



THE 13<sup>TH</sup> EDITION OF THE INTERNATIONAL CONFERENCE  
**EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES**

## **Aspects on Involvement of Citizens in the Decision-Making Process of the European Institutions**

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**Abstract:** This work presents outline relevant issues concerning the real involvement of citizens in the decision-making process of the European institutions as well as the control exercised by the European Ombudsman. Institutional development of the EU, increasing the level of integration and awareness of the European identity strengthened significantly by the introduction of European citizenship by the Maastricht Treaty of 1993 have prompted both the European institutions and the European political environment the need to involve European citizens in making decision and creating the premises for a well-defined decisional transparency. The establishment of the European Ombudsman, a body with the role of investigating complaints by citizens of Member States or residents of the European Union or by associations and undertakings based in the European Union for maladministration by the institutions and bodies of the European Union, in addition to the fact that it is interested in the citizen's perception of the administrative decisions taken by the European institutions and gives the citizens of the Member States the possibility of exercising control over these decisions, regardless of whether these decisions have an economic or political impact on the citizens.

**Keywords:** European citizenship; the decision-making process; European Ombudsman; People's Lawyer

### **1. General Aspects on European Citizenship, Rights and Obligations Set Forth by European Union Treaties**

Involvement or participation of citizens in the administrative act, in making administrative decisions at both local public administration level and central or European level, is of paramount importance for the administrative system and the civil society. The local, regional or European elected representatives should represent citizens, as their decisions have an impact on the entire daily activity of citizens. Citizens' involvement in the activities of the Union's institutions is achieved either by accurately informing them on the activities conducted by the institutions as well as on their policies or by consulting citizens with regards to questions of interest of them. An efficient government may only be achieved with the citizens' support. The European Union has been numerous times accused of not being sufficiently transparent in relation to adopting decisions or to their institutional activity. In order to improve this aspect, various campaigns of informing and raising European identity awareness or different programmes supported by European funds have been conducted. The official websites of the European institutions provide information of interest to citizens in real time. The Official Journal of the European Union facilitates the access to the European Union law to all parties interested. All

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debates and deliberations of the Council on legislation are made public. Accurate information of the European citizens facilitates a constructive consultation, as every participant to consultations is informed when taking the floor and positive results may therefore be obtained in practice. (Boc, 2013, p. 19)

The process of political integration should have obligatorily succeeded the unification and economic integration of Europe. The economic unification on which an agreement had been reached was not seen as the end of a process, as it was not considered to be a goal in itself, but only as a mere intermediary towards the political unification. Or, this process became visible as the European Communities were being democratised. This democratisation was achieved by increase in the authority of the European Parliament, determined by direct elections. By introduction of new decisional procedures (firstly by the Single European Act in 1987, then by the Maastricht Treaty in 1992<sup>1</sup> and the Treaty of Amsterdam in 1987<sup>2</sup>), the Parliament decides with the Council on a large number of aspects regarding the life of the Union. The representativeness and the democracy of the Union were therefore enhanced, in other words, the citizens' representation in the decisional process and in the democratic adoption of decisions. (Barbulescu, 2008, p. 104)

The article 1(2) of the Treaty on the European Union (TUE)<sup>3</sup> marks "*a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizens*". Consequently, two essential elements of good governance/good administration are outlined, *transparency and rapprochement with citizens*. In addition, the Union recognises the rights, freedoms and principles set out by the Chart of the Fundamental Right of the European Union<sup>4</sup> and plans to adhere to the European Convention for Protection of Human Rights and Fundamental Freedoms<sup>5</sup>. The fundamental rights, "as they are guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms and as resulting from the constitutional traditions of Member States, represent general principles of the Union law", pursuant to article 6(3) of TUE. In all its activities, the Union shall respect their citizens' equality principle (article 9 of TUE) and the proportionality principle (article 5(4) of TUE), according to which "*the content and form of the Union action shall not exceed what is necessary to achieve the objectives of the European Union Treaties*".

The Union institutions give the citizens and the representative associations "*the opportunity to make known and publicly exchange their views in all areas of Union action*" and "*maintain an open, transparent and regular dialogue with representative associations and civil society*" (article 11 (1) and (2) of TUE). To ensure coherence and transparency of the Union actions, the European Commission carries out broad consultations with parties concerned. The European Parliament and the EU Council adopt provisions on procedures and conditions required to present a civic initiative, according to article 11 of TUE, so that the will of the Union citizens may be heard and taken into consideration. (Craig & Grainne, 2009, p. 84)

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<sup>1</sup> The Maastricht Treaty was signed by the European Council on 7 February 1992 and entered into force on 1 November 1993.

<sup>2</sup> The Treaty of Amsterdam, adopted on 16-17 July 1997 and signed on 2 October 1997, entered into force on 1 May 1999.

<sup>3</sup> The Treaty on the European Union, published in OJEU, C 326/13 of 26.10.2012 consolidated version.

<sup>4</sup> The Chart of the Fundamental Right of the European Union, OJEU, 2012/C 326/02.

<sup>5</sup> The European Convention for Protection of Human Rights and Fundamental Freedoms, amended by Protocols no. 3, 5 and 8 and supplemented by Protocol no. 2, concluded at Rome on 4 November 1950, published in the Official Journal no. 135 of 31 May 1994.

By virtue of article 15 of the Treaty on the functioning of the European Union<sup>1</sup> (TFUE), in order to promote good governance and ensure participation of the civil society, the Union's institutions shall respect the transparency principle according to which any citizen of the Union and any natural or legal person residing or having its registered office in a Member State shall have "*the right of access to the documents of the Union's institutions, bodies, offices or agencies of the Union, whatever their medium*".

The Chart of the Fundamental Right of the European Union represents a mandatory legal instrument of which the European citizen may avail in relation to any European court. It has represented "a landmark in the European construction, in the sense that this time, the integration aimed the values specific to citizens and their rights and not the economic values". (Tănăsescu, p. 17)

The Chart represents "*a genuine catalogue of the rights from which all European citizens should benefit in relation to all European Union institutions and Member States whenever the latter enforce the European legislation*". At European level, the citizens of the UE Member States as well as the citizens of third states (Salomia, 2013, p. 253) benefit from a right of good governance in relations to the European Union institutions and bodies, according to article 41 of the Chart of the Fundamental Right of the European Union.

