

**LAW No. 35 of March 13, 1997 on the organization and functioning of the People's Advocate Institution, republished\***

**CHAPTER I: General Provisions**

**Art. 1**

(1) The People's Advocate institution has as purpose the defense of individuals' rights and freedoms in their relations with public authorities.

(2) The People's Advocate Institution is a national institution for the promotion and protection of human rights, within the meaning established by the Resolution of the General Assembly of the United Nations (UN) no. 48/134 of December 20, 1993, adopting the Paris Principles.

(3) The headquarters of the People's Advocate institution is located in the municipality of Bucharest.

**Art. 2**

(1) The People's Advocate institution is a public authority, autonomous and independent from any other public authority, under the law.

(2) The People's Advocate institution, by its Department for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Places of Detention, hereinafter called the Department for the Prevention of Torture in Places of Detention, performs the specific tasks of the National Preventive Mechanism against Torture in Places of Detention, within the meaning of the Optional Protocol, adopted in New York, on December 18, 2002, at the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted in New York, on December 10, 1984, ratified by Law no. 109/2009, hereinafter called the Optional Protocol.

(3) In the exercise of its powers, the People's Advocate shall not substitute itself for the public authorities.

(4) The People's Advocate may not be subject to any imperative or representative mandate. No one can compel the People's Advocate to obey any instructions or orders.

**Art. 3**

(1) The activity of the People's Advocate, of his/her deputies and of the staff working under their authority has public nature.

(2) At the request of persons whose rights and freedoms have been violated, or due to well-grounded reasons, the People's Advocate may decide upon the confidential nature of his/her activity.

**Art. 4**

Public authorities have the obligation to communicate or, depending on the case, to provide the People's Advocate Institution, under the terms of the law, with any information, documents or other acts that they possess related to the complaints submitted to the People's Advocate Institution, as well as to the ex officio proceedings initiated by the institution and the announced and unannounced visits conducted for the purpose of fulfilling the specific tasks of the National Preventive Mechanism against Torture in Places of Detention, granting it support for the fulfilment of its duties.

#### **Art. 5**

(1) The People's Advocate presents reports, in joint session of both Chambers of the Parliament, annually or at their request. The reports must contain information regarding the activity of the People's Advocate Institution. They may contain recommendations regarding the amendment of legislation or other measures for the protection of individuals' rights and freedoms.

(2) The annual report shall present the activity of the institution for one calendar year and it must be submitted to the Parliament until the 1<sup>st</sup> of February of the following year, in order to be debated in the joint session of both Chambers. The annual report shall be made public.

### **CHAPTER II: The mandate of the People's Advocate**

#### **Art. 6**

(1) The People's Advocate is appointed for a five year term by the Chamber of Deputies and the Senate, in joint session. The People's Advocate's mandate may be renewed only once.

(2) Any Romanian citizen who fulfils the legal requirements for holding the position of judge at the Constitutional Court can be appointed as People's Advocate.

#### **Art. 7**

(1) The nominations are made by the Standing Bureaus of the Chamber of Deputies and the Senate, on the recommendation of the parliamentary groups of the two Chambers of Parliament.

(2) The candidates shall be heard by the legal committees of the Chamber of Deputies and Senate. In view of the hearing, each candidate shall submit the documents certifying that he/she is duly qualified, as required under the Constitution and this law, in order to be appointed as People's Advocate. The candidates shall attend the debates.

(3) The candidate who obtained the largest number of votes from the deputies and senators attending the session shall be appointed as People's Advocate.

#### **Art. 8**

(1) The mandate of the People's Advocate shall be exercised starting with the day when the following oath is taken in front of the presidents of both Chambers of Parliament:

"I swear to observe the Constitution and the laws of the country, and to defend the citizens' rights and freedoms, by carrying out my duties, as People's Advocate, in good faith and impartiality. So help me God!"

(2) The oath may also be taken without the religious formula.

(3) The refusal of taking oath prevents him/her from taking up the office of the People's Advocate and starts the procedure for the appointment of another person.

(4) The mandate of the People's Advocate lasts until a new People's Advocate takes the oath.

#### **Art. 9**

(1) The mandate of the People's Advocate terminates earlier in cases of resignation, removal from office, incompatibility with other public or private

offices, incapacity to fulfil his/her duties for more than ninety (90) days, certified by a specialized medical exam, or in case of decease.

**(2)** The removal from office of the People's Advocate, as a result of the violation of the Constitution and laws, shall be decided by the Chamber of Deputies and the Senate, in joint session, with the majority vote of the present senators and deputies, at the proposal of the Standing Bureaus of the two Chambers of Parliament, based on the joint report of the legal committees of the two Chambers of Parliament.

**(3)** The resignation, incompatibility, incapacity to fulfil his/her duties, or decease shall be established by the Standing Bureaus of the two Chambers of Parliament, within ten (10) days from the occurrence of the event that determined the termination of the mandate of the People's Advocate.

**(4)** The People's Advocate, fulfilling the legal requirements for holding the position of judge at the Constitutional Court, at the date of retirement or recalculation of the pension previously established, benefits of pension calculated similarly to the pensions of the Constitutional Court judges.

**(5)** The period of holding the position of People's Advocate shall be deemed as length of service in magistracy and length of service in legal speciality.

### ▣ **CHAPTER III: The deputies of the People's Advocate**

#### ▣ **Art. 10**

▣ **(1)** The Ombudsman is assisted by deputies, who are specialized in the following fields of activity:

- a)** Human rights, equality of chances between men and women, religious cults and national minorities;
- b)** The rights of the family, youth, pensioners, persons with disabilities;
- c)** The defense, protection and promotion of the rights of the child;
- d)** Army, justice, police and prisons;
- e)** Property, labor, social protection, taxes and fees.
- f)** The prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention, through the National Preventive Mechanism.

