PEOPLE'S ADVOCATE RECOMMENDATIONS FROM THE CURRENT INTERNATIONAL PERSPECTIVE ON THE OMBUDSMAN INSTITUTION

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Abstract

This paper aims to contribute to a change in perspective regarding the Ombudsman institution and the legal means at its disposal for the protection of human rights and fundamental freedoms.

In recent years, the international community has shown a growing interest in Ombudsman institutions, seeking joint solutions to support the national Ombudsman in order to strengthen its statute with all the guarantees it needs to effectively exercise its legal powers.

As regards the legal framework in which the Ombudsman institutions operate, the Venice Commission has consistently advocated strengthening their constitutional foundation so as to guarantee full independence for Ombudsman. At the same time, the Commission sustained the importance of creating Ombudsman institutions where they are lacking and giving wider powers to the existing ones.

The Commission is currently carrying out a comprehensive codification process of a set of constitutional and legal principles, so-called "Venice Principles", specifically dedicated to the Ombudsman institution. All these developments announce interesting changes in the legal systems where there are Ombudsman institutions.

In this favourable international context and analysing the situation within the People's Advocate-the Romanian Ombudsman institution, we dare to say that we are not far from the moment when the Ombudsman's good practices and mechanisms of action will become instruments with an irrefutable legal force, comparable to legally binding acts.

Keywords: *Ombudsman, Ombudsman Recommendation, Human Rights and Fundamental Freedoms, Venice Comission, Venice Principles*

JEL Classification*:* [K 38, K 40, K 33].

1. Ombudsman institution in its Romanian version - People's Advocate

The People's Advocate is the Romanian version of an iconic institution for the international community, of a concept-institution, involved in combating governmental abuse of power and defending fundamental human rights: the Ombudsman's institution.

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Although, in Europe, the first Ombudsman appeared in Sweden in the nineteenth century, in the Romanian constitutional system this institution makes its way along with the adoption of the new Constitution of 1991, under the name of "People's Advocate". That was also the year when the International Workshop regarding National Institutions for the Promotion and Protection of Human Rights took place in Paris, but the Romanian Ombudsman was born before it could benefit from the conclusions of the Workshop, materialized in the resolutions of the United Nations Commission on Human Rights adopted in 1992 and 1993. Moreover, in the Romanian doctrine was reported the lack of an express mandate, of human rights promoter, granted to the People's Advocate (Dragoş & Neamţu, 2011, p. 18).

But today, this legislative shortcoming is overcome, the organic law regulating the organization and operation of the People's Advocate Institution stipulating (following the amendments brought by Law no. 9/2018) the fact that the People's Advocate is a national institution for the protection and promotion of human rights within the meaning of the Paris Principles.[1]

However, the institution shares this role with the specific mission of a classical Ombudsman, appointed by the Parliament[2] and designed to ensure that public administration authorities do not violate constitutional and legal limits in their relations with individuals.

The adoption of the Ombudsman institution was an absolute novelty in the Romanian public authorities system and was due to the imperative of guaranteeing the fundamental rights and freedoms of persons interacting with the public administration.

The functionality of public administration can be consumed by bureaucracy, corruption, abuse of power, or the essence of the activity of an Ombudsman type institution resides precisely in the fight against such diseases. (Vida, 2012, p. 234)

The People's Advocate is a state authority, because its activity is of a public, autonomous nature (with the amendment, in the year of 2002, of the organic organizational and operational law of the institution) acting as a constitutional guarantor of the rights and freedoms of individuals, but also an instrument for controlling the activity of public administration authorities.

In connection with this control, the doctrine believes that through People's Advocate, the Parliament actually exercises its control over public

[1] According to Law no. 35/1997 regarding the organization and operation of the People's Advocate Institution, art. 1, par. (2): "The People's Advocate Institution is a national institution for the promotion and protection of human rights in the sense established by United Nations General Assembly Resolution no. 48/134 of 20 December 1993, which adopted the Paris Principles".

[2] However, there are some Ombudsmen appointed by the Government.

administration, and this aspect makes the institution not to be completely independent from the Parliament.

In the exercise of its legal attributions, the People's Advocate may request information and documents held by the authorities of the concerned public administration; may perform investigations and issue Recommendations based on its own findings, in conjunction with the relevant national and international legislation; may initiate proceedings before the contentious administrative court[3] or, in the case of the Child's Advocate attributions, may notify the criminal prosecution authorities, when there are indications of criminal offenses committed against minors.

Moreover, in the case of this vulnerable category, the People's Advocate formulate writ of summons and may represent them before the court when the children are subjected to physical or mental violence by their parents, guardian or legal representative, or when they are victims of abuse, sexual exploitation, labour exploitation, human trafficking, neglect and any other form of violence against the child, provided for and sanctioned by the domestic and international law.