In article 43, the Chart provides the right of every Union citizen or any natural or legal person residing or having its registered office in a Member State of the European Union to refer to the European Ombudsman in case of maladministration in relation to the activity of the institutions or community bodies, except for the Court of Justice of the European Union and the General Court of the European Union, in terms of their jurisdictional competences. Additionally, article 44 stipulates the right to filing a petition by every Union citizen or any natural or legal person residing or having its registered office in a Member State of the European Union. Article 42 lays down the right of access to the documents of the Union's institutions, bodies, offices and agencies, irrespective of their medium. Article 47 sets out that all and any person of whose rights and freedoms guaranteed by the Union law have been violated is entitled to a course of action with a court of law.

The preoccupation for the transparency of the European activities has materialized throughout time in normative acts which are extremely important for the protection of the fundamental rights of the citizens inside the Union. Therefore, Regulation no. 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> gives EU citizens and all persons residing or having their registered office in the European Union free access to the information included in the documents of such institutions. In the preamble of the Regulation mentions are made that "openness enables citizens to participate more closely to the decision-making process and guarantees accountability of the administration" and "*contributes to the strengthening of the democratic principles and respect for the fundamental rights as they are laid down in the European Union Treaty and the Chart of the Fundamental Rights of the European Union*".

In September 2001, the European Parliament approved the European Code of the Good Administrative Behaviour which sets forth the standards to comply with by European Union institutions and bodies and by their employees in relations to citizens of the European Union. It elaborates on the provisions of the Chart of the Fundamental Right of the European Union and reunites the procedures of material and procedure nature which should govern the actions undertaken within EU institutions and bodies.

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<sup>1</sup> The Treaty on the functioning of the European Union, published in OJEU, C 326/13 of 26.10.2012 consolidated version

<sup>2</sup> The EU Regulation no. 211 of the European Parliament and Council of 16 February 2011 regarding citizens' initiative, OJEU L 65/1 of 11.03.2011.

(Balan, Varia, Iftene, Troanță & Văcărelu, 2010, p. 90) This Code has become a key instrument in applying the principle of good governance as it helps citizens to understand and exercise their rights and promotes the public interest in an open, efficient and independent administration. It enables citizens to learn about the administrative standards which they should expect in relation to EU institutions.

Citizenship was established by provisions of the Maastricht Treaty, which introduced in the EC Treaty the second part entitled “*Citizenship of the Union*”, including art. 8(17) -8 E(22). Granting a European citizenship by this Treaty emerged on the one hand as an instrument which allows rapprochement of the Union with its citizens and on the other hand as a social legitimacy of the European edifice. (Mătușescu, 2013, p. 125) Recognised by virtue of article 17 of TCE to all citizens of a UE Member State and considered to be complementary to the national one, once the Treaty of Amsterdam was adopted, the European citizenship enables European citizens to participate to a community construction process in a more significant manner. In accordance with article 20 of TFUE “Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.” Two attributes of the concept of European citizenship are therefore recognised: dependence of European citizenship on national citizenship and distinct nature of the former in relation to national citizenship which it does not replace.

It should be pointed out that the European citizenship does not confer a person the right to automatically acquire the citizenship of another Member State of the European Union. An ad litteram interpretation of the provisions in the treaties may lead one to an erroneous conclusion in the sense that, being subordinated to national citizenship, the quality of European citizen may not be attributed to nationals of a third state. The jurisprudence of the Court of Justice of the European Union tries to set a clear dividing line between the two citizenships. For instance, in the case *C 145/04 of 12 September 2006, Spain/Great Britain, Rec 1-7917, CJEU*<sup>1</sup> recognises the possibility of a state to grant certain rights arising from the European citizenship of specific persons who have good relations to such state, others than their nationals.

The derived character of the European citizenship in relation to national citizenship would imply that loss of the latter should entail deprivation of the person of all rights attached to European citizenship. *In the case of 2 March 2010, Rottman, case C -1354/0, the Court of Justice of the European Union* recognises the right of a state to cancel the citizenship fraudulently obtained. Nevertheless the same court obliges to respect the proportionality principle and objectively assesses whether the measure taken is grounded in relation to the crime committed.<sup>2</sup>

The Court of Justice of the European Union sets that “*The status of European citizen is meant to be the fundamental status of the Member States nationals which allows the ones among the latter who are in the same position to obtain, irrespective of their citizenship and without prejudice to the exceptions expressly stated in this regard, the same legal treatment*”.<sup>3</sup>

By provisions referring to the European citizenship, there emerges an entire set of rights which may be classified into the following categories: political rights, economic freedoms and guaranteed rights.

The category of political rights includes: the right to vote and to stand as candidates in local elections, the right to vote and to stand as candidates in the European Parliament.

<sup>1</sup> CJEU, C 145/04 of 12 September 2006, Spain/Great Britain, Rec 1-7917.

<sup>2</sup> CJEU, 2 March 2010, Rottman, case C -1354/08.

<sup>3</sup> CJEU, 20 September 2001, Grzelczyk, Case C -184/99, Rec. I – 06193.

The economic freedoms encompass the right to free movement and the right to stay, the free movement of workers and free access to jobs, the right to settle in any member state which implies access to unpaid activities and the freedom for establishment of firms.

The category of guaranteed rights includes: the right to petition, the right to appeal a European mediator.

