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**A Human Rights Perspective on the Reform
of Public Administration in Romania**

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Abstract: Romanian scholars argue that the evolution and transformations of the national public administration in the past twenty years were marked in a great extent by the process of integration into the European Union. In trying to provide an explanation to the apparition and evolution of the mechanisms dedicated to the protection of the persons in relation to public administration, after the fall of the communism, the first part of the paper studies the establishment, the evolution and the activity of the ombudsman-type institution in Romania. The second part of the paper, on the basis of the analysis of the legislation, briefly reviews the most important transformations brought to *People's Advocate* (Romanian Ombudsman) institution at the end of the last year. As suggested by the conclusions of this article, the Romanian Ombudsman played and continues to play significant role in the evolution of the behavior of public administration towards citizens, from the perspective of the human rights.

Keywords: national human rights institutions; ombudsman; citizenship

1 Introduction

In the field literature it is often shown the fact that the reform of public administration represents a broad concept, which includes all the aspects of the organization of the public sector. At the level of the year 2006, the process of the reform of the Romanian public administration, both at the level of the technical apparatus and of the elected officials, was perceived as a process which had not yet brought the expected transformations. (Profiroiu, 2006) The same source indicates that for Romania, the process of transformations of the public administration did not have only to answer to the new challenges of the world economics, but in the same degree to the new conditions of the integration process into the EU's structures. Here it is taken into consideration the fact that the development of the democracy involves *setting up of new relations between citizens and administration, strengthening the role of the authorities and the reconsideration of the partnership with the civil society and the local elected officials*. When speaking about human rights, generally, it can be noticed that it is no consensus on the precise meaning of the term, but nearly everyone agrees that that human rights involve the ability to demand and enjoy a minimal restrictive yet optimal quality of life with liberty, equal justice before law, and an opportunity to fulfill basic cultural, economic, and social needs. (Haas, 2008) Stressing the fact that human rights are first and foremost to be addressed at the national level, the European Union Agency for Fundamental Rights elaborated and issued in 2010 a rapport on national human rights institutions (NHRIs) in the EU, that reached the following key findings: they don't enjoy sufficient political support in all Member States, they are not sufficiently independent and effective and that the existence of several different independent public bodies with human rights remits contributes to a diffusion of resources and gaps in

mandates. The present article addresses some questions related to the attributions and activities of the People's Advocate - which is included in the category of the national human rights institutions and represents an innovative independent authority in the Romanian administrative landscape. We consider that the evolution of the institution in term of attributions and prerogatives as well as the indicators that point out the volume of its activity can reflect the changes and transformations of the public administration from the perspective of human rights.

2 The People's Advocate Establishment, Evolution and Activity

In the vision of the Romanian Constitution of 1991, the Ombudsman was, in fact, an independent person appointed by the Parliament to monitor the administration in its relation to the citizen, whose mission was to defuse the conflicts occurred between them, conflicts which were considered mainly to be generated by bureaucracy. (Mauraru, 2004) From the institution's constitutional consecration, the most important moments in its history are the following years: 1997, year that corresponds to the adoption of the organic law that regulates People's Advocate organization and functioning (Law no. 35/1997); 2003 when it took place the modification of the constitutional provisions that govern the institution and the year 2005 when it was adopted the Romanian Law on administrative contentious. As the historical perspective on the Romanian Ombudsman was submitted to the analysis in prior works, we are going to address briefly the aspects that concern the evolution of the institution. Thus, the Constitution review in 2003 gave the Romanian Ombudsman the possibility to watch over the constitutionality of laws, which he can challenge before the Constitutional Court, both by means of action and through exception, when through their provisions they harm fundamental citizens' rights and liberties. By the modifications brought to the Romanian fundamental law, the sphere of the law subjects that can apply to Constitutional Court was enlarged, in the framework of the prior control (*a priori*), by adding People's Advocate, institution which, by its direct connection with people, holds the position to signal to the Constitutional Court the situations in which a law adopted by the Parliament but not yet enacted by the President of Romania contravenes the Constitution. Accordingly, the People's Advocate was inscribed among the law subjects that can apply to Constitutional Court, together with the President of Romania, the Presidents of the Senate and of the Chamber of Deputies, the Government, the High Court of Cassation and Justice, at least 50 deputies or 25 senators. The constitutional modifications also referred to introducing the possibility for the People's Advocate to rise directly in front of Constitutional Court the exception of unconstitutionality, exception which is based on the People's Advocate's practice in solving the citizen's complaints regarding the infringement of constitutional and legal rights. Another important attribution of the People's Advocate was brought by the Law on Romanian Administrative Contentious, entered into force in 2005, which provides the possibility for the Romanian Ombudsman to introduce, following a control performed, an action before an administrative contentious court for defending the rights of a natural person. This action represents the judicial mean that People's Advocate resorts to after exhausting all other instruments specific to his work, and when he appreciates that the act's legality or the administrative authority's refusal cannot be removed, except through justice. Having as a starting point the analysis dedicated to the ethical means of the Romanian Ombudsman for protecting the citizens' rights and liberties (Bălan, E. & Varia, G., 2010), we follow the evolution of the People's Advocate activity, by surveying the institution's annual rapports.

