

Specific Duties for the Romanian Ombudsman During the Period of the Pandemic

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ABSTRACT: The year 2020 was a challenge for the entire planet in the fight against the pandemic of the spread of the new coronavirus, SARS-CoV-2. Romania was also part of this effort collectively, and the People's Advocate, in his capacity as constitutional guarantor of rights and fundamental freedoms, had to act constantly in order to preserve all rights, assuring citizens that whenever the exercise of some of their rights and freedoms were and are restricted, this is done entirely according to the Romanian Constitution, that is, it is prescribed by law, for the defense of other fundamental values and rights and on a determined duration, without affecting the very substance of those rights and freedoms. I chose as a research topic for this study one of the most important institutions in Romania, the "People's Advocate Institution". The structure of our paper begins with the presentation of the People's Advocate institution, its structure and the main attributions regarding the human rights situation, taking note of the establishment of the state of emergency and the state of alert on the territory of Romania, which led to monitoring the application of these measures.

KEYWORDS: People's Advocate Institution, human rights and freedoms, state of emergency/alert, human rights restrictions, constitutional order

Introduction

Regardless of the manner and name under which the Ombudsman institution has been established by each state, the role of the Ombudsman is, in the classical sense, that of defender the rights of individuals in their relations with public authorities, and the means of exercising this general mandate vary from state to state.

Created by the 1991 Constitution, revised in 2003, as a novelty in the legal and institutional scenery in Romania, the People's Advocate Institution was practically established and started to operate after the adoption of its organic law, in 1997.

The Romanian Constituent Assembly has chosen the name "the People's Advocate", an Ombudsman institution with general jurisdiction, which has as purpose the defense of individuals' rights and freedoms in their relationship with the public authorities.

The Departments of Romanian's Ombudsman are specialized in the following fields of activity:

1) *Human rights, equality of chances between men and women, religious cults and national minorities;*

2) *The rights of the family, youth, pensioners, persons with disabilities;*

3) *The defense, protection and promotion of the rights of the child;*

4) *Army, justice, police and prisons;*

5) *Property, labor, social protection, taxes and fees.*

6) *The prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention, through the National Preventive Mechanism.*

The main attributions of the Romanian People's Advocate:

1. ***The activity of solving the petitions;***

2. ***The activity regarding the constitutional contentious:***

a. formulates points of view, at the request of the Constitutional Court;

b. may notify the Constitutional Court regarding the unconstitutionality of the laws, before their promulgation;

c. may notify directly to the Constitutional Court exceptions for the unconstitutionality of laws and ordinances;

3. *The activity regarding the administrative contentious*: it can notify the administrative contentious court, under the conditions of the administrative contentious law;

4. *Promoting the appeal in the interest of the law before the High Court of Cassation and Justice*, regarding the legal issues that were solved differently by the courts, by irrevocable court decisions;

5. *Presents reports to the two Houses of Parliament*, annually or at their request; the reports may contain recommendations on amendments to legislation or other measures to protect the rights and freedoms of citizens;

6. *Reports to the Presidents of the two Houses of Parliament* or, as the case may be, to the Prime Minister, in cases where it finds, on the occasion of investigations, gaps in legislation or serious cases of corruption or non-compliance with the laws of the country;

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

We must also note the role of the People's Advocate as an institution of the rule of law:

It is important to specify that the General Assembly of the United Nations, by Resolution no. 75/186 - The role of the institutions of the Ombudsman in the promotion and protection of human rights, good governance and the rule of law, adopted on 16 December 2020, emphasized the need for Member States "to take measures to ensure adequate protection for The Ombudsman and the Ombudsman against coercion, retaliation, intimidation or threats", regardless of who they come from.

All the notifications that determined the pronouncement of the decisions of the Romanian Constitutional Court - regarding acts and restrictions of the exercise of some freedoms during COVID -19 - were formulated by the People's Advocate who, according to the Constitution, can address directly to the Constitutional Court, both through objections of unconstitutionality, as well as the exceptions of unconstitutionality.

Through the role of the People's Advocate, for the promotion and protection of human rights, this institution can make a crucial contribution to signaling human rights issues during emergencies and to helping citizens affected by emergency measures.

Therefore, "the People's Advocate can effectively complement parliamentary and judicial scrutiny."

Protection of rights and freedoms in the context of a state of emergency/alert due to COVID-19:

The most widespread restrictions on daily life experienced in peacetime in modern Europe affect everyone living in the E.U., albeit in different ways. This has implications for the enjoyment across our societies of nearly all the fundamental rights enshrined in the Charter (Marin and Popescu 2014, 445-448). The 27 EU Member States reintroduced or extended states of emergency or other emergency situations as the health situation deteriorated (Chilea 2013, 54). States of emergency typically allow certain rights to be limited, such as freedom of movement (Article 45 of the Charter), freedom of assembly and of association (Article 12), and private and family life (Article 7). (***)European Union Agency for Fundamental Rights, 8).

Fundamental rights - the legal basis of all civil rights, are subjective rights, enshrined in the text of the Constitution which invests them with special legal guarantees (Niță 2019, 125).

Regarding the human rights situation, the People's Advocate, taking note of the establishment of the state of emergency and the state of alert on the territory of Romania, carefully monitored the application of these measures.