## 2. Rights of European Citizens

### 2.1. General Aspects

The European citizenship entails rights and duties of citizens; accordingly, the same article 20 of TFUE sets out that “*Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties*”. Classified into several categories, political rights, economic freedoms and guaranteed rights, the rights of the European citizens shall be exercised “*within the conditions and limits defined by the Treaties and by the measures adopted thereunder.*” The European citizens’ rights are constantly evolving, article 25 of TFUE stating that, on the basis of an evaluation conducted by the European Commission every three years on the application of the provisions regarding the EU citizens’ rights, “*without prejudice to the other provisions of the Treaty*”, the Council, acting unanimously in accordance with the special legislative procedure and after obtaining the consent of the European Parliament, may adopt provisions to add to the rights listed in article 20(2). These provisions shall come into force after their approval by the Member States.<sup>1</sup>

The right to vote and to stand as candidates in local elections and the right to stand as candidates in the European Parliament have been recognised by provisions of article 8B (19) paragraph 1 of the TEC (turned into article 19). According to these provisions, any Union citizen who resides in a Member State and is not a national of such state has to right to elect and stand as candidate in the municipal elections of the state where he or she resides. This right shall be exercised subject to arrangements adopted by the Council which will unanimously act on the proposal of the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State. By virtue of article 22 (1) of TFUE “*Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State under the same conditions as nationals of that State.*”

The detailed arrangements and derogations on exercising the right to vote and to stand as a candidate in the European elections and the municipal elections for the citizens of the European Union residing in a Member State of which he is not a national are set by Directives of the Council 93/109<sup>2</sup> and 94/80<sup>3</sup>.

The right to diplomatic and consular protection is conferred by provisions of article 8C (20) of TEC and article 23 (1) of TFUE.

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<sup>1</sup> The EU Regulation no. 211 of the European Parliament and Council of 16 February 2011 regarding citizens’ initiative, OJEU L 65/1 of 11.03.2011, p. 127.

<sup>2</sup> Directive 93/109/EC of Council of 6 December 1993 to set norms on exercising the right to vote and to stand as a candidate in the European Parliament for citizens of the European Union residing in the Member State of which they are not nationals, OJ L 329, of 30.12.1993, page 34, amended by Directive 2013/1/EU of 20 December 2012, JO L 26/27 of 26.01.2013.

<sup>3</sup> Directive 94/80/EC of Council of 19 December 1994 to set norms on exercising the right to vote and to stand as a candidate in municipal elections for citizens of the Union residing in the State of which they are not nationals, OJ L 368, of 31.12.1994, p. 38.

According to these provisions, every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary rules and start the international negotiations required to secure this protection. With regards to this right to diplomatic and consular protection, there is a series of difficulties which starts mainly from the fact that it should not be mistaken with the right of the European citizens to enjoy protection by European institutions. The *CJEU, 28 November 1996, Odigitria, Case C 293/95 Rec. I -6129*, does not exclude potential undertakings by the Commission towards recognizing the right to diplomatic and consular protection<sup>1</sup>. On the other hand, materialisation of this right to European citizens proved to be difficult as Member States reached an agreement only on consular assistance in relation to death, accident, serious disease, arrest, support for repatriation.<sup>2</sup>

Upon introduction of the concept of “**European citizenship**” by the Maastricht Treaty (1993), right to free movement and free residence inside European Union was granted to all citizens of Member States. Additionally, the Treaty included in the domain of common interest of Member States the policy on asylum, crossing external borders and policy on immigration.

In close connection with the subject matter of this study, we will further refer to the guaranteed rights recognised to European citizens, rights which give them the opportunity to actually get involved in the decision-making process of the European Union institutions: right to information, right of access to administrative documents, right to petition, right to refer to a European mediator.

## **2.2. Right to Information and Citizens’ Initiative**

The right to information and the European citizens’ initiative come to meet the demand relating to rapprochement of the decision with the citizens. It represents methods by which citizens may propose legislative bills on the agenda of the European Union, in fields in which the Union has powers and competences to legislate.<sup>3</sup>

The Maastricht Treaty (1992), enhanced by the Treaty of Lisbon<sup>4</sup> (2007), also grants the European Parliament the right of initiative and allows it to request the Commission to submit a proposal. Moreover, in terms of common foreign policy and security policy, the Member States have the right to legislative initiative. According to article 11 (4) of TUE” *Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.*”

*“The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens’ initiative within the meaning of the article of TUE, including the minimum number of Member States from which such citizens must come.”*– article 24 (1) of TUE.

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<sup>1</sup> CJEU, 28 November 1996, Odigitria, Case C 293/95, Rec. I -6129.

<sup>2</sup> Council Decision no 95/553/CE of 19 February 1995.

<sup>3</sup> European Citizens Initiative, Europe Direct Information Centre in Bucharest, European Institute in România address: <http://ec.europa.eu/citizens-initiative>.

<sup>4</sup> Treaty of Lisbon to amend the Treaty on the European Union and the Treaty on the Functioning of the European Union, OJEU, 2007/C 306/01.

Regulation of the citizens' initiative comes in the context of correcting the democratic deficit of the European Union and the lobby activities carried out by the main associates of the civil society within the Member States. The European citizen hereby becomes a new player in the classic decision-making triangle of Europe, made up of the European Commission, the European Parliament and the Council of the European Union.

The opportunity given to citizens to express through legislative initiatives represent an important step in ensuring legitimacy and consolidation of the participative democracy within the Union. Therefore, the European citizen is ensured a new perspective and is given the opportunity to actively participate to elaboration of decisions which concern him directly. Once instituted, this mechanism of promoting the interests of the European citizens enhances the internal democracy of the European Union and capitalises on the manifestations of the civic concerns on the European territory<sup>1</sup>.

In practical terms, this right is exercised in *compliance with Regulation no. 211 of 16 February 2011*<sup>2</sup>.

### **2.3. Right of Access to Administrative Documents**

The right of access to the documents of the European Council, Commission and Parliament is granted by provisions of article 191A (225) paragraph 1 introduced in the EC Treaty of Amsterdam, taken over in article 15 (3) of TFUE and article 42 of the Chart of Fundamental Rights of the European Union.

In line with provisions of this article, any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the European Parliament, Council and Commission, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3 (they refer to potential limits of such right of access, on grounds of public or private interest; each institution shall set by internal rules and regulations specific provisions on public access to their documents).

Citizens' involvement and transparency of the decision-making process in the European institutions are also conferred by Regulation no. 1049/2001 of the European Parliament and Council of 30 May 2001 regarding free access to documents of the European Parliament, Council and Commission. (OJ L 154/31.05.2001)

In the Preamble of the Regulation, statement is made that the transparency contributes to enhancing democratic principles and respect of the fundamental rights.

