

## LEVERS OF THE PEOPLE'S ADVOCATE INSTITUTION ON THE PROTECTION OF THE RIGHTS OF THE INDIVIDUAL

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### **Abstract**

*The People's Advocate Institution carries out its activity in accordance with the provisions of Law no. 35/1997, republished, as subsequently amended and supplemented, which regulates it with a material competence and a specific activity in promoting and protecting the rights of a person injured by a public authority. The leverage available to the People's Advocate is different from what we are accustomed to meeting with other public administration authorities, be it autonomous - as the institution in question. These means by which the People's Advocate Institution operates through its People's Advocate or the Central and Territorial Specialist apparatus derives from the very essence of this institution and from the fudge of its establishment as well as its constitutional consecration, namely, the mediator between the citizens and the state institutions.*

*Throughout this article, we will attempt to briefly present and analyze these levers in order to be able to develop the subject through practical examples relevant to the work of the People's Advocate Institution.*

**Keywords:** *Public law, People's Advocate, human rights, protection.*

### **1. Brief introduction**

According to art.50 of the Romanian Constitution, the Ombudsman exercises his powers ex officio or at the request of the persons injured in their rights and freedoms, within the limits established by the law.

Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, as subsequently amended and supplemented, regulates the duties of the People's Advocate, as well as the legal means that the People's Advocate Institution can use in the exercise of his activity. According to art.14 of the law, the People's Advocate Institution can exercise its powers ex officio, in which case the public authorities are obliged to respect the right of access of the representatives of the People's Advocate Institution, including the classified information that they hold.

According to art. 21 of the Law no. 35/1997, the People's Advocate issues recommendations by means of the recommendations issued by the public administration authorities regarding the illegality of administrative acts or deeds.

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The silence of administrative authorities or the late issuance of administrative acts is assimilated to administrative acts.

Also, according to article 22 of the same law, the People's Advocate, his deputies, as well as the specialized personnel of the People's Advocate Institution have the right to make their own inquiries, to ask the public authorities any information or documents necessary for the investigation, to hear and to make statements from the heads of the public administration authorities or from any public official. The surveys target either public administration authorities or public institutions or any public services under the authority of public administration authorities.

At the territorial level, these legal means through which the People's Advocate Institution operates are proposed by the territorial office that has the competence to resolve the case and are subsequently approved by the People's Advocate. The choice of the proposed legal remedy is at the discretion of the titular of the work and the appreciation of the People's Advocate, depending on the circumstances and particularities of the situation to be solved, but also on the previous steps taken towards the notified authorities.

Regarding the evolution of the activity of the People's Advocate Institution from year to year, there is noticed a strategy change that tends to put in the forefront more and more ways to streamline the activity of the institution and direct it towards concrete results in order to the protection of the rights of individuals. For example, in 2010, the ex officio notifications were not mentioned having any weight in the activity of the territorial offices, the emphasis being on quantitative aspects, namely the number of petitions and the number of audiences (at the level of the People's Advocate Institution at Braşov Territorial Office had been registered 1395 audiences, 289 registered petitions and 261 phone calls received from citizens) [1]. In the same year, they had been registered at the level of the entire institution, only 18 investigations and one recommendation from the People's Advocate.

Subsequently, in 2014, there are already 56 ex officio complaints and 137 inquiries, out of which 104 inquiries carried out only by the territorial offices, and the number of recommendations issued by the People's Advocate increased to 33 [2].

We specify that inquiries are means made available to the People's Advocate to examine petitions with which he has been informed and to verify information provided by the press or any other way insofar as they relate to possible violations of the rights of the individual.

Thus, ex officio notifications are a specific way for the People's Advocate, triggered when the representatives of this institution find out by any means that the rights or freedoms of individuals have been violated.

The recommendation is perhaps a last resort addressed to public authorities that have been found to violate the legal provisions on the rights of the individual,

the People's Advocate requesting through it that the authority take concretely identified measures to remove the illegalities and recognize the rights of the injured person. The Recommendation is an act through which the Ombudsman exercises his duties, being considered "both as an insistence to the public administration authorities and as a warning seriously addressed to them" [3]. The recommendations do not produce legal effects specific to sanctions, but it is perhaps the most eloquent expression of the unique identity in the area of public authorities, of the People's Advocate Institution, namely its function of mediator between the public administration and the citizen, as well as of the autonomy of the People's Advocate Institution by any other authority [4].

In 2016, the People's Advocate Institution carried out 194 inquiries, out of which 97 at the territorial offices and 200 ex officio complaints. Also, 44 recommendations were issued by the People's Advocate [5].