At the same time, through the *Field of prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention*, the People's Advocate fulfils the specific attributions of a national mechanism for the prevention of torture in places of detention within the meaning of the Optional Protocol adopted in New York on 18 December 2002, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, ratified by Law no. 109/2009.

Last but not least, the People's Advocate has attributions in the area of the constitutionality control of the laws, both of the *a priori* control of the laws, before the promulgation and of the *a posteriori* of the laws and ordinances adopted, in relation to which he can raise exceptions of unconstitutionality directly before the Constitutional Court. All these duties strengthen the position of the People's Advocate and, at the same time, represent an effective means of achieving his human rights protection function.

The importance given to this institution therefore lies with the role of the Ombudsman type institution, essentially in a democratic society and a rule of law. It is no coincidence that in Romania, the People's Advocate Institution is legally established through the *Basic* Law - the Romanian Constitution and regulated under its Title II, entitled: *Fundamental* Rights, Freedoms and Duties.

[3] In the case of the right conferred on the People's Advocate to address a contentious administrative court, it should be noted that this attribution is exercised when the claimant lacks the capacity to bring an action in court, the People's advocate introducing it on his behalf. However, after the legal action has been brought, it remains up to the complainant whether or not to continue the proceedings.

Nor the fact that the organization and operation of the People's Advocate Institution is regulated by organic law, or that, for the appointment of the People's Advocate, the two Chambers of the Parliament, the Senate and the Chamber of Deputies meet, which happens for a limited number of events, each of them with particular importance. All these aspects confirm the place that People's Advocate Institution occupies in the state order in Romania.

Similarly, the constitutional provision by which the public authorities are obliged to give the People's Advocate all the necessary support in the exercise of his duties, "gives substance to the quality of the People's Advocate of being a High Dignitary of the Romanian State".

It is important that, in the exercise of his duties, especially with regard to the members of the Government and the heads of central public administration bodies, the People's Advocate to occupy a position equal to them on a hierarchical scale. (Ionescu & Dumitrescu, 2017, p. 671)

In fact, the current international standards on the Ombudsman's institution, crystallized on the basis of the experience of the states that have developed such institutions, qualify the constitutional provision of the institution as guarantee of the functional independence of the Ombudsman.

The constitutional establishment of an Ombudsman institution is preferable to a provision in a law, despite the cumbersome process of eventual constitutional reforms, which may be needed at some point regarding the Ombudsman's institution.

Functional independence is the core of the People's Advocate Institution. In order to carry out his mandate, an Ombudsman must not have bureaucratic obstacles or pressures to be removed, he must be independent of all other state authorities and cannot be subject to any imperative mandate.

Maintaining and strengthening this independence is a permanent desideratum of these institutions, and the discussions in the international legal area converge to the topic of ensuring the independence of ombudsman type institutions.

The independence of the People's Advocate Institution is based on its legal establishment, the manner in which the appointment of the People's Advocate is regulated and its dismissal, the means of action available to the Ombudsman, the limits of its competence which, sometimes, may coincide with the limits of the institution's independence at national level regulations, on its budget regulations, because the material and human resources can be a serious brake on carrying out the activity and the fulfillment of its mission.

Regarding the protection of human rights, the People's Advocate's mission is to identify the discrepancies between existing human rights standards and principles on the one hand, and their implementation, by public administration authorities.

In terms of promoting human rights, the institution's contribution is to spread international values and standards in the field, at national level.

The People's Advocate does not have the authority to make binding decisions for their recipients from a legal point of view, therefore, the Recommendations they address to the investigated public administration authorities are not legally binding instruments. But these Recommendations refer to fundamental rights and freedoms whose observance is guaranteed by the Constitution of Romania, the Universal Declaration of Human Rights, the Charter of Fundamental Rights of the European Union and the pacts and treaties to which Romania is a party [4].

The role of the People's Advocate and the Ombudsman's institution in general, is to protect the rights and freedoms of the individual and to discourage abuse by the administration. Despite its name, the People's Advocate protects individuals from the abuses of public administration authorities, but the legal framework in which it is made is mainly institutional rather than judicial.

The unprecedented development of the Ombudsman's institution in the world, the increase and diversification of his attributions, the interest of the international legal community in the importance and role of the Ombudsman in a democratic society and in a rule of law entitles us to affirm that the institution of the Ombudsman has become almost a legal institution, with its own specific regularities, and we believe that we will soon be able to talk about the right to ombudsman.

