European Ombudsman Institute

Европейский Институт Омбудсмана

Europäisches Ombudsmann Institut

Institut Européen de l'Ombudsman

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GENERAL PRESENTATION OF THE ROMANIAN OMBUDSMAN INSTITUTION (OCTOBER 1998)

EOI

Introduction

The present - most recent - stock-taking by Mrs. Ruxandra SABAREANU, the deputy ombudsperson of Romania, took place on the occasion of the 6th Round Table Talks of the Council of Europe with European ombudsman institutions held in Malta from 6 - 8 October 1998.

In summer 1998 the young and flourishing institution AVOCATUL POPORULUI (ombudsman of Romania) was considerably weakened, because both the office-holder Mr. Paul MITROI and his deputy Mrs. Ruxandra SABAREANU were seriously ill at almost the same time.

The EOI would like to wish both these committed ombudspersons a rapid recovery and lasting return to full health!

Even on previous occasions Mr. MITROI and Mrs. SABAREANU reported that the very bad situation of the premises was greatly hindering the full development of the institution. Also the lack of an e-mail address at these premises was a justified complaint, because without this, communication with European colleagues is considerably hampered.

It can be seen as a good omen that Mrs. SABAREANU, who represented the ombudsman institution of Romania at the 6th Round Table Talks in Malta, received a telefax on 8 October with the information that the AVOCATUL POPORULUI was now being given the opportunity to move to new - better located - premises with 550 m^2 of office space available.

Following the removal of this main obstacle, the EOI would now like to wish the young and committed ombudsman institution of Romania every success in its further development, which is well deserved in view of the considerable efforts made to date! Good luck!

Innsbruck, 15 October 1998

MMagDr Nikolaus SCHWÄRZLER
President of the EOI

General Presentation of the Romanian Ombudsman (People's Advocate) Institution

The 1991 Romanian Constitution has introduced a new institution, the People's Advocate, formally inspired by the Ombudsman tradition in other countries. It was felt then, after half a century of totalitarian rule, that Romania's outspoken commitment to democracy and the rule of law would be further strengthened by establishing an Ombudsman Institution.

Its creation as such has so far undergone three stages.

The first one, as already mentioned, began with the adoption of the constitutional text on December 8th, 1991. In concise wording, it enshrined the basic principles related to the organisation and operation of the People's Advocate Institution, its role, the procedure to appoint the People's Advocate, his powers and the ways in which such may be exercised, the relationship with public authorities and Parliament. Moreover, the Constitution has also laid down the principle that the Institution is organised and functions under an organic law (*loi organique*).

The second stage in the creation of the Institution is linked with the enactment of the organic law on the organisation and functioning of the People's Advocate Institution. It took more than 6 years before Parliament passed the law, in March 1997. It is noteworthy that four distinct legislative proposals had been drafted and tabled to Parliament.

On March 13th, 1997, the Law on the Organisation and Functioning of the People's Advocate Institution (*The Ombudsman Act*) was enacted. Two months later, the first Romanian incumbent People's Advocate - Mr Paul Mitroi, formerly a Judge with the Supreme Court - was appointed by the Senate. On June 18th, he was sworn in before the Speakers of the two Parliament Houses and entered office.

The third stage began with the appointment of his two deputies, on December 1st, 1997, and the publication of the Standing Rules on the Organisation and Functioning of the People's Advocate Institution, on December 9th 1997. It was the point where the Institution started to work. During the first five months of operation, the workload seemed somehow too burdensome to cope with - given the scarcity of human resources

(no more than four people with a legal background) and the lack of room facilities.

The initial period of "purgatory" was left behind by mid-April 1998, once the Office moved to a provisional basis whose main inconvenience was (and still is) its situation in an area almost inaccessible to the general public. However, this kind of compromise was the only possible way to get over a critical threshold and start recruiting the Office staff. On May 5th, 20 junior lawyers came in and their contribution has significantly accelerated the fulfilment of tasks. However, the present situation is far from satisfactory, because activities must be shared between two different locations. A small unit for taking up complaints and receiving petitioners is located in the Senate building, while the rest of the staff is isolated in a place where public access is almost denied, which has set a major obstacle to the smooth running of the People's Advocate Office.

