this need for independence, special guarantees are required against unjustified dismissal and references to the principle of symmetry. The absence of such guarantees can lead to serious problems, not only as concerns the protection of human rights, which are the essential task of the Advocate, but also as concerns the control of government emergency ordinances and, consequently, for the rule of law.