The documents of the European institutions which may be publicly accessed are represented by "any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility". (article 3 of Regulation)

The exceptions on the public access to documents of the European institutions are set forth in article 4 of the Regulation. Therefore, the institutions shall refuse access to a document where disclosure would undermine the protection of:

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<sup>1</sup> European Citizens Initiative, Europe Direct Information Centre in Bucharest, European Institute in România address: <http://ec.europa.eu/citizens-initiative>.

<sup>2</sup> EU Regulation no. 211 of the European Parliament and Council of 16 February 2011 regarding citizens' initiative, OJEU L 65/1 of 11.03.2011.

- a) The public interest, as regards: (1) public security; (2) defence and military matters; (3) international relations; (4) the financial, monetary or economic policy of the Community or a Member State;
- b) Privacy and the integrity of the individual, in accordance with Community legislation regarding the protection of personal data;
- c) Commercial interests of a natural or legal person, including intellectual property;
- d) Court proceedings and legal advice;
- e) The objective of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

The document access applications shall be submitted in writing, including in electronic form, in one of the languages of the Member States and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application. (article 6.1 of the Regulation) The institution shall grant access to documents requested and shall provide them within 15 working days from registration of the application. The graceful appeal shall apply in favour of the applicant. According to European regulation, in the event of a total or partial refusal or lack of response from the institution, the applicant may, within 15 working days of receiving the institution's reply or of the date by which the institution should have responded, make a confirmatory application requesting the institution to reconsider its position. (articles 7.2 and 7.4 of the Regulation)

Similarly to the Romanian legislation, the graceful appeal is a preliminary procedure mandatory before referring to a court of law.

Pursuant to article 11.1 of the Regulation, each European institution shall have a register of publicly accessible documents.

Most European States guarantee the citizens the right of access to administrative documents. Therefore, in France, the right of every person to public information and administrative documents is provided for by the law, whereas exceptions refer only to protected interests such as: national defence, external relations, monetary policy, national security and public order, legal procedures, tax-related documents, personal files or documents on personal life, trade or industrial secret. In Italy, the access to administrative documents is guaranteed to all persons who have a legitimate interest therein. The exceptions from this right take account of documents on state secrets as defined by the law, military, industrial or trade secrets. In addition, public authorities may deny access to documents should disclosure of such documents influence the work of the administration in a negative manner<sup>1</sup>.

In România, article 31 of the Constitution, as amended and republished, establishes the fundamental right of the person to have access to any information of public interest which may not be restricted. Established under the influence of international legal instruments, this right has a double regulation in the Romanian legislation, namely the Constitution and the Law 544/2001 regarding public access to information of public interest<sup>2</sup>. This right institutes both the person's right to be accurately informed on any information of public interest and the authorities' obligation to inform the citizens on public

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<sup>1</sup> Professor Gyula Gulyas PhD, Lecturer Liviu Radu PhD, Research Assistant Dan Octavian Balica, Research Assistant Cristina Haruța PhD Student. *Ethics in Public Administration. Course Book*. Ministry of Education, Research and Youth. BABEȘ-BOLYAI University of Cluj-Napoca, 2011.

<sup>2</sup> The consolidated form of Law no. 544/2001, published in the Office Gazette no. 663 of 23 October 2001, on 20 July 2016 is achieved by including the amendments and additions brought by: RECTIFICATION no. 544 of 12 October 2001; LAW no. 371 of 5 October 2006; LAW no. 380 of 5 October 2006; LAW no. 188 of 19 June 2007; LAW no. 76 of 24 May 2012; LAW no. 144 of 12 July 2016.



affairs and matters of personal interest. The principle of informing the citizens represents a fundamental principle in conducting activities by authorities and institutions in România, be they of central or local nature. The principle sets the right of citizens to know the concrete mechanisms on the public access to information of public interest or the transparency in the decision-making process as well as the right to inform the citizens which triggers the correlative obligation of the authorities to create the bases required to inform the citizens on every decision taken or administrative act concluded.

#### **2.4. Right to Petition the European Parliament**

The right to petition the European Parliament is set by article 8D (21) paragraph 1 of the TEC, according to which every citizen of the Union shall have the right to petition the European Parliament. Set in article 24 (2) of TFUE as a right of European citizens, the right to petition is extended by article 227 of TFUE to other categories of persons. Therefore, beneficiary of these rights may be any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State; the petition may be individual or in a group; the subject of the petition shall be on a matter which falls under the Union's fields of activity; the subject matter of the petition shall directly affect its author. In other words, the petitions should be absolutely circumscribed to the community domain; the activities which have no community relevance, yet only a national, internal relevance are therefore excluded, e.g. activities relating to persons' income taxation. (Manolache, 2006, p. 105) In accordance with articles 201 and 202 of the Rules of Procedure of the European Parliament, the petition commission within the Parliament rules on the admissibility of the petition, following a preliminary analysis which may include: audits, investigations, request for information etc. The commission may decide to prepare a report, submit a resolution proposal to the Parliament, may request the advice of a commission specialised in the matters addressed or may convey its recommendation to the European Commission so that a response should be remitted or an action be taken<sup>1</sup>. In the unpublished Decision of 14 September 2011, Ingo-Jens Tegebauer/European Parliament, ruled in Case T-308/07, *the General Court of the European Union* considers that a petition deemed to be inadmissible by the commission may at any time be subjected to a jurisdictional investigation, in the course of action for cancellation, such investigation being the only guarantee of the right to submit a petition<sup>2</sup>.

