

## LEGAL RELATIONSHIPS BETWEEN THE PEOPLE'S ADVOCATE AND THE LOCAL PUBLIC AUTHORITIES

Costel MIHAI\*, Cătălina Georgeta DINU\*\*

\*Department of Military Science and Management, "Henri Coanda" Air Force Academy, Brasov, Romania, \*\*Law Faculty, Transilvania University, Brasov, Romania

**Abstract:** *The People's Advocate Institution is an independent and autonomous public authority vis-à-vis any other public authority and aims to protect the rights and freedoms of individuals in relation to public authorities. Being a controlling institution without the possibility to dispose of ordinary coercive measures, the question arises as to how the People's Advocate manages to develop relations with local authorities and how he succeeds in mediating the conflict between them and the citizens who consider themselves injured in their rights.*

**Keywords:** *People's Advocate; local authorities; community; cooperation*

### 1. BRIEF PRESENTATION OF THE DUTIES OF THE PEOPLE'S ADVOCATE INSTITUTION

The People's Advocate Institution is an independent and autonomous public authority regarding any other public authority and aims to protect the rights and freedoms of individuals in relation to public authorities.

The main tasks of the People's Advocate Institution are:

1. the activity of solving petitions;
2. Work on constitutional litigation:
  - a. formulates points of view at the request of the Constitutional Court;
  - b. may refer the Constitutional Court to the unconstitutionality of the laws before promulgation thereof;
  - c. may directly refer the Constitutional Court to the unconstitutionality of laws and ordinances;
3. the activity regarding the administrative contentious: may file the administrative contentious instance, according to the law of the administrative contentious;
4. to promote the appeal in the interest of the law before the High Court of Cassation and Justice on the issues of law which have been solved differently by the courts through irrevocable court rulings;
5. present to the two Chambers of Parliament reports, annually or at their request; the reports may contain recommendations on changes to legislation

or measures of a different nature to protect the rights and freedoms of citizens;

6. Presents reports to the presidents of the two chambers of the Parliament or, as the case may be, to the Prime Minister, in cases where it finds, on the occasion of the investigations undertaken, gaps in the legislation or serious cases of corruption or non-observance of the laws of the country;

7. The People's Advocate can be consulted by the initiators of the draft laws and ordinances, which, through the content of the regulations, concern the rights and freedoms of citizens provided by the Romanian Constitution, by the covenants and other international treaties on fundamental human rights to which Romania is a party.

### 2. THE RELATIONSHIP BETWEEN THE PEOPLE'S ADVOCATE INSTITUTION AND THE LOCAL PUBLIC ADMINISTRATION

In the doctrine it was mentioned that, unlike the American model, characterized mainly by the existence of Ombudsman, also appointed responsible to the executive, the Romanian constitutional system opted like the majority of European states in favor of an Ombudsman accountable to the legislator for could be impartial in relation to officials and administrative bodies, more likely to mistaken or be the target of criticism (Tofan, 2011:21).

The Ombudsman's institution is in line with this idea, its main attribution as it protects the rights of

citizens faced with public administration (Scutelnicu, 2000:130).

Compared to the three classical public powers: legislative, executive and judiciary, the People's Advocate has no decision-making power, being a hearing based on mediation, which differentiates this authority from the usual ones. His real power is based on his moral authority, the latter being a fundamental characteristic of the institution. The experience of the Scandinavian countries has shown that the Ombudsman can be effective if he has enough personality and moral authority. The main function of the People's Advocate is to formally establish the correctness or incorrectness of the administrative actions (Scutelnicu, 2000:131).

In fact, through the People's Advocate Institution and its report with the public administration authorities, as judiciously emphasized in the specialized doctrine, we are witnessing a parliamentary control exercised by the People's Advocate at the level of the local public administration. Antonie Iorgovan (1993:148, *apud* Scutelnicu, 2000:134) speaks of

a modern parliamentary control over the Government and the other bodies of the public administration through authorities that depend on Parliament without being subordinated to it: the People's Advocate and the Court of Accounts.

The People's Advocate Institution does not have a sanctioning role in the application of fines, like other control authorities, this aspect representing the specificity and uniqueness of this institution as a mediator, all the actions undertaken being free of charge. Representatives of the public administration authorities must show their gratitude and openness to collaboration and communication with the People's Advocate Institution, which, both at central level and through its territorial structures, aims to resolve petitions addressed in view of possible harm to the rights of a natural person, the reparation of the alleged damage and the rectification of the unlawful act, if such an act is found, following the investigations carried out<sup>1</sup>.

In the following, we will exemplify certain case scenarios from the work of the People's Advocate - Braşov Territorial Office in relation to the City Hall of Braşov City, which have been solved favorably.