Ever since the establishment of the state of emergency on the Romanian territory by Decree no. 195 of March 16, 2020, the People's Advocate made a public appeal to the public

and the media to report by telephone, e-mail, post or fax any acts or facts in connection with which there are suspicions regarding possible violations of fundamental rights or freedoms.

Actions of Romanian Ombudsman:

1. Steps at the level of public authorities:

- **Government of Romania – Prime Minister, for example:**

- ❑ Request for capping prices for certain medicines, medical devices and health products; **The response of the General Secretariat of the Government:** The answer of the General Secretariat of the Government shows that the *Government of Romania takes into consideration and analyzes the aspects notified by the People's Advocate.*
- ❑ Request regarding the transmission of the database of the Ministry of Health to the Ministry of Internal Affairs, respectively the communication of the administrative act by which the transmission of the database is performed; To this request there was no response.
- ❑ **Request regarding the provision of the protective equipment and apparatus necessary to combat COVID-19 to doctors.** The response of the Ministry of Internal Affairs – Department for Emergency Situations **until May 1, 2020, were distributed to all health units involved in combating the spread of the epidemic caused by Sars-Cov-2 the following protective materials.**

Request regarding the restriction of the freedom of expression; In the period following the establishment of the state of emergency on the Romanian territory, the People's Advocate took note of the requests addressed to the National Authority for Administration and Regulation in Communications (ANCOM) by the Ministry of Internal Affairs, at the proposal of the Strategic Communication Group, to shut down several websites that were considered to broadcast fake news about the evolution of the SARS-CoV-2 epidemic.

2. Steps taken to European institutions:

- During the reference period, the People's Advocate maintained a constant connection with the Ombudsman institutions in Europe, but also with other authorities at European level, as for example - **The Federal Ministry of Labor and Social Affairs of the Federal Republic of Germany:** regarding the sanitation safety of the Romanian seasonal workers

In the exercise of his/her duties, the People's Advocate issues recommendations. Through the issued recommendations, the People's Advocate notifies the public administration authorities about the illegality of their administrative acts or deeds.

Some examples of recommendations issued:

- **Recommendation on the right to healthcare and the right to social protection of the category of vulnerable persons in institutionalized care;**
- **Recommendation no. 125 of June 18, 2020, regarding the obligation to hospitalize asymptomatic persons found positive with COVID-19;**
- **Recommendation no. 133 of July 16, 2020, on the existing Euthyrox crisis at national level, a medicine necessary for thyroid disease patients;**
- **May 12, 2020 ▶ Request regarding the extension of the validity of the disability certificates.** (Manu 2020a)

In Romania, during the **state of emergency and the state of alert, established following the declaration of the coronavirus pandemic (COVID-19)**, in the exercise of its constitutional and legal powers to verify the constitutionality of laws or ordinances, contributing to the observance of fundamental rights and freedoms, **the People's Advocate notified the Constitutional Court with 5 exceptions of unconstitutionality which sought to clarify, improve and strengthen the legal framework for the establishment of state of emergency, state of alert, as well as quarantine and isolation measures**, so that they are compatible with the constitutional requirements for restricting certain rights and fundamental freedoms by law, as a formal act of Parliament. [The observance of human rights and the exceptional measures

ordered during the period of the state of emergency and the state of alert (March 16 - September 10, 2020)]

According to art. 53 of the Romanian Constitution (Muraru 2008, 527), **the restriction of the exercise of certain rights and freedoms is made only by LAW** and in compliance with the conditions established in the same constitutional text.

The motivation of the Constitutional Court Decision:

The Court stressed that “in exceptional situations, such as that caused by the spread of COVID-19 virus infection, the establishment of vigorous, prompt and appropriate measures to the seriousness of the situation is, in reality, a response of the authorities to the obligation provided in art. 34 paragraph (2) of the Constitution, according to which “the State is obliged to take measures to ensure hygiene and public health”.

The Court also notes that both compulsory hospitalization in order to prevent the spread of communicable diseases and the quarantine measure are restrictions on the exercise of fundamental rights and freedoms which may be justified if reasons of necessity for public safety and health so require.

- However, the Court notes that the measures in question have severe effects on the rights and freedoms of the individual and that the relevant regulations must therefore comply strictly with all the constitutional requirements.

The exceptional, unpredictable nature of a situation cannot constitute a justification for violating the rule of law, legal and constitutional provisions regarding the competence of public authorities or those regarding the conditions under which restrictions may be exercised on the exercise of fundamental rights and freedoms (Manu 2020b).

Conclusions

National authorities - especially the central and local government - are best placed to identify and establish the set of actions needed to respond to each stage of the pandemic, but the measures can only be based on a primary legal framework, which it is subject to constitutional and international provisions regarding the restriction of the exercise of certain rights or freedoms.

Given that the crisis situation generated by a pandemic is the inevitable premise of such restrictions (Rotaru 2020, 71-82), national legislation must be accompanied by clear and effective safeguards against any abuse or discretionary or illegal action".

Specifically, the involvement of the People's Advocate in the protection of human rights and freedoms (Rotaru 2014, 256) through the constitutional review exercised during the state of emergency and the state of alert created the premises for the adoption by Parliament of the following normative acts:

- *Law no. 55/2020 on certain measures to prevent and combat the effects of the COVID-19 pandemic;*
- *Law no. 136/2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk.*

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