The right of defence includes as derivative the *person's right of access to administration documents* in order to submit his own point of view. Thus, one must say that in the matter of public servants disciplinary regime, in a case filed against the advice issued by a discipline commission, the Court considered that such advice represents a harmful act and that it may be the subject matter of an action, as the advice mentioned, despite its issuance by a consultative body, had been issued upon the completion of an investigation which the commission should have conducted in full independence and in accordance with a special, distinct procedure, of contradictory nature and subjected to the fundamental principle of the right of defence<sup>3</sup>. A fortiori, such a reasoning should by analogy apply in case of decisions adopted in application of article 10 (2) the first thesis of Regulation no. 1073/1999<sup>4</sup>, as these decisions come from an independent community body and are also taken in relation to or

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<sup>1</sup> The EU Regulation no. 211 of the European Parliament and Council of 16 February 2011 regarding citizens' initiative, OJEU L 65/1 of 11.03.2011. p. 137.

<sup>2</sup> Decision of 14 September 2011 ruled by the General Court of the European Union, unpublished, Ingo-Jens Tegebauer/European Parliament ruled in Case T-308/07.

<sup>3</sup> Court Decision of 29 January 1985, F/Commission, 228/83, Rec., p. 275, point 16.

<sup>4</sup> (EC) Regulation no. 1073/1999 of the European Parliament and Council of 25 May 1999 regarding investigations carried out by the European Anti-fraud Office (OLAF).

upon completion of an investigation which should be carried out in full compliance [...] of the right of the persons concerned to express their opinions on actions which regard them”<sup>1</sup>.

## **2.5. Right to Appeal a European Mediator**

The right to appeal a **European Mediator** is conferred by provisions of article 8D (21) paragraph 2 of TEC.

The Parliament appoints a mediator habilitated to collect the complaints from any European citizen or any natural or legal person residing or having its registered office in a Member State. These complaints concern cases of maladministration in relation to actions taken by institutions or bodies, except the Court of Justice and the General Court of First Instance which perform their duties. The mediator conducts the investigations which he considers grounded, either based on his own initiative or in line with the complaints filed directly or through a member of the European Parliament, excepting the cases when such actions are or were subject to a jurisdictional procedure. Should the mediator note a maladministration case, he shall inform the institution concerned thereon. The institution shall have three months to take actions. Subsequently, the mediator shall send a report to the European Parliament and the institution concerned. The person who filed the complaint is informed on the outcome of the investigation. Every year the mediator submits a report to the European Parliament on the outcomes of the investigations conducted.

After each election of the European Parliament, the mediator is appointed for the duration of the office. His term may be renewed. Should the mediator fail to meet the requirements necessary to function or commit a serious error, he may be declared resigner by the Court of Justice, upon request of the European Parliament.

The mediator fulfils his tasks in full independence. In fulfilling his tasks, he does not request or accept instructions from another body. Throughout the period of his function the mediator may carry out no other professional activity, irrespective of whether such activity is remunerated or not. The independence refers to his relation to the European Parliament, however does not exclude jurisdictional control over his activity. This hypothesis is set by *the Court of Justice of the European Communities* in Case C 234/02P.<sup>2</sup>

## **3. European Ombudsman**

*The Ombudsman is a democratic institution created to operate in a democratic spirit with a cooperative government and amiable officials. It chiefly pursues to rectify any mistake which might occur.*<sup>3</sup>

### **3.1. Role of the European Ombudsman**

According to articles 42 and 43 of the Chart, any European citizen is recognised the right of access to documents of Union’s institutions, bodies, offices and agencies as well as the right to appeal the European Ombudsman with regards to cases of maladministration relating to activities of the Union’s institutions, bodies, offices and agencies, except the Court of Justice of the European Union in exercising its jurisdictional function. The opportunity to notify the European Ombudsman or the Court

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<sup>1</sup> Decision of the EU Public Function Court of 28 April 2009 in jointed F-5/05 and F-7/05, subject matter being an action filed on grounds of articles 236 EC and 152 EA.

<sup>2</sup> CJEC, 23 March 2004, Lambert, Case C 234/02P, Rec. I -2803.

<sup>3</sup> (Deleanu, 2006, p. 547) and (Hossu, 2013, p. 62).

of Justice, as appropriate, “constitutes elements of consolidating efficiency and efforts to guarantee the right to a good administration, strictly at the level of the European Union”.

The European Ombudsman has on the one hand the role of an external control mechanism, i.e. examination of complaints on inappropriate behaviour in administration and recommendations on rectifying actions, and is on the other hand a source of support for the Union’s institutions, helping them to improve their activity by indicating the domains which may be enhanced.

The national denominations of the Ombudsman are different: Parliamentary Commissioner in Great Britain, Defender of People in Spain, Mediator in France, Protector of Citizens in Canada, Parliamentary Delegate of Defence in Germany, Commissioner on Administration Affairs in Cyprus, Defender of Civil Rights in Poland, Ombudsman for Human Rights in Slovenia, People’s Lawyer in România, Parliamentary Lawyer in the Republic of Moldova (Centre for Human Rights in Moldova), in other states – public mediator, parliamentary lawyer etc.

### **3.2. Appointing and Dismissing the European Ombudsman**

The procedures on appointing and dismissing the Ombudsman are set forth in article 219-221 of the Rules of Procedure of the European Parliament; according to article 221, at the beginning of every legislature, just after his election or in cases stipulated in paragraph (8) of the same article (death or dismissal), the President launches a call for candidacies in order to appoint the Ombudsman and sets the timeframe to submit them. The call is published in the Official Journal of the European Union and the candidacies have to be supported by minimum 40 deputies who are nationals of at least two Member States.

Should the Ombudsman fail to meet the requirements necessary to function or commit a serious error he may be dismissed by the Court of Justice of the European Union, upon request of the Parliament. Dismissal may be requested by a tenth of the Parliament members. The request is also conveyed to the competent commission who, in the event most members consider there are grounds for dismissal, submits a report to the Parliament. Upon his request, the Ombudsman is audited prior to taking a vote on the report. After the debates, the Parliament decides by secret ballot. In case the vote is in favour of dismissing the Ombudsman and the latter fails to act on it, the President notifies the Court of Justice of the European Parliament in the session period following the vote, at the latest, and demands a decision in the shortest time possible with regards on the request for dismissal. The Ombudsman’s voluntary resignation interrupts this procedure.

Although he is totally independent in performing his duties, the European Ombudsman has close relations with the Parliament, which is exclusively responsible for his appointment, may request the Court of Justice to dismiss him, sets the norms regarding performance of his duties, provides assistance in relation to investigations and receives his reports.