2. Recommendation - The legal authority of the People's Advocate acts

The acts by which the People's Advocate exercises authority and expresses his powers are either expressly provided for in the Constitution of Romania, as in the case of *Annual or Special Reports*[5] and *Seize of the Constitutional Court*[6], either resulting from the legislative context, which allows

[4] As stated in the Constitution of Romania in art. 20 on the International Treaties on Human Rights, " *(1) The constitutional provisions regarding citizens' rights and freedoms shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, with the pacts and other treaties to which Romania is a party.*

(2) If there are inconsistencies between the pacts and treaties regarding fundamental human rights to which Romania is a party, and domestic laws, priority is given to international regulations, unless the Constitution or domestic laws contain more favourable provisions.

[5] Provided in art. 60 of the Romanian Constitution: "The People's Advocate presents reports to the two Chambers of Parliament, annually or at their request. Reports may contain recommendations regarding legislation or measures of a different nature in order to protect the rights and freedoms of the citizens".

[6] The People's Advocate may seise the Constitutional Court through an objection of unconstitutionality of the law, before its promulgation, in accordance with Article 146 let. a)

the autochthonous Ombudsman to exercise greater freedom of action.(Muraru, 2004, p. 95)*The Recommendation* addressed to the heads of the public administration authorities, *the Standpoint* formulated at the request of the Constitutional Court when it is seised with the exception of the unconstitutionality of a law or ordinance regarding fundamental rights and freedoms, *the Letter* by which the People's Advocate institution either addresses to the petitioner or to the authority, *the Order* issued by the People's Advocate for regulating the issues related to the proper operation of the institution.

Of all these acts of the People's Advocate, some of them have a particular specificity, which derives from the special legal nature of the institution, including the Recommendation among these. It is known the fact that the People's Advocate arms relate to mediation and dialogue, legality, fundamental principles of law and equity.

An Ombudsman has no power to make legally binding decisions, the effectiveness of his institution being based on moral authority and, ultimately, on publicity and the ability to persuade public opinion, which, in a pluralist democracy, can provide public authorities with an effective incentive to comply with an Ombudsman's recommendations. (Rădulescu, 2011)

Although, in essence, the People's Advocate seeks to protect the individual against arbitrary, unjust, unlawful interference by public administration authorities, his recommendations are not only aimed on abstaining from a particular public authority from a particular interference with a particular person. Nor is it limited to recommending the rectification of the unlawful act, with reinstatement in the previous situation of the injured person, where possible.

Considering its role as a national institution for the protection and promotion of human rights, within the meaning of the Paris Principles, the purpose of the People's Advocate Recommendation must be beyond the precise resolution of the concrete case that led to the formulation of the recommendation from the beginning.

This Act of the People's Advocate may contain indications of observance of the fundamental right violated to the person, but it always aims a general good, such as the efficiency and accountability of the public administration authority in relation to any individual. Therefore, any Recommendation should, as far as possible, take into account that at least the fundamental principles of law applicable to the matter be clearly understood by the authority and the authority will find itself the most appropriate means of acquiring the Recommendation of the People's Advocate.

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or by an exception of unconstitutionality of a law or ordinance, according to art. 146 let. d) of the Romanian Constitution.

Regarding referral procedure of the People's Advocate by the petitioners, some authors (Dragoş & Neamțu, 2011, p. 17) have considered that the complaint should have a legal, strictly formal basis, in the sense given by the Law concerning the Organization and Operation of the People's Advocate, with the clear indication of the violated rights and freedoms, as well as of the administrative authority or civil servant regarded by the complaint, being inconceivable to receive a petition that signals aspects that are not necessarily illegal, but may be subsumed to a wider concept of maladministration.

We do not share this view, considering that the institution of the Ombudsman can and should valorise in his work legal principles and cannot get stuck into formality when it comes to a referral, all the more so as the institution maybe seized ex officio regardless of the way it finds that it is possible to intervene for the protection or promotion of a fundamental human right.

In fact, the Venice Commission[7] has also addressed this matter, considering that if the Ombudsman is conferred a broad mandate based on the promotion and protection of human rights and fundamental freedoms, given the need for the executive to respect the principles of good administration, the Ombudsman should intervene not only when there are irregularities, i.e. violations of legal norms, but also when legal principles have been ignored (for example: humiliating treatment in relation to individuals, slow processing of files-ostentatiously), being able to control inclusively the objectivity and impartiality of the activity of the administrative bodies.

Whether it is a file that involved an investigation in an ex officio referral, or a case brought before the People's Advocate by a petition, its resolution must follow two components: an individual one, of immediate case application, and a general one, applicable to all such cases.

The purpose of opening the Recommendation to the general is to be a preventive one, so that the violation of the rights questioned by the investigated case is no longer possible and the public authority's conduct to improve starting from that case.