---

<sup>1</sup> At European level, the homologous institution, entitled the European Ombudsman, with similar powers and attributions functions in the People's Advocate (for details, see Ioan Muraru, 2004:24-25).

### 3. PRACTICAL ASPECTS OF THE ACTIVITY OF THE PEOPLE'S ADVOCATE – BRA OV TERRITORIAL OFFICE, IN RELATION TO THE CITY HALL OF BRA OV

The Territorial Office of Braşov, established at the end of 2004, provides protection to any person irrespective of race, nationality, ethnic and social origin, language, religion, sex, opinion, political affiliation, wealth in relation to the activity of civil servants or central authorities ministries, departments, government agencies); the local administration (prefectures, town halls, county, municipal, town and communal councils); the public institutions (for example, labor and social protection departments, territorial pension houses), autonomous regies, as well as specialized committees, such as local and county commissions for land, or commissions for the assessment of persons with disabilities .

#### 3.1 The right to a decent living standard and the protection of children and young people<sup>2</sup>.

The People's Advocate launched an investigation at the City Hall of Braşov, in the event of a citizen's eviction and social housing shortage at the city level. The investigation concerns the possible violation of art. 47 and art. 49 of the Romanian Constitution, regarding the standard of living and protection of children and young people, as well as of Law no. 272/2004 on the protection and promotion of the rights of the child. The People's Advocate was notified on 18 April 2016 by a petitioner stating that she is the sole supporter of two minor children and lives in a real estate under the administration of SC RIAL SRL Braşov (a trading company operating within the limits of the decisions of the Local Council of The City of Braşov and the provisions of the Mayor).

The petitioner reported that he had been sued in court to recognizal of the termination of the last rental agreement concluded on 23 June 2014 and their eviction from space<sup>3</sup>.

Following the demarches made by the People's Advocate on April 23, 2016, SC RIAL SRL Braşov announced that she was also summoned to hand over the space in which the petitioner lives, a space that is owned by private individuals. The imminent danger

---

<sup>2</sup> [http://avp.ro/comunicate-de-presa/comunicate\\_2016/comunicat\\_18octombrie2016.pdf](http://avp.ro/comunicate-de-presa/comunicate_2016/comunicat_18octombrie2016.pdf), accessed on 11 June, 2019;

<sup>3</sup> For details regarding the fact that improper execution of obligations is assimilated with the non execution of the contract, see C.Dinu, D.G.Iona (2017:157).

of evacuation of the patent stems also from the fact that on 13 July 2016 it sent a new petition informing it that the tabular owner had been informed by the tabular owner to leave the premises within 7 days. Considering the difficult situation of the petitioner, considering especially the fact that it is a single-parent family, with two dependent children, the Brasov Territorial Office continued the efforts at the City Hall of Bra ov, requesting it to analyze the situation, respectively to communicate the necessary information regarding the projects started in order to reduce the deficit of social housing, with which Brasov has faced for a long time.

By written procedures, information was requested on how to handle the situation of the petitioner, but also on the measures taken in the field of social housing at the city of Bra ov, the City Hall of Brasov communicating a response in this respect.

The People's Advocate states that, in accordance with Article 48 paragraph (2) of the Law no.272 / 2004 on the protection and promotion of the rights of the child, republished, if the parents or persons who, according to the law, have the obligation to support the child can not ensure, for reasons beyond their control, the satisfaction of the minimum needs for housing, food, clothing and education of the child, the State, through the competent public authorities, is obliged to provide them with adequate support, in the form of financial benefits, benefits in kind, as well as in the form of services, according to the law.

Subsequently, the People's Advocate Institution, through its representatives at the territorial level, carried out an investigation at the City Hall of Brasov City Hall, which consisted of a meeting aimed at presenting the complained situation and identifying its favorable resolution.

As a result of the collaboration between the representatives of the two authorities, the City Hall of Brasov ordered the allocation of a social housing in favor of this petitioner and stated that it envisages a series of investments for the construction of new such buildings. The settlement of the complainant's housing situation, as well as the City Hall's commitment to improving the social housing situation at the city of Bra ov, are the result of the actions taken by the People's Advocate, alongside the local authorities of Brasov<sup>4</sup>.

Regarding the situation of social housing at the level of Brasov Municipality, the People's Advocate was informed that two buildings are currently in use: one located on Zizinului Street and the other on Lani

Street, all social housing being already assigned. Besides these, there are also spaces administered by S.C.RIAL S.R.L. which were attributed to certain categories of people (evicted from nationalized buildings, employees in the budgetary sector, social cases). In order to make investments in the field, Bra ov City Hall also identified a building on 126 Zizinului street, suitable for social housing, so the feasibility study was carried out, and the Investment Service would prepare the necessary documentation for the technical project execution and transformation of the Homeless Home Center into social housing. The center will be relocated to another building, formerly the Transylvania School - Astra group, where the public procurement procedure has already begun.