### **3.3. Status of the European Ombudsman**

The status and general conditions on exercising the European Ombudsman’s functions were laid down by Decision 94/262/CECO, EC, Euratom of the European Parliament of 9 March 1994 regarding the status and general conditions on performance of the European Ombudsman’s duties<sup>1</sup>, in accordance with article 195 (4) TEC and article 107 (4) of CEEA (current article 228 TFUE). Pursuant to article 2 (1) of this decision, the Ombudsman contributes to identification of cases of

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<sup>1</sup> Decision 94/262/CECO, EC, Euratom of the European Parliament of 9 March 1994 regarding the status and general conditions on exercising the European Ombudsman’s functions, published in OJ L 113, 4.5.1994, p. 15 – amended by EP decisions of 14 March 2002 - OJ L 92, 9.4.2002, p. 13 and of 18 June 2008 - OJ L 189, 17.7.2008, p. 25.

maladministration relating to the activity of the Union's institutions and bodies, except the Court of Justice and the General Court of First Instance. The action of any other authorities or persons may not be subject matter of a complaint referred to the Ombudsman. (Mihailescu, 2017, p. 166)

The European Parliament appoints the European Ombudsman after each election and for the duration of the entire legislature. The term may be renewed. The Ombudsman is appointed from among the personalities who are citizens of the Union, enjoys all civil and political rights, presents all guarantees of independence and fulfils the requirements necessary in the country of origin for exercise of the highest jurisdictional functions and possesses expertise and competences recognised for fulfilment of Ombudsman functions.

### 3.4. Duties of the European Ombudsman

The Ombudsman performs his duties in conditions of full independence, to the general interest of the European Union and its citizens. With a view to performing these duties, he does not request or accept instructions from any government or body. The Ombudsman refrains from any actions which are not compatible with the nature of his duties. Upon taking his position over, the Ombudsman makes a firm commitment before the Court of Justice of the European Union to perform his duties in full independence and impartially and to respect, for the entire duration of his term and after its completion, the obligation of honesty and discretion in case of accepting some positions or advantages after expiry of his term as Ombudsman. During performance of his duties, the Ombudsman may not hold another political or administrative position or carry out any professional activity, irrespective of whether this is remunerated or not.

Almost in any law system it may be, the Ombudsman represents a body of protecting the citizens, derived from the Parliament, which holds a prerogative to control the administration, enjoys large independence and acts in the absence of an excessive formalism. (Tofan, 2011, pp. 18-19)

## 4. People's Lawyer

People's Lawyer is the constitutional denomination under which the ombudsman is organised and functions in Romania. Created by the Constitution in 1991, as an innovation in the legal and state life of România, but also in Europe, the institution of the People's Lawyer (Ombudsman), institution of Western European inspiration, was actually set up and started operating after adopting its organic law, Law no. 35/1997 regarding organisation and functioning of the institution People's Lawyer.<sup>1</sup> The institution People's Lawyer is a national institution meant to promote and protect human rights, within the meaning set by Resolution of the General Assembly of the United Nations (UN)<sup>2</sup> no. 48/134 of 20 December 1993, by which Principles of Paris were adopted. (Muraru, 2004, p. 118)

Distinct from similar European institutions, according to the Constitution revised, People's Lawyer is conferred enhanced attributes, especially in terms of control of the constitutionality of laws. Therefore, in line with constitutional provisions of article 146 of the Constitution, People's Lawyer has the prerogative to refer to the Constitutional Court in relation to unconstitutionality of laws, *prior to their promulgation*; additionally, in relation to a law already entered into force, *he may* directly invoke the exception of unconstitutionality before the same Court and *may thus entail a posteriori the*

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<sup>1</sup> Law 35/1997 regarding the organisation and functioning of People's Lawyer\*) – Republished in the Official Gazette 181 of 27 February 2018 was amended by Law no. 9/2018 for amendment and addition to Law no. 35/1997 regarding organisation and functioning of People's Lawyer.

<sup>2</sup> Resolution of the General Assembly of the United Nations (UN) no. 48/134 of 20 December 1993.

*control of constitutionality of laws.* Many references to the Constitutional Court in relation to the exception of unconstitutionality filed by the People's Lawyer are intensely mediated; for instance, People's Lawyer appealed the Constitutional Court and invoked the exception of unconstitutionality of the Government Emergency Ordinance 13/2017<sup>1</sup>, Government Emergency Ordinance 15/2016 supplements the provisions of Law 3/2000 regarding organisation and conduct of the referendum in the sense of allowing organisation and conduct of the local referendum on the same date as the local elections, using the same polling stations, constituency offices and voting stamps.<sup>2</sup>

In terms of the prerogative of People's Lawyer to raise the exception of unconstitutionality, by **Decision no. 148/2003**<sup>3</sup>, *the Constitutional Court has seen that it does not include a judicious solution with potential of juridical norm of constitutional rank, as the exception raised by People's Lawyer to the benefit of a person may not have the significance of an authentic guarantee or be a measure to protect the citizen as long as this person, having the legal capacity and being animated by a legitimate interest, may personally exercise the procedural right to raise the exception before the court of law.* In addition, the Constitutional Court acknowledges that People's Lawyer might not even invoke a procedural position which should legitimate his participation to a lawsuit before courts of law. As long as citizens are guaranteed the right of free access to justice as well as the right to defence, citizens may defend themselves in the legal domain against any enforcement of some unconstitutional legal provisions. This is the reason why People's Lawyer is endowed with a competence which is as excessive as it lacks consistency, namely the competence of raising the exception of unconstitutionality, outside a lawsuit, on behalf of the litigant.

Law 35/1997 regarding organisation and functioning of People's Lawyer was amended by Law no. 9/2018 to amend and supplement Law no. 35/1997 regarding organisation and functioning of the institution of People's Lawyer so that he is assisted by deputies specialised in the following domains of activity: a) human rights, equal chances between men and women, religious forms and national minorities; b) rights of family, young persons, retired, disabled persons; c) defence, protection and promotion of child's rights; d) army, justice, police, penitentiaries; e) property, labour, social protection, taxes; f) prevention of torture and other punishments or cruel, inhuman or degrading treatments applied in detention places, by the National Preventive Mechanism.