**(2)** The deputies of the People's Advocate shall carry out the duties in their respective areas of activity, as well as any other duty entrusted to them by the People's Advocate.

**(3)** The deputies of the People's Advocate shall take over his/her duties, in the order established by the People's Advocate, in case of a temporary inability of exercising his/her duties.

#### ▣ **Art. 11**

**(1)** The deputies of the People's Advocate shall be appointed for a 5 year term, by the Standing Bureaus of the Chamber of Deputies and the Senate, on the proposal of the People's Advocate, after taking the opinion of the legal committees of both Chambers of Parliament.

**(2)** The cumulative conditions for the appointment as Deputy of the People's Advocate are the following:

- a)** to be a graduate of higher education in legal sciences, administrative sciences, political sciences, economic sciences or humanities;
- b)** to have at least 8 years length of service in the speciality of the graduated studies provided at letter a) or to have been a Member of the Parliament for at least one mandate as Deputy or Senator;

- c)** to have full exercise capacity and a good moral reputation;
  - d)** to have an appropriate health status;
  - e)** to have no criminal record;
  - f)** not to have political affiliation.
- (3)** The position of Deputy People's Advocate is assimilated to the position of Secretary of State.
- (4)** The mandate of the Deputy People's Advocate shall be exercised starting with the day of the following oath, taken in front of the People's Advocate and one member of the Standing Bureaus of both the Chamber of Deputies and the Senate, authorized for this: "I swear to respect the Constitution and the laws of the country, and to defend the citizens' rights and freedoms, by carrying out my duties as Deputy People's Advocate in good faith and impartiality. So help me God!"
- (5)** The oath may also be taken without the religious formula.
- (6)** The refusal of taking oath prevents the nominated person from taking up the office of Deputy People's Advocate and starts the procedure for the appointment of another person.
- (7)** The mandate of the Deputy People's Advocate shall last until a new Deputy People's Advocate takes the oath, and may be renewed only once.
- (8)** The period of performing the function of Deputy People's Advocate by graduates of faculties of Law shall be deemed as length of service in magistracy. The period of performing the function of Deputy People's Advocate by graduates of faculties other than Law shall be deemed as length of service in the graduated studies.
- (9)** The resignation, incompatibility, incapacity to fulfil their duties, or decease shall be acknowledged by the People's Advocate and shall be communicated to both Standing Bureaus of the Chambers of Parliament, within thirty (30) days from the occurrence of the event that determined the termination of the Deputy People's Advocate mandate. Until the appointment of a new deputy, his/her duties shall be delegated, by order of the People's Advocate, to a person from the specialized staff.
- (10)** The appointment of the deputies of the People's Advocate shall be published in the Official Gazette of Romania, Part I.

#### **Art. 12**

The deputies of the People's Advocate shall have the following duties:

- a)** Coordinate the activity within their field of activity;
- b)** Inform the People's Advocate about the activity of their department;
- c)** Distribute petitions within the department coordinated by them;
- d)** Approve reports, recommendations, as well as any other documents submitted to the approval of the People's Advocate;
- e)** Perform, in the order established by the People's Advocate, his/her duties in case of temporary inability of exercising his/her duties;
- f)** Carry out any other tasks entrusted to them by the People's Advocate, within the limits established by law.

#### **Art. 13**

**(1)** The department for the defense, protection and promotion of the rights of the child is coordinated by a deputy of the People's Advocate, hereinafter referred to as the Ombudsman for Children.

**(2)** The Ombudsman for Children, under the coordination of the People's Advocate, acts in order to promote and protect the rights of children up to the

age of 18, upholds and encourages the respect and promotion of the children's rights, under the conditions of this law and of Law no. [272/2004](#) on the protection and promotion of the rights of the child, republished, with subsequent amendments and completions.

#### ☐**Art. 14**

In fulfilling the specific mandate in the field of protection and promotion of the rights of the child, the Ombudsman for Children fulfills the following tasks:

- a)** solves the individual complaints made by children or their representatives in relation to the actions of public institutions in the field of health, education, special protection of the child and in the field of applying the custodial and non-custodial measures provided by Law no. [286/2009](#) regarding the Criminal Code, with subsequent amendments and completions, regarding the criminal liability of minors, as well as of any institutions whose activity is related to duties of the department for the protection and promotion of the rights of the child;
- b)** solves any complaint regarding the violation of one or more rights of the child;
- c)** promotes the rights of the child among children and adults;
- d)** collaborates with the formal organizations of children and, to the extent it is deemed necessary, notifies the competent authorities;
- e)** formulates proposals for measures aimed at encouraging the participation of children in the decisions that concern them;
- f)** prepares studies on the exercise and observance of the rights of the child and recommends, if necessary, measures for the observance of the rights of the child at the level of public policies and at the legislative level, including through the preparation of special reports;
- g)** makes unannounced control visits, ex officio or upon request, together with the representatives of the National Preventive Mechanism against Torture in places of detention, to educational or detention centers in which minors execute the custodial measures provided by Law no. [286/2009](#), with subsequent amendments and completions, in the field of criminal liability of minors, to the persons in charge of the supervision and guidance of the minors who are executing non-custodial measures provided by Law no. [286/2009](#), with subsequent amendments and completions, in the field of criminal liability of minors, to placement centers, family-type housing, maternal assistance and family placement in which the minor is placed as a special protection measure provided by Law no. [272/2004](#), republished, with subsequent amendments and completions, to the extended family, as well as to children's hospitals;
- h)** notifies immediately, ex officio or upon request, the criminal investigation bodies when it finds the existence of indications concerning possible criminal offenses committed against children.