## **2. Aspects from the practice of the People's Advocate Institution. Excerpts ex officio**

In the local Covasna Observatory on January 19, 2016, an article was published stating that an adult with mental disorders lives in the streets despite the attempts of journalists from the same daily to find a solution to protect this person, with the help of the local authorities, the Police or the non-governmental organization Maltese Help Service in Sfântu Gheorghe, which administers a Night Shelter in Sfântu Gheorghe.

The Covasna Observatory team tried to help the homeless man who had improvised on the Olt bank in Sfântu Gheorghe a cellophane tent, living in precarious conditions and being at risk of dying during the night due to the cold.

Mister. V. Z. has a behavior specific to an indiscriminate person, which is why he was headed to the Maltese Helpdesk in Sfântu Gheorghe, where he did not return. Later on, the journalists of the Covasna Observatory reported to the Police of Sfântu Gheorghe, who said that V.Z. "Could not be heard as a result of health".

The person concerned lost his identity papers and his right to retirement was terminated, according to the article. In conclusion, it is appreciated that "V. Z. would need specialized help, a psychiatrist's assessment and a constant shelter, but he is condemned to remain in the streets with no papers, no legal guardian, no other support ... "

As a result of the Office of the People's Advocate Institution, the General Directorate for Social Assistance and Child Protection Covasna informed us of the following:

- The Maltese Help Service in Sfântu Gheorghe was contacted, in whose records Mr V. Z. appears from 21.10.2015;

- the representative of the Maltese Help Service, Sfântu Gheorghe, has taken all care to obtain by Mr. V.Z. of the provisional identity card, of the national health insurance card, as well as the retroactive payment of the disability pension not

directed by Mr V.Z. for more than a year, by submitting an application to Covasna County Pensions House. An account was also opened at CEC Bank, where the outstanding amounts are to be paid as invalidity pension;

- Dl.V.Z. has received shelter for homeless people from the Maltese Help Service in Sfântu Gheorghe, where he has disappeared many times, the last time being registered on 18.01.2016;

- the suspect requires medical care with health problems. According to the representatives of the Emergency County Hospital "Dr.Fogolyan Kristof" in Sfântu Gheorghe, Mr. Vass was amputated a part of the inferior member, an intervention absolutely necessary to save his life. Currently, Mr. V.Z. is hospitalized, being out of danger.

After discharge, the following social protection measures will be taken by DGASPC Covasna: counseling and support from DGASPC Covasna for enrolling and obtaining a Disability Certificate issued by the Comprehensive Evaluation Panel for Disabled Persons Covasna; guidance and help from the Maltese Help Service in Sfântu Gheorghe for internment and permanent supervision in an asylum for the elderly with psychiatric problems; making all the necessary steps for the sums of money to which Mr V.Z. has the right to cover its maintenance.

The Police of Sfântu Gheorghe also told us the following:

- Mr V.Z. a provisional identity card was issued to him and a bank account opened at CEC Bank where he can receive his disability pension again;

- at present, Mr V.Z. is hospitalized at the "Dr.Fogolyan Kristof" Emergency Hospital in Sfântu Gheorghe, at the Surgery Department, and will undergo a specialized psychiatric consultation;

- dl.V.Z. has given his verbal consent to be hospitalized at the Asylum for the elderly with psychiatric problems in Curtici, Arad County, after discharge.

### **3. Ex officio referral. Case Study**

As a result of an official complaint registered at the People's Advocate Institution regarding the information in the press indicating that the headquarters of the Public Finance Administration of Făgăraș and the Treasury of Făgăraș municipality do not provide access for the disabled people with the stairs being steep and narrow and consequently, the Brasov Territorial Office of the People's Advocate Institution has taken steps to the General Directorate of Public Finances in Brasov (DGRFP Brașov, further on), as well as for people who do not suffer from disabilities [6].

As a result, D.G.R.F.P. Brasov communicated the following information:

- The Făgăraș Municipal Tax Service and the Făgăraș Territorial Department of Taxes operate in a building that is not adapted to the unhindered access of disabled people;

- the owner of the building in which the two services operate is CEC Bank, D.G.R.F.P. Brasov having concluded a lease with this company,
- at the request of D.G.R.F.P. Brasov, CEC Bank has agreed to start the works necessary to build a ramp, at the expense of D.G.R.F.P. Brasov;
- D.G.R.F.P. Braşov informed us that it was established as a suitable solution to purchase and install a folding platform for the access of persons with locomotor disabilities at the headquarters of the Municipal Fiscal Service and the Făgăraş Treasury. In this respect, the investment list for the year 2016 was modified and subsequently approved.