The main duties of People's Lawyer are: a) petition settlement; b) activities on constitutional contentious; c) submitting points of view, upon request of the Constitutional Court; d) he may refer to the Constitutional Court with regards to unconstitutionality of laws, prior to their promulgation; e) he may directly refer to the Constitutional Court in relation to the unconstitutionality of laws and ordinances; f) activities on administrative contentious: he may inform the administrative contentious court, under terms and conditions of the administrative contentious law; g) promoting the appeal in the interest of the law before the High Court of Cassation and Justice with regards to law matters which were settled differently by courts of law, by irrevocable court judgments; h) he submits his reports the two Chambers of the Parliament, which are annual or upon the request of the former; the reports may contain recommendations on amending the legislation or measures of a different nature to protect the rights of freedoms of citizens; i) he submits reports to the presidents of the two Chambers of the

<sup>1</sup> Decision of the Constitutional Court no. 63/08.02.2017 by which it was rejected as inadmissible because this was repealed by Government Emergency Ordinance 14/2017 after notification of the Constitutional Court.

<sup>2</sup> By Decision of 26 May 2016 by which the Constitutional Contentious Court acknowledged that Government Emergency Ordinance no. 15/2016 to supplement Law no. 3/2000 regarding organisation and conduct of referendum is unconstitutional. The Court acknowledged that the normative act examined fails to observe the requirements provided in article 115 (4) of the Constitution, in reference to an extraordinary situation of which regulation may not be postponed.

<sup>3</sup> Decision no 148 of 16 April 2003 of Constitutional Court regarding constitutionality of the legislative proposal to revise the Constitution of România, Published in the Official Gazette no. 317 of 12 May 2003.

Parliament or, where appropriate, the prime minister, in cases he finds during investigations conducted, legislative gaps or serious cases of corruption or failure to enforce the national laws.

People's Lawyer for protection of child's rights performs his duties in order to ensure observance of child's rights and freedoms and implementation at national level, by central and local authorities, by persons holding high positions at all levels, of the provisions of the UN Convention with regards to child's rights.

People's Lawyer for child's rights provides protection and assistance to the child, upon the latter's request, without requesting the consent of the parents or the legal representatives. The child is informed on the outcome of the examination of his request in the appropriate form of his intellectual and mental maturity.

In order to ensure observance of child's rights and freedoms People's Lawyer for the child's rights is entitled to act on his own initiative so as to assist the child in difficulty or at risk, without requesting the consent of the parents or the legal representatives. People's Lawyer for the child's rights cooperates with all persons, non-commercial organisation, public institution or authority carrying out activities in the domain, decides on the requests regarding violation of child's rights and freedoms, may file lawsuits with courts of law. In his activity, People's Lawyer for child's rights is assisted by a specialised subdivision within the People's Lawyer Office.

People's Lawyer may be consulted by the initiators of bills and ordinances of which content regard rights and freedoms of citizens stipulated by the Constitution of România, by pacts and other international treaties regarding fundamental human rights to which România is part.

The institution of People's Lawyer performs its duties: on own initiative or upon request of natural persons – irrespective of age, gender, political views or religious beliefs, trading companies, associations or other legal persons. People's Lawyer accounts only to the Parliament to which he shall submit his reports. In these reports People's Lawyer may also make recommendations regarding legislation or taking some actions to protect public freedoms.

The performance of duties deriving from the capacity of People's Lawyer to protect the citizens' rights and the positive results of this institution determine us to believe that implementation of this institution of the ombudsman in the Romanian system has been successful, to the benefit of the citizen and also of consolidating the rule of law.

## **5. Conclusions**

The European Union Treaties have outlined a framework for the development of the democratic life at the level of the European Union; the institutions have the obligation to maintain an open, transparent and constant dialogue with the civil society. To this end, various mechanisms of consulting citizens have been implemented and the citizens have been recognised the right to legislative initiative.

An important milestone in the evolution of the European Union is represented by the efforts to combat the democratic deficit, concept which was invoked to criticise the undemocratic and inaccessible character for the ordinary citizen of the European Union to documents of representative institutions, especially due to the complex manner in which such institutions function.

Although over the past years the European Union has taken important steps towards allowing the beneficiaries of the decisions made by the European institutions – the Union's citizens – to actively participate to making such decisions, one may see a poor communication by European institutions

with citizens and a poor involvement of citizens in the decision-making process or a failure to become aware of the rights conferred by the European treaties.

To respect citizens' right to get involved in the decision-making process by the public institutions or public central and local authorities, România has adopted the Law no. 52 of 21 January 2003 regarding decisional transparency in public administration.<sup>1</sup> The objective of this law is to increase the accountability level of the public administration in relation to the citizen as beneficiary of the administrative decision, to stimulate the citizens' active participation in the administration decision-making process and in the process of elaborating normative acts and to enhance the transparency level of the entire public administration. In addition, Law no. 544 of 12 October 2001 regarding the public access to information of public interest provides for free and unlimited access of the person to any information of public interest as a fundamental principle of the relation between people and public institutions.

Moreover, creation of an autonomous institution similar to the *ombudsman* – People's Lawyer, specialised in the matter of administrative control, gradual development of the administrative capacity of the existing institutions, generally the ones which exercise external control, of hierarchic or specialised type, adaptation of the control mechanisms of administrative guardianship to the new realities, in harmony with the European requirements, determine us to state that the Romanian legislation meets the European requirements in this matter and provides a new legal institutions meant to defend the rights and freedoms of the citizens in their relation with the public administration. The amendments to Law 35/1997 by Law 9/2018 in terms of observance and protection of child's rights is an additional proof that România is making efforts to align to the standards imposed by European Union with regards to the fundamental human rights and freedoms and the provisions of the UN Convention on child's rights.