### ☐**CHAPTER IV: THE DUTIES OF THE PEOPLE'S ADVOCATE**

#### ☐**Art. 15**

☐**(1)** The People's Advocate has the following duties:

- a)** Coordinates the activity of the People's Advocate Institution;
- b)** Coordinates the activity on the prevention of torture in places of detention, carried out by the Department for the Prevention of Torture in Places of Detention;
- c)** Approves the visit reports drawn up within the torture prevention activity;

- d)** Approves the recommendations accompanying the visit reports drawn up in the cases where, following the visits conducted, there were found irregularities.
  - e)** Decides on the complaints submitted by persons whose rights and freedoms have been violated by public administration authorities;
  - f)** Verifies the legal settlement of complaints received and requests the public administration authorities or civil servants concerned to put an end to the violation of citizens' rights and freedoms, to restore the complainant's rights and to redress the damages thus caused;
  - g)** Formulates points of view, at the request of the Constitutional Court;
  - h)** May notify the Constitutional Court on the unconstitutionality of laws, before their promulgation;
  - i)** May notify directly the Constitutional Court with the exception of unconstitutionality of laws and ordinances;
  - j)** Represents the People's Advocate Institution before the Chamber of Deputies, the Senate, and the other public authorities, as well as in its relations with any natural or legal persons;
  - k)** Hires the employees of the People's Advocate Institution and exercises disciplinary authority over them;
  - l)** Acts as Chief Authorizing Officer, task which he may delegate with the observance of the legal provisions in the field of public finances;
  - m)** May notify the administrative litigation court, under the administrative litigation law;
  - n)** Can file writs of summons or criminal complaints and may represent the minor in court, when he or she has been the victim of physical or mental violence by parents, legal guardian or legal representative, abuse, violence and sexual exploitation or exploitation through work, trafficking in human beings, neglect and exploitation, as well as any form of violence against the child, provided for and sanctioned by the domestic and international legislation to which Romania is a party;
  - o)** Performs any other duties provided by law.
- (2)** The People's Advocate ensures the defense, protection and promotion of the rights of the child by specific means provided by this law, through the Department regarding the defense, protection and promotion of the rights of the child or, as the case may be, through the National Preventive Mechanism.
- (3)** The People's Advocate may delegate the exercise of these powers to his/her deputies or to other persons in management positions within the institution.

#### **Art. 16**

**(1)** The People's Advocate Institution exercises its duties ex officio or upon the request of individuals, companies regulated by Law No. [31/1990](#), republished, with subsequent amendments and supplements, associations or other legal persons, as well as unannounced, through visits to places of detention, under the law.

**(2)** The complaints may be submitted by the persons mentioned in para. (1), irrespective of their citizenship, age, sex, political affiliation or religious beliefs.

#### **Art. 17**

**(1)** The complaints must be submitted to the People's Advocate in writing and must indicate the full name and domicile of the individual aggrieved in his rights and freedoms, the specific rights and freedoms violated, as well as the concerned administrative authority or civil servant. The complainant must also

prove the delay or the refusal of the public administration to legally solve his/her request.

**(2)** Anonymous complaints cannot be taken into consideration and those directed against violations of individuals' rights or freedoms through acts or deeds of the public administrative authorities shall be brought to the attention of the People's Advocate no later than one year from the date on which the violation occurred or the date on which the person became aware of them.

**(3)** Citizens belonging to national minorities who have their domicile or residence in administrative units where they account for over 20% of the local population can submit complaints in their native language and shall receive the answer in Romanian and their native language.

**(4)** The People's Advocate can reject, on a reasoned basis, complaints which are patently unsubstantiated, or may ask for additional data to analyze and solve the complaints.

**(5)** Any complaints dealing with acts issued by the Chamber of Deputies, the Senate or the Parliament, acts and deeds of deputies and senators, those of the President of Romania, the Constitutional Court, the President of the Legislative Council, and the Judiciary, as well as the Government except for laws and ordinances, are not covered by the activity of the People's Advocate Institution and will be rejected without explanation.

#### **Art. 18**

Complaints submitted to the People's Advocate are exempt from stamp duty.

#### **Art. 19**

**(1)** The administration of penitentiaries, re-education centers for minors, penitentiary hospitals as well as the Public Ministry and the police bodies must allow, with no restriction whatsoever, to anyone who serves imprisonment or, as the case may be, is under arrest or kept in detention, as well as to minors who are in re-education centers, to address the People's Advocate Institution, in any possible way, concerning a violation of their rights and freedoms, except for legal restraints.

**(2)** The same obligation rests with the commanders of military units, with respect to persons who fulfil military duties, regarding infringements upon their rights and freedoms, except for legal restraints.

#### **Art. 20**

**(1)** The administration of the places of detention referred to in Art. 34 is required to allow, without restriction, to persons deprived of their liberty on the basis of a decision of an authority, to address, in any way, the People's Advocate about the violation of their rights and freedoms, except for legal restraints.

**(2)** In order to enable the People's Advocate Institution to fulfil its legal duties, the administration of the places of detention provided for in Art. 34 must allow to the People's Advocate, to his/her deputy in charge of the Department for the Prevention of Torture in Places of Detention, as well as to the representatives of the institution, without restriction, access to all places of detention that are subject to monitoring, for carrying out their announced or unannounced visits, as well as conducting their investigations with a view to resolving the complaints received.

**(3)** Complaints on torture, cruel, inhuman or degrading treatment in detention shall be settled, according to the issues notified, by the Department for the

Prevention of Torture in Places of Detention, in collaboration with the other structures of the People's Advocate Institution.