By address, D.G.R.F.P. Braşov informed us that the activities of mounting a folding platform for the access of persons with locomotor disabilities to the Municipal Tax Service and the Făgăraş Treasury were executed and are approaching completion.

#### **4. Recommendation on violation of constitutional provisions regarding free access to justice and private property, provided by art. 21 and art. 44 of the Romanian Constitution**

By a petition filed with the People's Advocate on April 31, 2015, JV reported that, through a civil sentence, the Târgu Secuiesc Court of Appeal admitted the petitioner's action against the Zagon Local Commission for the Establishment of Private Property Rights on Land and ordered the latter to compile and submit the necessary documentation for the issue of the property title for the land covered by the Property Certificate. Although, according to the aforementioned court decision and the legislation in the field (actually referred to by the court), the obligation to draw up the necessary documentation for the possession of the property is the responsibility of the local land fund committees (in this case Zagon Local Commission for the Establishment of Property Rights Private Town Hall), Zagon Town Hall informed the petitioner that there is no authorized topographic expert at the level of Zagon commune, so the petitioner has the obligation to identify the land through a topo expert.

On the occasion of the investigation, the discussions with the representatives of Zagon Town Hall showed the following:

At the level of Zagon Commune Town Hall and the Zagon Land Fund Local Commission, no money was allocated for parcel plans to be made available to individuals who have submitted applications for property reconstitution. Currently, the percentage of ownership and issuance of U.A.T. Zagon is about 70% (including forests), but after the entry into force of Law no. 247/2005, no land and agricultural land titles have been issued for lack of necessary funds.

Although the petitioner has a favorable final judgment that the local Zagon Land Fund Commission has the obligation to draw up the necessary documentation, Zagon Town Hall representatives maintain their view that the petitioner must hire a topograph expert, at his own expense, as well as to address

the Covasna Real Estate Cadastre and Publicity Office to verify a correlation between the old Land Survey Numbers invoked by the petitioner and the current land cadastral numbers.

U.A.T. Zagon - The Zagon Land Fund Local Commission has so far not undertaken any measure to carry out the topographical work requested by the petitioner.

Also, no action has been taken to implement the judgment in question, considering that the allocation of funds to this effect would contradict the rules imposed by the Court of Auditors.

Compared to the situation presented, although it results that, following the demarches of the People's Advocate Institution of Brasov Territorial Office, Zagon Town Hall concluded a contract for the provision of topographical surveying services and parcel plans with a specialized firm, but also the fact that it was verified the legal status of the land on which the petitioner issued a certificate, the Zagon Local Commission for the Establishment of Private Property Law on Lands has not even undertaken any concrete measures to enforce the judgment pronounced in favor of the petitioner, according to which he was disposed obliging it to draw up and submit the necessary documentation for the issuance of the ownership title for the land covered by the Certificate No. 948 / 25.09.1991.

In view of the above, we show that, according to Article 7 paragraph (2) of the Law no. 165/2013 on the measures for completing the restitution process, in kind or equivalent, of the buildings abusively taken over during the communist regime in Romania, as subsequently amended and supplemented, are exempt from the suspension of administrative procedures specific to the reconstitution of the property right, the final and irrevocable judgments. Also, art.116 of the Land Fund Law no. 18/1991, republished, as subsequently amended and supplemented, as well as art.5 of the Government Decision no.890 / 2005 approving the Regulation on the constitution procedure, the attributions and the functioning the commissions for the determination of the right of private property on land, the model and the manner of assigning the titles of ownership, as well as the possession of the owners, as subsequently amended and supplemented, stipulate that the obligation to carry out the works and the operations established by the law rests with the local commissions the land fund, and, according to Article 27 paragraph (1) of the Law no. 18/1991, in conjunction with Article 24 paragraph (1) of the Order no.700 / 2014 regarding the approval of the Regulation for approval, receipt and registration cadaster and land register, the possession and release of the property title can only take place after the cadastral documentation analog and digital.

As a result, carrying out the necessary measurements and drawing up the plot plan is a sine qua non condition for the realization of the applicant's property reconstitution, a legal obligation that the Zagon Local Authority for the Establishment of Private Property Rights has to execute.

In this context, under the provisions of Art. 59 of the Constitution of Romania and art. 13 lit. c), art. 21 and art. 23 of Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, was issued the People's Advocate Recommendation No. 27/2016.

As a result, the land plot for land 5, parcel 17/2 and plot 13 parcel 50/1 has been drawn up, the mayor of Zagon Commune making the commitment to take the necessary steps in the preparation of the necessary documentation for the issuance of the property title, the applicant in possession [7].

**References:**

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