Firstly, the examination of *petitions* represents the most important part of the People's Advocate activity. As it is shown by the Figure 1, the number of petitions addressed to the Romanian Ombudsman continued to slightly increase in 2008 and 2009.

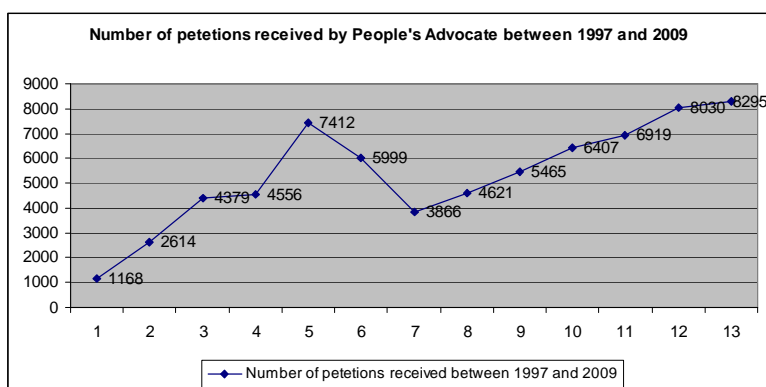


Figure 1. The evolution of the number of petitions received by People's Advocate between 1997 and 2009 (own processing of the data provided by the Annual Reports of the institution)

The *audiences* are a direct form of the institution's relation with the public, and, in most of the cases, audiences represent the first step in petitioning People's Advocate. Audiences are assured by the specialized personnel of the institution.

Also, citizens can be admitted by People's Advocate and his adjuncts, according to the provisions of the Rules of organization and functioning of the People's Advocate institution, republished. As in the case of petitions submitted a very large part of the audiences have objects that fall outside of the institution's competence.

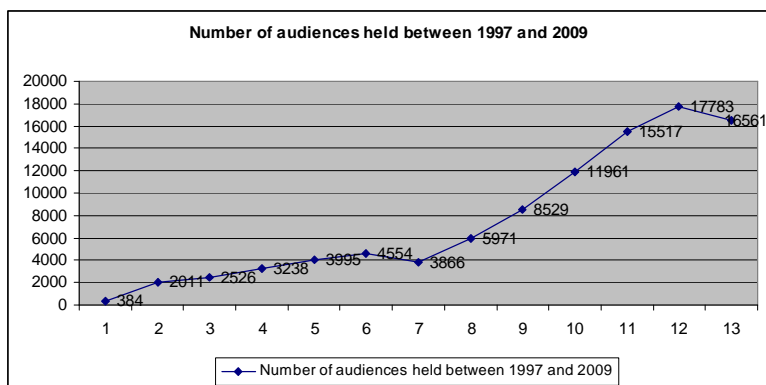


Figure 2. The evolution of the number of audiences held by People's Advocate between 1997 and 2009 (own processing of the data provided by the Annual Reports of the institution)

People's Advocate has the right to effectuate its own *inquiries*, to ask public administration's authorities any information or documents related to the inquiry, to hear and to take declarations from the managers of the authorities, and from any other civil servant that may offer necessary information for the petition's solving. According to law, public authorities are obliged to communicate, or, if case, to put at People's Advocate disposal, the information, documents or the acts the hold related to the petitions received, providing him the necessary help for the realization of his attributions.

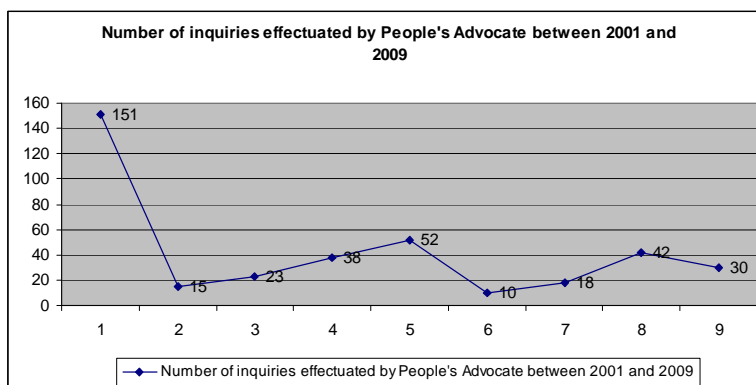


Figure 3. The evolution of the number of inquiries effectuated by People’s Advocate between 2001 and 2009 (own processing of the data provided by the Annual Reports of the institution)

At the headquarters of the institution, it functions a *telephonic line*, where the citizens can call daily, between 10 o’clock and 14 o’clock. Outside this timeframe, the requests are taped by the robot.