**(4)** The provisions of this law shall be made available to inmates in Romanian or in the language they understand, immediately after being placed in detention.

#### **Art. 21**

If the People's Advocate Institution finds that the settlement of a complaint is for the competence of the Judiciary, it may notify, as the case may be, the Minister of Justice, the Superior Council of Magistracy, the Public Ministry or the president of the court of law, who has the legal obligation to communicate the measures taken.

#### **Art. 22**

In case of a notification regarding the exception of unconstitutionality of laws and ordinances referring to individuals' rights and freedoms, the Constitutional Court shall also request the point of view of the People's Advocate Institution.

#### **Art. 23**

**(1)** The People's Advocate and his/her deputies have access, under the terms of the law, to classified information held by the public authorities, insofar as they consider it necessary in order to solve the complaints lodged with them, as well as the ex officio proceedings and the announced and unannounced visits conducted for the purpose of fulfilling the specific tasks of the National Preventive Mechanism against Torture in Places of Detention.

**(2)** The People's Advocate has the obligation to not disclose or make public the secret information or documents to which they had access. This obligation stands even after ceasing their activity as People's Advocate, and it extends to their deputies as well as to the staff, subject to criminal liability.

#### **Art. 24**

**(1)** In the exercise of his/her duties, the People's Advocate issues recommendations.

**(2)** Through the issued recommendations, the People's Advocate notifies the public administration authorities about the illegality of their administrative acts or deeds. The silence of the public administration bodies and the delay in issuing documents are assimilated to administrative acts.

**(3)** The recommendations of the People's Advocate in the field of torture prevention in places of detention, issued when irregularities are found, have as purpose the correction of those irregularities and the improvement of treatment and detention conditions for the persons deprived of their liberty and the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

#### **Art. 25**

**(1)** The People's Advocate, his/her deputies and the specialized staff of the institution have the right to conduct their own investigations, to request from the public administration authorities any information or documents necessary for the investigation, to hear and take statements from the heads of the public administration authorities or from any civil servant who may provide useful information for the resolution of the complaint, under this law.

(2) The provisions of para. (1) apply to public administration authorities, public institutions, as well as any public services under the authority of the public administration authorities.

#### **Art. 26**

(1) If, after examining the complaints received, it is found that the aggrieved individual's complaint is founded, the People's Advocate Institution will notify in writing the public administration authority which has violated the individual's rights, with the request to reform or revoke the administrative act, redress the damage thus caused, as well as restore the aggrieved person to the former situation.

(2) The public authorities concerned shall immediately take all necessary measures to remove the illegality that was found, to redress the damages and to remove the causes that have created or helped create the violation of the aggrieved individual's rights, while duly informing the People's Advocate Institution thereof.

#### **Art. 27**

(1) If a public administration authority or civil servant does not remove such illegality within 30 days from the date of the notification, the People's Advocate Institution shall address the hierarchically superior public administration authorities, which are obliged to inform it, within 45 days, of the measures taken.

(2) If the concerned public authority or the civil servant belong to a local public administration, the People's Advocate Institution shall address the county prefect. A new deadline of 45 days shall run starting with the date when the request was submitted to the prefect's office.

#### **Art. 28**

(1) The People's Advocate is entitled to notify the Government regarding any illegal administrative act or deed done by the central public administration and the prefects.

(2) The Government's failure to take measures, regarding the illegality of administrative acts or deeds notified by the People's Advocate, within 20 days, shall be brought to the attention of the Parliament.

#### **Art. 29**

(1) The People's Advocate Institution shall inform the complainants about the way their complaints were solved. The People's Advocate may also make public these results through the media, with the consent of the person or persons concerned and in compliance with Article 23, on classified information and documents.

(2) If, during the course of its investigations, the People's Advocate finds gaps in legislation or serious cases of corruption or violations of the country's laws, it shall submit a report on its findings to the presidents of the two Chambers of Parliament or, where applicable, to the Prime Minister.

#### **Art. 30**

The People's Advocate may be consulted by the initiators of draft laws and ordinances, which, by the content of their provisions, concern the citizens' rights and freedoms, provided by the Constitution of Romania, by the pacts and other

international treaties regarding fundamental human rights, to which Romania is a party.

#### ☐**Art. 31**

The provisions of this law shall also apply to administrative acts issued by autonomous state enterprises.

#### ☐**Art. 32**

**(1)** The People's Advocate Institution shall set up territorial offices in order to exercise the powers established by the present law, according to the Annex that is part of the present law. The presidents of county councils and the mayors shall provide the necessary spaces for the functioning of the territorial offices.

**(2)** The People's Advocate Institution's territorial offices which have their premises or conduct hearings in administrative units where citizens belonging to national minorities account for over 20% of the local population, shall also ensure the use of the respective minorities' mother tongue, both orally and in writing, in the relations with the complainants.

**(3)** In justified cases, the People's Advocate may establish the seat of the territorial offices in other city than the county capital city, in the area of competence of the Court of Appeal.

### ☐**CAPITOLUL V: The Activity in the Department for the Prevention of Torture in Places of Detention**

#### ☐**SECTION 1: General Provisions**

#### ☐**Art. 33**

**(1)** The People's Advocate is the only national structure designated to exercise the powers provided by the [Optional Protocol](#), adopted in New York on the 18<sup>th</sup> of December 2002, to the [Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Places of Detention](#), adopted in New York on the 10<sup>th</sup> of December 1984, ratified by Law no. [109/2009](#).

**(2)** For the purposes of the present Law, the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, established by the Optional Protocol, will be hereinafter called the Subcommittee on Prevention.