Its budget being too small to bear the costs for building or hiring premises to install the Office, the only choice is the grant of room facilities from the public estate. All efforts taken so far have been unsuccessful, even though supported by Parliament. Accordingly, special legislation was enacted to that effect subject to which the Romanian Government and the Bucharest City Council were bound to provide a suitable location for the Institution - within 30 days as of entry into force. Meaning 30 days as of June 24th, 1998. That legal obligation has not been accomplished to this day.

In other words, the Institution has not yet emerged as a fully operational office during the last ten months. Apparently, the birth of our youngest constitutional product is belated for administrative reasons, which may prove that newly established institutions will take more than just a legislative framework and personal dedication for coming to life. Despite such laboured delivery, a fact remains indisputable: the People's Advocate Institution is looked upon with great confidence and hope by citizens, but at times such expectations from the general public come too high, in the light of the real powers that the Romanian People's Advocate has been entrusted with.

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The constitutional, legal and regulatory provisions on the People's Advocate Institution have laid down the main characteristics thereof.

The statutory aim of the Institution is to protect the citizens' rights and freedoms in their relationship with public authorities.

Appointment to the People's Advocate office is by a majority vote in the Senate. The term of office is four years, and the incumbent is eligible for re-election, but only once. Qualification to fill the post is as required for a justice of the Constitutional Court, that is to be a Romanian citizen, possess a university degree in law, have eighteen years experience in the legal area and high professional skills. Party groups in both Parliament Houses may put forward recommendations for a candidate of their own, while the Senate Standing Bureau will formally nominate the candidates to be presented and heard before the Senate Committee on Legal Affairs. The final decision rests with the plenary Senate.

Before taking up office, the People's Advocate must be sworn in before the Speakers of the Parliament Houses - the Senate and the Chamber of Deputies.

The term of office begins on the day of appointment and ends with the installation of the new incumbent. The office will cease before the end of term in cases of resignation, removal, legal incompatibility, disability to discharge powers for more than 90 days on grounds of ill-health, or death.

The Ombudsman has **legal immunity**, no criminal proceedings can be taken against him unless consented by the Senate. Furthermore, he is not legally answerable for statements or actions made during the exercise of his office, if such has been in compliance with the law.

Removal from office for violating the Constitution and the laws of the country must be decided by a majority vote of the Senate, based on the report issued by its Legal Affairs Committee.

In discharging his duties, the People's Advocate is assisted by **two deputies** whom he appoints after taking an opinion from the Senate Committee on Legal Affairs. Both deputies stand in office for the entire duration of his term.

The Ombudsman and his deputies are barred from holding any other office, whether public or private, and must be politically neutral.

The powers vested in the People's Advocate are as follows:

- to lead and co-ordinate all activities carried out by the Institution;
- to take up complaints lodged with him by persons whose civil rights and freedoms have been aggrieved by the

public administration authorities, to further assign and decide thereupon;

- to supervise the legal resolution of such complaints and, where the complaint is well-founded, to request the public administration authority or civil servant concerned to withdraw or revoke illegal administrative action, to reinstate the petitioner in his/her rights and to redress for the damages caused. To that effect, he will issue recommendations;
- to make investigations and take hearings, or to seek any information he may deem necessary for resolving complaints lodged with him;
- to follow up the resolution of cases taken up, in accordance with his recommendations and - where the authority concerned failed to comply within the specified deadline - to approach the higher administrative body or to notify the Government about such failure;
- ultimately, to submit the matter to Parliament, where the Government has withheld legal measures;
- to represent the People's Advocate Institution before any other authority or person, as well as in international relations;
- to report on the Institution activity before Parliament, on a yearly basis or when so requested;
- where he has found - while carrying out investigations, serious cases of corruption or violation of the Country's laws, to present a report on his findings to the Speakers of Parliament Houses or, as the case may be, to the Prime-Minister;
- to issue recommendations on proposed amendments to existing legislation or on other steps as may be deemed necessary for the protection of human rights, and include such recommendations in his reports to Parliament.