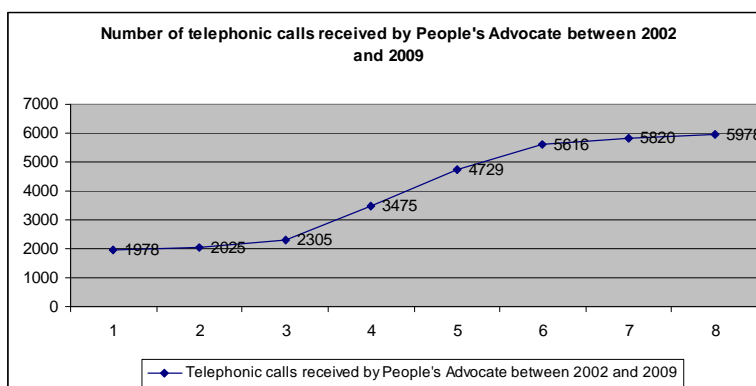


Figure 4. The evolution of the number telephonic calls received by People’s Advocate between 2002 and 2009 (own processing of the data provided by the Annual Reports of the institution)

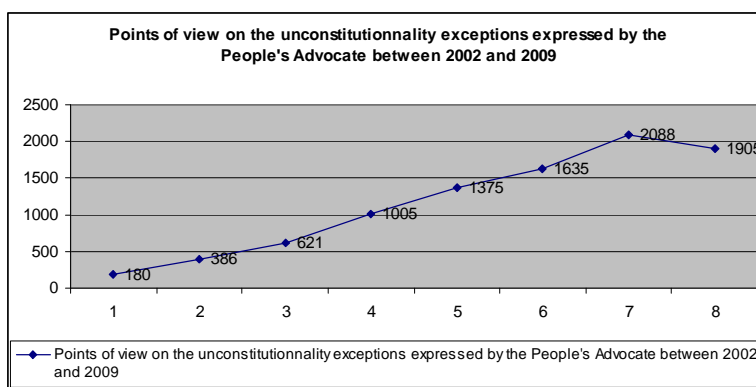


Figure 5 The evolution of the points of view on the unconstitutionality exceptions expressed by People’s Advocate between 2002 and 2009 (own processing of the data provided by the Annual Reports of the institution)

3 Recent Changes for People's Advocate at the End of 2010

The Law no. 202/2010 concerning some measures for speeding the litigation process or *The Small Reform of Justice*, as it is more well-known by the public, represents a recent legislative modification through which the field of competence for the People's Advocate is made wider. By the provisions of this Law, People's Advocate is vested with the prerogative of protecting the citizens' rights and liberties in front of public authorities by submitting the recourse in the interest of the law in front of the Romanian High Court of Cassation and Justice. This juridical instrument allows the unitary interpretation and implementation of the legislation by all the courts of justice. The law states that the recourse in the interest of the law is admissible only if it is demonstrated that the law problems were solved in different manners by the courts of justice. The decision is pronounced by the Highest Court of Cassation and Justice only in the interest of the law, without having effects on the prior examined decisions of the Courts, but it becomes mandatory for them beginning with the publication in the first part of the official Journal of Romania. As far as the Law no. 258/2010 for the modification and completion of the Law no. 35/1997 on the organization and functioning of the People's Advocate Institution is concerned, we can notice the shift concerning the law subjects who can address the Romanian Ombudsman: from *citizens* to *individual persons*. We can conclude by noticing the fact that People's Advocate role is gradually increasing since its establishment by the 1991 Constitution - the possibility to apply to the administrative court, to the Constitutional Court is now completed with the obligation of submitting the recourse in the interest of the law, in front of the High Court of Cassation and Justice. As a consequence, the activity of the institution, rapidly growing, should be sustained by the adequate human and material resources.

4 Acknowledgement

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5 References

Bălan, E.; Varia, G. (2010). *Promovarea bunei administrări prin mijloace etice – evaluarea eficienței activității Avocatului Poporului. Dreptul la o bună administrare. Între dezbaterile doctrinară și consacarea normativă/ Promoting good governance through ethical means - evaluating the effectiveness of the Ombudsman. Right to good administration. Between the Doctrinal debate and the legal act.* Bucharest: comunicare.ro. pp. 16-30.

Haas, M. (2008). *International Human Rights. A Comprehensive Introduction.* London: Routledge.

Muraru, I. (2004). *Avocatul Poporului – instituție de tip ombudsman/the Ombudsman – an institution of the Ombudsman type.* Bucharest: All Beck.

Profiroiu, M. (2006). *Reforma administrației publice în perspectiva integrării României în Uniunea Europeană/Public administration reform in the perspective of Romania's accession to the European Union.* Bucharest: Institutul European din România.

*** National Human Rights Institutions in the EU Member States. Strengthening the fundamental rights architecture in the EU I, Luxemburg: Publications Office of the European Union, 2010. Retrieved at www.fra.europa.eu.

*** Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished in the Official Journal of Romania, no. 844 from 15 September 2004.

*** Law no. 202/2010 concerning some measures for speeding the litigations, published in the Official Journal of Romania, The 1st Part, no. 714 from 26 of October, 2010.

*** Law no. 258/2010 for the modification and completion of the Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, published in the Official Journal of Romania no. 847 from 17 December 2010.

*** The Annual Reports of the People's Advocate published between 1998-2009. Retrieved from www.avp.ro.