#### ☐**Art. 34**

**(1)** For the purposes of the present Law, is considered place of detention, any place where a person or persons are deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

**(2)** Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

**(3)** For the purposes of the present Law, are considered places of detention, or as case may be, places where the People's Advocate exercises its legal duties in the field of prevention of torture, the following:

**a)** prisons, including prison hospitals;

- b)** re-education centers, detention centers;
- c)** detention and remand centers;
- d)** residential services for juveniles who have committed criminal offenses and are not criminally liable;
- e)** psychiatric hospitals for safety measures, psychiatric hospitals;
- f)** transit centers;
- g)** accommodation centers for aliens taken into public custody, subordinated to and administered by the General Inspectorate for Immigration;
- h)** special reception and accommodation centers for asylum seekers, subordinated to the General Inspectorate for Immigration, having the legal status of transit zone;
- i)** centers that offer assistance for drug users in closed regime;
- j)** any other place that fulfils the requirements of para. (1) or is part of the health system or the social assistance system.

## ☐ **SECTION 2: The duties of the Department for the Prevention of Torture in Places of Detention**

### ☐ **Art. 35**

The Department for the Prevention of Torture in Places of Detention regularly monitors how the detainees are being treated in order to strengthen their protection against torture and other cruel, inhuman or degrading treatment or punishment and to ensure that they are able to exercise, without discrimination, their fundamental rights and freedoms, by:

- a)** carrying out announced or unannounced visits to the places of detention, for the purpose of checking the detention conditions and the treatment of persons deprived of their liberty;
- b)** making recommendations to the management of the visited detention facilities, following the visits;
- c)** formulating proposals for amending and completing the relevant legislation or comments on existing legislative drafts in the field, under the provisions of Art. 30;
- d)** preparing the draft of the part on prevention of torture of the annual activity report of the People's Advocate;
- e)** formulating proposals and comments on the development, amendment and supplementation of public policies and strategies on the prevention of torture and inhuman or degrading treatment or punishment, under the law;
- f)** liaising with the Subcommittee on Prevention of Torture;
- g)** analyzing, implementing, monitoring and evaluating, under the lead of the People's Advocate, international programs of technical and financial assistance, in order to achieve the goal of the Department for the Prevention of Torture in Places of Detention;
- h)** coordinating the activity of organizing awareness raising, education and training campaigns, on the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- i)** performing any other tasks set by the People's Advocate, within the limits of the law.

### ▣ **SECTION 3: Organizing the activity on the prevention of torture and other cruel, inhuman or degrading treatments in places of detention**

#### ▣ **Art. 36**

(1) The Department for the Prevention of Torture in Places of Detention comprises the central structure and the territorial structure.

(2) The central structure also encompasses the Bucharest Zonal Centre. The territorial structure consists of 3 zonal centers.

(3) The People's Advocate establishes, by order, the places where the zonal centers are located and the counties that fall under their jurisdiction, as well as the selection criteria for the staff of the Department for the Prevention of Torture in Places of Detention.

(4) In the activity of torture prevention will participate representatives of non-governmental organizations active in the field of human rights protection, selected, on the basis of their activity, by the People's Advocate.

#### ▣ **Art. 37**

(1) For carrying out the activities of the Department for the Prevention of Torture in Places of Detention, within the central structure are also co-opted, under service contracts, external collaborators having other specialties than the permanent employees. The external collaborators are selected by the People's Advocate, on the basis of proposals received from the Romanian College of Physicians, the Romanian College of Psychologists, Sociologists' Society in Romania, the National College of Social Workers or from other professional associations to which they might belong.

(2) During the fulfilment of their duties, the external collaborators shall be subject to the same obligations as the institution's staff, with regard to maintaining the confidentiality of their work and other rules of internal discipline of the institution.

(3) When carrying out the specific activities of the Field on the Prevention of Torture in Places of Detention, visiting team members are independent.

(4) In addition to the Deputy People's Advocate, head of the Department for the Prevention of Torture in Places of Detention, in the central structure of the Department, including the Bucharest Zonal Centre, operate a total of 11 employees, of which 4 employees as specialty personnel with legal studies, 3 specialists - physicians, psychologists, social workers, sociologists or any other professions necessary to conduct the specific activities and 4 employees for financial, payroll, human resources and administrative.

#### ▣ **Art. 38**

(1) For carrying out the activities of the Department for the Prevention of Torture in Places of Detention, in the territorial structure, are also co-opted external collaborators having other specialties than the permanent employees, under service contracts. The external collaborators in the territorial structure are selected by the People's Advocate, on the basis of proposals received from the Romanian College of Physicians, the Romanian College of Psychologists, Sociologists' Society in Romania, the National College of Social Workers or from other professional associations to which they might belong.

(2) The provisions of Art. 37, para. (3), shall also apply accordingly to the collaborators co-opted in the territorial structure.

(3) Within the three regional centers of the Department for the Prevention of Torture in Places of Detention operate a total of 12 employees. Each regional center has: one employee as specialty personnel with legal studies, 2 specialists - physicians, psychologists, social workers, sociologists or any other professions necessary to conduct the specific activities and one employee as administrative personnel.

## ☐ SECTION 4: Conducting visits in places of detention

### ☐ Art. 39

(1) The visiting teams conduct announced or unannounced visits to all places of detention falling under this law.

(2) The visiting team shall be composed of at least one physician, depending on the specialization required, and a representative of the non-governmental organizations mentioned in Art. 36 para. (4).

(3) Visits are conducted ex officio on the basis of an annual visitation plan, proposed by the Deputy People's Advocate, head of the Department for the Prevention of Torture in Places of Detention and approved by the People's Advocate, or unannounced, or following a complaint from any person, or after finding out, in any way, about the existence of a situation of torture and other cruel, inhuman or degrading treatment or punishment in a place of detention.