**3.2. Identity documents for a child, issued by local authorities following an investigation by the People's Advocate Institution and a successful collaboration<sup>5</sup>.** The petitioner, without identity papers, informed the Territorial Office of Brasov that she is 22 years old, she is the mother of two minor children - a child of 2 years and one of 10 months and has a stable relationship with the father of the children, otherwise, live together. Neither the petitioner nor his children had identity papers (birth certificates, identity cards). In order to regulate the legal situation of his children, but also to be able to marry, the petitioner addressed the Brasov Court and, following her action, obtained a civil sentence, according to which it was ordered to register the birth of the petitioner, born in 1991, May , day 20, in Bra ov, Bra ov County, female sex, Romanian citizenship, Romanian nationality ... ". On the basis of the civil sentence, the petitioner made several attempts at the local Public Service of Population Records in Bra ov (SPCLEP Bra ov), but she was informed that her mother needed to be present for identity papers. The petitioner states that his father is deceased and that his mother, although the holder of an expired ID card, refuses to appear at SPCLEP Bra ov headquarters so that she is unable to regulate his situation and obtain the desired documents. Only after the mother's birth certificate has been granted, she would be able to take legal action to obtain the birth certificate for the 2-year-old minor. Also, for the minor of only 10 months, it is possible to obtain the birth certificate by administrative means until it reaches the age of one year, so it is necessary to settle the situation of the petitioner with a view to obtaining his birth registration.

---

<sup>4</sup> [http://avp.ro/comunicate-de-presa/comunicate2017/comunicat\\_17februarie2017\\_2.pdf](http://avp.ro/comunicate-de-presa/comunicate2017/comunicat_17februarie2017_2.pdf), accessed on 11 June, 2019.

---

<sup>5</sup> Newsletter of the People's Advocate Institution no.4/2015, [http://avp.ro/Buletine-informative/buletin4\\_2015.pdf](http://avp.ro/Buletine-informative/buletin4_2015.pdf), accessed on 11 June, 2019.

Representatives of the Territorial Office in Bra ov conducted an investigation at SPCLEP Bra ov. From the discussions, the following occurred: The petitioner must certify, in the presence of another person, that he is so called T.N. SPCLEP therefore recommends the petitioner to appear at the headquarters of SPCLEP Bra ov with a relative who preferably bears the same name or another major person with a valid identity card certifying its identity. After obtaining the birth certificate and identity card, the petitioner will be able to present at the headquarters of SPCLEP Bra ov with the minor up to 1 year old with the following documents: the medical certificate from the maternity in the original, the mother's identity document (copy + original). It will also be necessary to have the father of the child with his / her identity card (original + copy), and he / she will sign a declaration of paternity recognition. Following the investigation, the petitioner was informed by telephone on the legal means by which she can obtain the birth registration. According to the SPCLEP Bra ov executive director, she immediately presented herself with a major person with a valid identity card to the SPCLEP Bra ov Civil Service, where she received the dossier, and on the same day the birth certificate was issued by SPCLEP Brasov.

**3.3. Social assistance for a person with disabilities.** By the petition registered by telephone, through the Dispatcher service, registered with the People's Advocate Institution at Bra ov Territorial Office, Mr. ZA, with domicile in Bra ov municipality, we were informed of a possible violation of art.50 of the Romanian Constitution regarding the protection people with disabilities. We mention that, since the applicant was unable to move because of a physical disorder and the fact that he was at that time hospitalized, the representatives of the People's Advocate Institution have the opportunity to record the issues notified by phone by the person which is considered injured.

Thus, from the content of the petition addressed, it appears that the petitioner is 65 years of age, is invalid, with a medium handicap, undetectable, needs oxygen mask, has no caregivers, is alone. The petitioner underwent a hip orthopedic surgery on October 30, 2018. Currently he is hospitalized at the Mârzescu Hospital in Bra ov. On February 8, 2019, the petitioner was notified of a new disability-grade decision, changing his grade from "accentuated" to "environment" as a result of his reassessment by the Complex Assessment Service of the Adult Person with disability in the County Council of Brasov.

Mr. Z. is dissatisfied with the average grade of disability and wants to file an appeal at the Brasov Tribunal, according to the legal procedure, but does not have the physical possibility to submit the necessary steps, needing guidance on the formulation of this appeal. The petitioner states that he has no help, his only possibility being to contact the authorities. In this respect, Mr Z. claims that he has appealed to several authorities with powers in the field of social assistance, without being able to nominate a certain authority, but it has been stated that there are not enough people to go to the field.