Outlining and prefiguration of the activity of administrative control, including through the institution of People's Lawyer and all other control systems provided for by the Romanian legislation, are legally supported by and result in the requirements derived from the imperative *rule of law*, with its two main coordinates, i.e. *abiding the law* by all administrative authorities of the state, and *observing citizens' rights and freedoms* as conferred by the law. (Manda, 2005)

## Bibliography

- Iorgovan, Antonie (2005). *Administrative Law Treaty*. 4<sup>th</sup> edition. Bucharest: Ed. All Beck.
- Fuerea, Augustin (2016). *European Union Manual*. 6<sup>th</sup> Edition supplemented. Bucharest: Universul Juridic Publishing House.
- Fuerea, Augustin (2016). *European Union Law. Principles, Actions, Freedoms*. Bucharest: Universul Juridic Publishing House.
- Mătuşescu, Constanța (2013). *Institutional Law of European Union*. Bucharest: ProUniversitaria Publishing House.
- Manda, Cezar Corneliu (2004). *Science of Administration*. Bucharest: Lumina Lex Publishing House.
- Manda, Cezar Corneliu (2005). *Administrative in the European Space*. Bucharest: Lumina Lex Publishing House.
- Tofan, Dana Apostol (2006). *European Administrative Institutions*. Bucharest: C.H.Beck Publishing House.
- Tănăsescu, Elena Simina, The Chart of the Fundamental Rights of the European Union: Advantages and Effects to European Citizens. *Romanian Magazine of European Law*, no. 4.

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<sup>1</sup> Law no. 52 of 21 January 2003 regarding decisional transparency in public administration, republished in the Official Gazette, Part I no. 749 of 3 December 2013.

Balan, Emil; Varia, Gabriela; Iftene, Cristi; Troanță, Dragos & Văcărelu, Marius (2010). *The Right to a Good Governance and its Impact on Public Administration Procedures*. Bucharest: Comunicare.ro Publishing House.

Barbulescu, Jordan Gheorghe (2008). *The Decision-Making Process in the European Union*. Collegium Poliorom Publishing House.

*European Citizens' Initiative*, Europe Direct Information Centre in Bucharest, European Institute in România address: <http://ec.europa.eu/citizens-initiative>.

Ion Deleanu (2006). *Institutions and Constitutional Procedures in Romanian Law and Compared Law*. Bucharest: C.H. Beck Publishing House, p. 547 and Hossu, Laura (2013). *Ombudsman. Institutional Practice. Mechanisms of Intervention*. Bucharest: C.H. Beck Publishing House.

Muraru, Ion (2004). *People's Lawyer – Ombudsman-like Institution*. Bucharest: All Back Publishing House.

Imbrescu, Ion (2008). *Elements of Administration Science, Theory of Public Administration, Administrative Practice*. Bucharest: Lumina Lex Publishing House.

Mihaela Boc (2013). Means of Citizens' Involvement in the Activity of the European Institutions. the Administrative Science Magazine of Transylvania, 1(32).

Salomia, Oana Mihaela (2013). *Autonomy of the Chart of the Fundamental Rights of the European Union*. The magazine *Law* no. 2.

Manolache, Octavian (2006). *Treaty on Community Law*. Bucharest: C.H. Beck Publishing House.

Mihailescu, Madalina Elena (2017). *European Administrative Institutions*. Bucharest: Hamangiu Publishing House.

Craig, P. & Grainne, de Burca (2009). *European Union Law, Comments, Jurisprudence and Doctrin*. 4<sup>th</sup> Edition. Bucharest: Hamangiu Publishing House.

The Maastricht Treaty was signed by the European Council on 7 February 1992 and entered into force on 1 November 1993

The Treaty of Amsterdam, adopted on 16-17 July 1997 and signed on 2 October 1997, entered into force on 1 May 1999.

Treaty on the European Union, published OJEU, C 326/13 of 26.10.2012 consolidated version.

The Treaty on the functioning of the European Union, published in OJEU, C 326/13 of 26.10.2012 consolidated version.

Treaty of Lisbon to amend the Treaty on the European Union and the Treaty on the Functioning of the European Union, OJEU, 2007/C 306/01.

The Chart of the Fundamental Rights of the European Union, OJEU, 2012/C 326/02.

The European Convention for Protection of Human Rights and Fundamental Freedoms, amended by Protocols no. 3, 5 and 8 and supplemented by Protocol no. 2, concluded at Rome on 4 November 1950, published in the Official Journal no. 135 of 31 May 1994.

The EU Regulation no. 211 of the European Parliament and Council of 16 February 2011 regarding citizens' initiative, OJEU L 65/1 of 11.03.2011.

Regulation no. 1049/2001 regarding public access to European Parliament, Council and Commission documents published in OJ L154/31.05.2001.

Directive 93/109/EC of Council of 6 December 1993 to set norms on exercising the right to vote and to stand as a candidate in the European Parliament for citizens of the European Union residing in the Member State of which they are not nationals, OJ L 329, of 30.12.1993, page 34, amended by Directive 2013/1/EU of 20 December 2012, JO L 26/27 of 26.01.2013.

Directive 94/80/EC of Council of 19 December 1994 to set norms on exercising the right to vote and to stand as a candidate in municipal elections for citizens of the Union residing in the State of which they are not nationals, OJ L 368, of 31.12.1994.

Council Decision 95/553/EC of 19 December 1995.



Law no. 544/2001, published in the Official Gazette no. 663 of October 23, 2001, on 20 July 2016 is made by including the amendments and additions made by: RECTIFICATION no. 544 of 12 October 2001; LAW no. 371 of October 5, 2006; LAW no. 380 of 5 October 2006; LAW no. 188 of 19 June 2007; LAW no. 76 of May 24, 2012; LAW no. 144 of 12 July 2016.

Law 52/2003 on decisional transparency in public administration, published in the Official Gazette of Romania no. 70 of 3 February 2003.

Law 35/1997 on the organization and functioning of the People's Law Institution \*) - Republican M.Of. 181 of 27-Feb-2018 was amended by Law no. 9/2018 for amending and completing the Law no. 35/1997 regarding the organization and functioning of the People's Low Institution.