(4) When preparing the annual visitation plan, the following minimum criteria shall be considered:

a) the existing types of places of detention;

b) the geographical distribution of the places of detention;

c) complaints received on the existence of situations of torture or cruel, inhuman or degrading treatment;

d) known vulnerability of certain types of places of detention;

e) previous reports of the Department for the Prevention of Torture in Places of Detention and of other departments within the institution.

### ☐ Art. 40

(1) It is incumbent upon the visited institutions to provide to the representatives of the visiting team, under the law, before, during or after the visit, any documents or information that is available to them or that they can get hold of, requested by the visiting team for fulfilling their legal duties.

(2) The management of the visited place of detention is obliged to provide assistance and to meet with the members of the visiting team, in order to achieve the purpose of the visit.

### ☐ Art. 41

(1) For fulfilling their legal duties, the members of the visiting team may meet in private with any person deprived of liberty, within the visited institution.

(2) At the request of the members of the visiting team, the visited institution is obliged to provide an adequate place for the meeting.

(3) The meetings may take place only with the consent of the person deprived of liberty or with the consent of their legal representative and are confidential.

(4) The confidential meeting cannot be attended by representatives of the place of detention, except at the express request of the members of the visiting team and just for the purpose of ensuring their protection. In that case, the representatives of the place of detention shall provide only visual surveillance, respecting the confidentiality of the meeting.

(5) The name and other personal data of the person interviewed shall not be disclosed without their prior written consent or their legal representative's prior written consent.

(6) For conducting interviews with persons who do not understand or speak Romanian, an interpreter shall be provided, the costs of which shall be covered from the funds allocated to Department for the Prevention of Torture in Places of Detention.

(7) The members of the visiting team may request meetings with any person if they consider that he/she can provide relevant information, with that person's consent.

#### **Art. 42**

No person may be held liable for the information communicated to the members of the visiting team.

#### **Art. 43**

(1) The findings of the visits shall be summarized in visit reports and, where irregularities are noticed, the report shall be accompanied by reasoned recommendations for improving the treatment and conditions of the persons deprived of liberty and for preventing torture and cruel, inhuman or degrading treatment or punishment.

(2) The visit report shall be drawn up by the members of the visiting team no later than 30 days from the date of the visit's completion and must be approved by the Ombudsperson.

#### **Art. 44**

(1) The visited institution is obliged to submit, within 30 days, a reasoned response to the proposals and recommendations contained in the visit report, indicating their point of view on the findings and a justified term in which measures will be implemented in order to comply with the proposals and recommendations, or depending on the case, indicating the reasons for which they cannot comply.

(2) For well-grounded reasons, the 30 days term referred to in para. (1) may be extended by another 30 days, with the approval of the Deputy Ombudsperson – head of the Department for the Prevention of Torture in Places of Detention.

(3) If the institution concerned does not comply, the Ombudsperson or, depending on the case, the Deputy Ombudsperson – head of the Department for the Prevention of Torture in Places of Detention shall inform on the matter the higher authority or the local or central public administration authority that issued the license for the private detention facilities, and may act under the provisions of this Law and of the Regulation on the organization and functioning of the People's Advocate Institution<sup>\*\*</sup>).

<sup>\*\*</sup>) The Regulation on the organization and functioning of the People's Advocate Institution, approved by the Decision of the Permanent Bureau of the Senate no. [5/2002](#), was republished in the Official Gazette of Romania, Part I, no. 758 of October 27, 2011, as subsequently amended.

#### **Art. 45**

The visit report and the reasoned response referred to in Art. 44, when one was sent, are public and shall be posted on the website of the institution concerned, of the higher authority or the local or central public administration authority that issued the operating permit, and also on the website of the People's Advocate Institution, except for the parts that concern personal data or classified information.

#### **Art. 46**

(1) When finding a case of human rights violation through torture and other cruel, inhuman or degrading treatment or punishment producing an imminent risk of harm to the life or health of a person, a preliminary report shall be prepared urgently.

(2) The deadline for the preparation and adoption of the preliminary report is 3 days and it may be extended by another 3 days for well-grounded reasons.

(3) The institutions concerned are required to comply immediately with the proposals and recommendations, or to formulate an answer under the provisions of Art. 44, within 3 calendar days at most.

#### **Art. 47**

It is incumbent upon the Ombudsperson to immediately notify the judiciary when, in the exercise of his/her duties, finds clues concerning possible offenses committed under the criminal law.

#### **Art. 48**

(1) The Deputy Ombudsperson – head of the Department for the Prevention of Torture in Places of Detention drafts the annual report on the activity of the Department, as part of the annual report of the People's Advocate Institution, and submits it to the approval of the Ombudsperson.

(2) The annual report comprises: the analysis and conclusions of the visits carried out during that year; proposals and recommendations formulated; measures taken by national authorities relating thereto; proposals to improve the legislative framework in the field, and any other data or information relevant to the activity of the Department for the Prevention of Torture in Places of Detention.

(3) The activity report of the Department for the Prevention of Torture in Places of Detention is part of the Annual Report that the Ombudsperson presents in the joint session of the two Chambers of Parliament.

### **SECTION 5: Liaising with the Subcommittee on Prevention of Torture**

#### **Art. 49**

In the exercise of his duties, the Ombudsperson or, depending on the case, the Deputy Ombudsperson for the prevention of torture liaises with the Subcommittee on Prevention of Torture, sends it information and meets with its members.

#### **Art. 50**

The non-managerial staff with legal studies and the specialists may receive training and technical assistance from the Subcommittee on Prevention of Torture, under the Optional Protocol.

☐ **Art. 51**

Funding the current and capital expenditure in the field of prevention of torture and other cruel, inhuman or degrading treatment shall be provided from the State budget and the funds allocated to it are part of the People's Advocate Institution's budget.