Following the written procedures of the People's Advocate Institution of Bra ov Territorial Office, drafted in a timely manner given the urgent situation of the petitioner, the Social Assistance Department of Bra ov Municipality informed us that on March 1, 2019, an interdisciplinary team from within the same direction went to the 1st Department of Internal Affairs Mârzescu at the County Emergency Clinical Hospital Bra ov, where the petitioner was interned at that time. During the discussion, the petitioner was advised on the challenge to the court of the disability certificate issued on 08.02.2019 by the Disability Assessment Panel. The petitioner was also advised on the procedure to be followed in order to benefit from social services, so that in the near future a team of the Social Services Division will travel to his home in this regard.

As the petitioner was reinstated in the shield, we directed him to contact the Social Services Department after his release so that his representatives could come to his home.

We also informed the petitioner that during the internship he is entitled to apply for social assistance from the Brasov County Emergency Hospital, and that a social worker from this unit should go to the place of admission.

#### **4. EX OFFICIO REFERRALS OF THE PEOPLE'S ADVOCATE INSTITUTION TO LOCAL PUBLIC AUTHORITIES**

According to Article 59 of the Constitution of Romania and Article 16 paragraph (1) of the Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, the Ombudsman exercises his / her duties ex officio or at the request of persons injured in the rights and freedoms so that, both under constitutional and legal provisions, the People's Advocate can self-challenge in matters within his competence (Constantinescu *et al.*, 2004:117).

The provisions of art. 4 of the Law no. 35/1997 on the organization and functioning of the People's

Advocate Institution, republished, regulate that the public authorities are obliged to communicate or, as the case may be, provide the People's Advocate, according to the law, their acts in connection with petitions addressed to the People's Advocate, as well as those related to the *ex officio* notifications and the announced or unexpected visits it carries out for the fulfillment of the specific tasks of the National Mechanism for the Prevention of Torture in the Places of Detention, giving him support for the exercise of his duties.

It should be noted that, according to Article 25 of the same law, the scope of exercise of the specific competence of the People's Advocate Institution as regards the conduct of investigations is extended, applying to the public administration authorities, to the public institutions, as well as to any public services under the authority public administration authorities. In this respect, both the head of the institution - the People's Advocate, his deputies, as well as the specialized personnel of the People's Advocate Institution have the right to ask the authorities of the public administration for any information or documents necessary for the investigation, to hear and to make statements from the heads of the public administration authorities; from any official who can give the information necessary to resolve the petition, under the terms of this law.

It should be noted that, according to Article 25 of the same law, the scope of exercise of the specific competence of the People's Advocate Institution as regards the conduct of investigations is extended, applying to the public administration authorities, to the public institutions, as well as to any public services under the authority public administration authorities. In this respect, both the head of the institution - the People's Advocate, his deputies, as well as the specialized personnel of the People's Advocate Institution have the right to ask the authorities of the public administration for any

information or documents necessary for the investigation, to hear and to make statements from the heads of the public administration authorities; from any official who can give the information necessary to resolve the petition, under the terms of this law (see Annual Report of the People's Advocate Institution 2018, [http://avp.ro/rapoarte-anuale/raport\\_2018\\_avp.pdf](http://avp.ro/rapoarte-anuale/raport_2018_avp.pdf), ).

By means of the aforementioned notifications, the People's Advocate Institution of Brasov Territorial Office took steps to verify the issues reported in the press.

## BIBLIOGRAPHY

1. Constantinescu, M.; Iorgovan, A.; Muraru, I. & T n sescu, E.S. (2004). *Constituția României revizuită*. Bucharest: All Beck Publishing House.
2. Dinu, C. & Iona, D.G. (2017). General Consideration regarding contractual civil liability in the New Civil Code. *International Law Review*. vol.II, Special Issue, dec.
3. Iorgovan, Antonie. (1993). *Administrative Law*, vol.II. Bucharest: Hercules Publishing House.
4. Muraru, Ioan. (2004). *Avocatul Poporului – instituție de tip ombudsmu*. Bucharest: AllBeck Publishing House.
5. Scutelnicu, Gina. (2000). The control exercised by the People's Advocate Institution on the Romanian public administration (Controlul exercitat de instituția Avocatul Poporului asupra administrației publice românești). *Transylvanian Review of Administrative Sciences*. no.2(5).
6. Tofan, Dana Apostol. (2011). Reports of the People's Advocate with constitutional jurisdiction (Raporturile Avocatului Poporului cu jurisdicția constituțională). *Transylvanian Review of Administrative Science*. no.2 (29).