Complaints lodged with the People's Advocate may come from any individual affected by an illegal action or abusive conduct on behalf of the public administration authorities, irrespective of his/her citizenship, age, sex, political affiliation or religious belief. Complaints must done in writing and contain indications of the petitioner's full name and address, of the specific rights and freedoms violated, as well as of the administrative authority or civil servant in question.

Anonymous complaints or those dealing with events dating back more than one year cannot be taken under examination (although this one-year limit has hardly been opposed to petitioners because of the ambiguous formulation of the

principle.) Likewise, patently unfounded complaints may be rejected, indicating this motivation.

Acts of Parliament, or acts or actions by individual MPs and senators, the President of Romania, the Government, the Constitutional Court, the Legislative Council, as well as the judicial authority are outside scrutiny by the People's Advocate, therefore any complaint dealing with such matters will be rejected without further motivation.

No formalities are required to approach the People's Advocate in the case of individuals who serve in the armed forces, prisons, or other closed institutions.

Apart from complaints received from the general public, the People's Advocate may also take up cases on his own initiative (*ex officio*).

The People's Advocate has **general jurisdiction** at the national level.

In **the exercise of his powers**, the People's Advocate has open access to documents and information held by public authorities. He is also able to obtain information classified secret or confidential, in so far he deems it necessary in order to resolve complaints, but must not disclose it to the public, otherwise he is subject to criminal liability.

The People's Advocate may carry out inquiries on his own or seek assistance from other authorities. Where necessary, he can hire expert assistance for conducting investigations.

In their turn, public officials must give the People's Advocate all information sought from them, appear before him for a hearing and render assistance within their own powers.

The People's Advocate is fully independent in the exercise of his office and cannot be subjected to any imperative or representative mandate. In other words, no other authority may force him to obey any directions or orders, or instruct him how to fulfil his duties.

Therefore, he is free to decide to proceed in a specific case and there is no appeal against his decision to discard a case. Once his work of examination is concluded and the complaint is found well-grounded, he makes recommendations to the authorities concerned, requesting them to take steps as quickly as possible in order to put an end to their illegal action, to redress for the damages caused and reinstate the aggrieved person to his/her former situation. The result of his work is also communicated directly to petitioner in question. However, the People's Advocate cannot reverse administrative decisions himself.

Where a case is already under examination before a court of law or falls under the Public Ministry jurisdiction or deals with some miscarriage of justice, the matter will be referred to the competent judicial authority, whether the Superior Council of Magistrature or the Prosecutor General.

Statistical data on the number of complaints registered (1168 in 1997, while 2191 only in the first semester of 1998) and processed so far may give a relevant idea about the first ten months in the People's Advocate Institution activities.

The large number of petitions and the small number of staff account for a certain delay in the handling of cases.

Out of a total of 3,359 complaints lodged till July 1st this year, 1646 have been processed and given a written reply (all 1168 for 1997, 478 for 1998). In 1997, 96 files were opened for further investigation, out of which 16 were resolved. In 1998, another 49 files were opened, but only 3 are closed. Additionally, about 2,350 applicants have addressed directly the Office to receive some sort of legal advice.

A substantial number of complaints lodged are either directed against final court decisions or deal with alleged misconduct of the court magistrates in a trial (about 20%), or with issues patently falling outside the People's Advocate jurisdiction, such as conflicts between individual persons or matters related to other areas of private law (about 12%). Other 21% were rejected as matters reserved for a court to decide, subject to the law. In 15.7% of the cases, petitioners ask the People's Advocate to represent them in court.