☐ **CHAPTER VI: Accountability, incompatibilities and immunities**

☐ **Art. 52**

The Ombudsperson and his/her deputies are not legally liable for the opinions expressed or the acts performed, in compliance with the law, while exercising their duties provided for in the present law.

☐ **Art. 53**

**(1)** During the exercise of his/her mandate, the Ombudsperson may be investigated and prosecuted for criminal offences, other than those referred to in Art. 52, but he/she may not be detained, searched or arrested without the consent of the presidents of both Chambers of Parliament.

**(2)** The deputies of the Ombudsperson may be investigated and prosecuted for criminal offences other than those provided for at Art. 52, but they may not be searched or arrested without previously notifying the Ombudsperson.

**(3)** If the Ombudsperson or his/her deputies are arrested or criminally prosecuted, they shall be *de jure* suspended from office until the issuance of a final court decision.

☐ **Art. 54**

**(1)** During the exercise of their mandates, the Ombudsperson and his/her deputies cannot be members of any political party, nor may they hold any other public or private office, with the exception of academic positions or activities in the higher education system.

**(2)** The incompatibilities provided for in para. (1) shall also apply to the specialized staff, holding managerial or non-managerial positions.

☐ **CHAPTER VII: The services of the People's Advocate Institution**

☐ **Art. 55**

The organizational structure, staff establishment and number of staff necessary for the institution's activity shall be approved by the Ombudsperson within the limit of the annual budget.

☐ **Art. 56**

Within the People's Advocate Institution, in addition to the departments specialized on different fields of activity, are organized the following:

**a)** Constitutional litigation, appeal in the interest of the law, administrative and legal litigation, analysis of normative legal acts, external relations and communication, subordinated directly to the Ombudsperson, headed by a Chief of Service, which coordinates the following bureaus: Constitutional litigation and appeal in the interest of the law Bureau, Administrative and legal litigation Bureau, Analysis of normative legal acts, external relations and communication Bureau.

**b)** Financial, Payroll and Human Resources Bureau and Administrative Bureau. The Coordinating Director guides the activity of the Financial Bureau, Payroll and Human Resources Bureau and Administrative Bureau and is accountable for it.

#### ☐ **Art. 57**

The managerial or specialized non-managerial positions within the People's Advocate Institution can be occupied through contest, according to the terms of the law.

#### ☐ **Art. 58**

The infringement upon this law or upon the Rules of organization and functioning of the People's Advocate Institution, by its staff shall entail criminal, disciplinary, or administrative liability, as the case may be. The disciplinary liability is laid down in accordance with the provisions of the Rules of organization and functioning of the People's Advocate Institution.

### ☐ **CHAPTER VIII: Transitory and final provisions**

#### ☐ **Art. 59**

**(1)** The People's Advocate Institution has its own budget, which is part of the State budget. The annual budget laws may approve a fund at the disposal of the Ombudsman institution, for granting financial aids.

**(2)** The draft budget is approved by the Ombudsperson, with the advisory opinion of the Ministry of Public Finances, and must be forwarded to the Government to be included separately in the draft State budget under enactment. The objections of the Ombudsperson upon the Government's draft budget shall be brought to the Parliament for settlement.

**(3)** The function of Ombudsperson is assimilated as rank, remuneration and conditions of retirement with that of minister, and the position of Deputy Ombudsperson is assimilated as rank, remuneration and conditions of retirement with that of secretary of state, with all the appropriate rights. The managerial and non-managerial specialized positions are assimilated with the corresponding positions of the Parliament.

The deputies of the Ombudsperson shall be appointed for a five years term, which may be renewed only once.

**(4)** The period of employment of the non-managerial specialized personnel with legal studies within the People's Advocate Institution shall be deemed as length of service in the specialty of the studies graduated and length of service in magistracy, under the terms provided by Art. 86 of Law No. [303/2004](#), regarding the status of judges and prosecutors, republished, as subsequently amended and supplemented.

**(5)** The period of employment within the People's Advocate Institution, of the managerial and non-managerial personnel with other studies than the legal specialty, shall be deemed as length of service in the specialty of the studies graduated.

(6) The Ombudsperson and the deputies of the Ombudsperson who don't have their domicile nor personal home in Bucharest, shall benefit, from the date of their appointment, of the reimbursement of expenses with accommodation and transport from their place of residence to the work place in Bucharest, under the conditions established by law.

(7) The Government and the General Council of the Municipality of Bucharest shall provide the necessary headquarters for the functioning of the People's Advocate Institution.

(8) The People's Advocate Institution may rent, concession or receive in administration, according to the law, in order to carry out its activity, movable and immovable property, from public or private property.

(9) The headquarters of the Ombudsman Institution shall be guarded, free of charge, by the Romanian Gendarmerie.

#### ☐Art. 60

(1) If a magistrate is elected for the position of Ombudsperson, their job reservation is compulsory.

(2) If a judge, a prosecutor, a lawyer, a notary, a legal adviser, an economist or a person performing similar functions is appointed for the position of deputy Ombudsman, their job reservation is compulsory.

#### ☐Art. 61

The Rules of organization and functioning of the People's Advocate Institution is approved, by order, by the Ombudsperson and is published in the Official Gazette of Romania, Part I.

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\*) Republished pursuant to Art. III of Law no. [9/2018](#) amending and supplementing Law no. [35/1997](#) on the organization and functioning of the People's Advocate Institution, published in the Official Gazette of Romania, Part I, no. 17 of January 8, 2018, giving the texts a new numbering.

Law no. [35/1997](#) regarding the organization and functioning of the People's Advocate Institution has been republished in the Official Gazette of Romania, Part I, no. 277 of April 15, 2014, and thereafter, was amended and supplemented by the Government Emergency Ordinance no. [48/2014](#) for amending and supplementing Law no. [35/1997](#) regarding the organization and functioning of the People's Advocate Institution, as well as for the modification and completion of certain normative acts, published in the Official Gazette of Romania, Part I, no. 485 of June 30, 2014, approved with modifications and completions by Law no. [181/2014](#), published in the Official Gazette of Romania, Part I, no. 6 of January 6, 2015.

#### NOTE:

We reproduce below the provisions of the amending acts, which are not incorporated in the republished form of Law no. [35/1997](#) and which continue to apply, as their own provisions:

1.- Art. II-V of the Government Emergency Ordinance no. [48/2014](#) for amending and supplementing Law no. [35/1997](#) regarding the organization and functioning of the People's Advocate Institution, as well as for the modification and completion of certain normative acts, approved with modifications and completions by Law no. [181/2014](#):

"- Art. II

(1) Within 30 days from the date of entry into force of the present emergency ordinance, the Ombudsperson approves, by order, the new organizational chart and list of staff of the institution.

(2) By derogation from the provisions of Art. 34 of Law no. [35/1997](#) regarding the organization and functioning of the People's Advocate institution, republished, the non-managerial specialized personnel who carry out their activity within the People's Advocate institution or within the territorial offices of the People's Advocate institution, may be moved on request, with the approval of the Ombudsperson, in the central structure of Department for the prevention of torture in places of detention or in the territorial structure of the Department for the prevention of torture in places of detention.

(3) Following the approval of the new organizational chart, the Ombudsperson adopts, by order, the methodology for promoting in positions or ranks the staff of the institution and promotes, by order, the personnel within the institution. The other vacant positions are filled by contest or examination, organized according to the law.

(4) The number of personnel financed according to the law is supplemented by 39 positions, of which: a deputy of the Ombudsperson, 23 employees for the Department regarding the prevention of torture in places of detention, 13 employees at the Constitutional Litigation Service, appeal in the interest of the law, administrative and legal litigation, analysis of normative legal acts, external relations and communication and 2 specialized non-managerial personnel with legal studies. The number of positions of the People's Advocate Institution is 133, excluding the dignitaries and the positions related to the Cabinet of the Ombudsperson.

(5) The provision of the necessary funds for these modifications will be made on January 1, 2015.

- Art. III

(1) The zonal center Bucharest takes over in its area of competence the counties assigned to the Territorial Office Slobozia, which is not operational at the date of entry into force of this emergency ordinance.

(2) [Until January 1, 2015](#), when the complete scheme of personnel provided by this normative act becomes operational, the activity regarding the prevention of torture is carried out by the existing specialized personnel of the People's Advocate institution, including these from the territorial offices and collaborating specialists.

- Art. IV

In Article 24 para. (3) of the Government Emergency Ordinance no. [34/2009](#) regarding the budgetary rectification for 2009 and the regulation of some financial-fiscal measures, published in the Official Gazette of Romania, Part I, no. 249 of April 14, 2009, approved by Law no. [227/2009](#), with the subsequent modifications and completions, after the letter f) is introduced a new letter, letter g), with the following content:

«g) the procurement made by the People's Advocate Institution, in order to carry out the duties that fell under its responsibility a result of the establishment, within this institution, of the National Preventive Mechanism against torture in places of detention.»

- Art. V

In Article III para. (2) of the Government Emergency Ordinance no. [26/2012](#) regarding certain measures to reduce public expenditure and strengthen the financial discipline and to amend and supplement certain normative acts,

published in the Official Gazette of Romania, Part I, no. 392 of June 12, 2012, approved with modifications and completions by Law no. [16/2013](#), letter a) is amended and will have the following content:

«a) organized, according to the law, at the level of the President of Romania, the President of the Senate, the President of the Chamber of Deputies, the Prime Minister, the Vice Prime Minister, the President of the Constitutional Court, the President of the High Court of Cassation and Justice, the President of the Superior Council of Magistracy, the President of the Court of Accounts, the People's Advocate, the ministers, the delegated ministers and the other leaders of the central and local public institutions and authorities acting as chief authorizing officer;»"

2.- Art. II of the Law no. [9/2018](#) amending and supplementing Law no. [35/1997](#) on the organization and functioning of the People's Advocate Institution:

"- Art. II

Starting with January 1, 2018, the number of positions financed according to the law, for the People's Advocate Institution, is supplemented by 18 positions, of which 4 positions at the central headquarters and one position for each of the 14 territorial offices."

## **ANNEX: THE TERRITORIAL OFFICES OF THE PEOPLE'S ADVOCATE INSTITUTION**

Office no.	Premises	Counties in territorial jurisdiction
1.	Alba Iulia	Alba, Sibiu, Hunedoara
2.	Pitești	Argeș, Vâlcea
3.	Bacău	Bacău, Neamț
4.	Oradea	Bihor, Satu Mare
5.	Suceava	Suceava, Botoșani
6.	Brașov	Brașov, Covasna
7.	Slobozia	Călărași, Giurgiu, Ialomița, Ilfov, Teleorman
8.	Cluj-Napoca	Cluj, Bistrița-Năsăud, Maramureș, Sălaj
9.	Constanța	Constanța, Tulcea
10.	Craiova	Dolj, Gorj, Mehedinți, Olt
11.	Galați	Galați, Brăila, Vrancea
12.	Iași	Iași, Vaslui
13.	Târgu Mureș	Mureș, Harghita
14.	Ploiești	Prahova, Buzău, Dâmbovița
15.	Timișoara	Timiș, Arad, Caraș-Severin

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