This only proves that his role and powers are misunderstood, also because there is little knowledge about the exact jurisdiction of the People's Advocate among the population in Romania. Apart from that, the expectations from so many people to obtain some form of redress for the massive abuse committed during 45 years of totalitarian rule are sky-rocketing, if seen in the light of the actual powers of the People's Advocate. Moreover, since *the Ombudsman Act* has set a time limit for taking up complaints but defines it in rather ambiguous and arguable terms, it seems imperative to have the law amended in order to confine the matters subjected to scrutiny to no more than one year before the date of petitioning the Ombudsman.

In quite a number of cases, complaints cannot be handled where such refer to matters awaiting proper remedy through legislation to be passed.

In the complaints filed against public administration, people most often are discontented with the enforcement of two

very important pieces of legislation enacted in recent years, on restitution of land (Law no. 18/1991, supplemented by Law no. 169/1997), and house properties (Law no. 112/1995).

The legal procedure involved the creation of administrative bodies (local and county commissions) to handle and decide on the former owners' requests for restitution in kind (*restitutio in integrum*) or payment of due compensation. In many cases, petitioners complain about lengthy procedures or abuse on behalf of administrative officials, this partly because of flaws or gaps in existing legislation, or because of poor quality in administration. It also reflects the need to have more determined steps taken in bringing both central and local administration in line with the European standards.

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The experience gathered so far during the **first ten months of activity** carried out by the People's Advocate Institution has already revealed a number of flaws that need be corrected in its own organisation and operation under the law.

The most significant ones could be listed as follows:

- 1. Unlike other national counterparts, the Romanian Ombudsman is explicitly forbidden under the law to intervene in the field of the judiciary, irrespective whether it goes about unjustifiable lengthy proceedings in court, delayed passing of judgement or prosecution of crimes by the state attorneys. In this context, the name chosen to designate this office ("The People's Advocate", therefore a legal counsel defending cases in a court of law) is misleading, the result being that quite many people lodge complaints dealing with cases pending in court, or adjudicated through a final court decision, while others see themselves entitled to request his *pro bono* assistance in court.
- 2. The Institution is based in Bucharest and the law does not allow for the establishment of regional offices elsewhere. For this reason, some petitioners come up to Bucharest from far away, only to find out that their complaint cannot be taken under scrutiny by the People's Advocate, as it falls outside his jurisdiction. Others feel it is necessary to seek some sort of legal advice in order to handle administrative proceedings, too complex in many cases.
- 3. The Law no. 35/1997 should be amended in order to eliminate conflicting terms. E.g., Article 15 para. 4

reads that any complaints dealing with decisions or actions taken by the judicial authority must be rejected without further motivation, while Article 18 provides that where a complaint lodged with the People's Advocate deals with some miscarriage of justice, he will refer that matter to the Superior Council of the Magistrature and must be informed about any subsequent measures as may be taken. On the other hand, the legislation under which the powers and organisation of the Magistrature's Supreme Council are regulated does not include any legal channel to allow the People's Advocate intervention to that effect or any legal remedies available to the Council itself in such cases.

Other negative aspects reflected in the operation of the Institution are directly linked with the poor knowledge by the general public of its powers and role in the area of human rights protection. Conversely, what rightly falls within jurisdiction of the People's Advocate, irregularities, abuse and misconduct from public administrative bodies remains unsanctioned. In order to change this bizarre state of things, the Institution has prepared a promotional campaign in fulfilling its pro-active role. With financial and logistical support rendered by the United Nations Development Programme, leaflets and printed materials have been prepared for distribution to the public, giving more exact information about the People's Advocate powers and limits. This campaign is also intended to increase public awareness on human rights protection and to inform about what is to be done wherever civil rights are violated by administrative authorities.

To accomplish its legitimate tasks, the People's Advocate Institution also needs ambitious training programmes for its staff. Concrete forms of bilateral co-operation with other counterparts in long-established democracies would, of course, serve this purpose to a greater extent. On the other hand, it is essential to be included in the Council of Europe ambit of activities. As it has been now.