Certainly, it is not always possible to formulate a Recommendation containing the two components that we were referring to above. Sometimes, two Recommendations should be addressed (one of them having the hierarchically superior entity as addressee) considering the attributions of the public administration authorities, as they appear from the incidental legislation. Other times, the petitioner cannot be reinstated in the situation prior to the violation of his fundamental right by the public authority unless he addresses the court.

[7] CDL-AD (2003) 006 - Advice regarding the draft law on the human rights defender in Armenia, adopted by the Venice Commission at its 54th plenary session (14-15 March 2003, Venice), art. 11.

For example, the People's Advocate it seizes ex-officio as a result of media reports broadcast by the media channels according to which a pensioner located on the other side of the country, cannot receive his pension because he is listed as a deceased person in the County House of Pension. Cause:

At the other side of the country, following police investigations of a homeless person who had died in a decommissioned building, the identity of the deceased had been wrongly established as being the living pensioner.

Of course, in this case, the annulment of the document establishing the death and their subsequent acts, as well as the reinstatement of the injured person into the situation prior to the injury, cannot be obtained through a graceful procedure, within the competence limits of the People's Advocate institution, but by the court.

But that does not mean that the People's Advocate is held by the legal limits of the powers conferred to the institution, to remain passive. It goes without saying that somewhere along the path of the erroneous determination of the deceased person's identity, at least one public administration clerkhas had a negligent conduct towards his duties and the legal provisions governing these duties.

And if he had that conduct, it means that this was possible, that something must be changed or improved at the level of that authority, either in the Rules of procedure or in the organization and operation or elsewhere.

This is where the People's Advocate comes in, addressing a Recommendation to the public administration authority guilty of violating some fundamental rights and freedoms of the individual (the concerned pensioner) as a result of that faulty administrative conduct. In his approach, the People's Advocate verifies what fundamental rights have been violated.

Considering that the wrongfully pronounced deceased person cannot be able to collect its pension, following that administrative error, we can ascertain a violation of his private property right over the pension[8] and perhaps the right to a living standard, given that we are talking about leaving a pensioner without financial means.

At the same time, being that he is also listed as a deceased person in the National Health Insurance House, also results the violation of art. 34 of the Romanian Constitution, the right to health protection, because the pensioner injured by the administrative error can no longer benefit from his rights of insurant of the health care system, he no longer benefits from the services or the compensated medicines to which he was entitled.

Not once, the People's Advocate invoked in his acts, especially in the Recommendations, legal principles of European Union law, the role of these

[8] According to Article 44 of the Romanian Constitution, ”claims upon the state are guaranteed”.

principles being that of signaling the public administration authorities to which they are intended, the need to have a certain conduct, consistent with both the constitutional and legal framework in Romania, as well as the law of the European Union.

In the same context, the authorities of the concerned public administration may be made aware of the consequences of violation of those principles, such as violations of fundamental human rights which, through a contest of events, did not occur in relation to that case, but which would be could have taken place if the details of the case had changed only slightly.

In the above-mentioned example, of the casuistry of the People's Advocate, if the person deceased in the decommissioned building would have had a family, the constitutional right of the members of this family to intimate, family and private life[9] would have been violated.

The mere fact that the deceased person was wrongly identified and that, for this reason, no institutional steps were taken in order to identify the true careers, the deceased being buried by the care of a religious establishment, would have made the family aware of this when it could no longer dispose of its right to choose where and how to be buried member of the family.

The authorities in default will therefore be forwarded to the People's Advocate Recommendation to adapt their conduct to legal norms and incidents legal principles, to complete their existing procedures or to implement new ones, in relation to the case of violation that came to the attention of the People's Advocate.

Although the People's Advocate Recommendations do not have the force of binding legal acts, the competence of the People's Advocate Institution to request and receive complete information from the public authorities concerned is indisputable; to examine, from the perspective of national law and European Union law, the acts and facts of the public administration authority in relation to the individual; to find their non-compliance with fundamental legal principles.

Moreover, the People's Advocate has a non-negligible power of "sensitize the hierarchically superior authorities in the public administration system, the Parliament and the public opinion regarding illegal phenomena that would happen inside one of the state powers".(Brânzan, 2001, p. 257)

Undertakings for obtaining information, investigation and, ultimately, the Recommendation addressed by the People's Advocate in order to prevent the recidivism of the illegal or abusive treatment are not sufficient; it is also necessary

[9] "The public authorities observe and protect the intimate, family and private life." according to Article 26 of the Romanian Constitution.

to follow the subsequent conduct of the concerned public administration authority, so as to determine if it has adopted the Recommendation.

It is true that, for the authority of the public administration under examination, there is no legal obligation to follow the People's Advocate Recommendations. However, the addressee of the Recommendation has the obligation to communicate to the People's Advocate the adoption of the Recommendation and the redressing of the situation or, on the contrary, the refusal to accept it, legally explained. However, this obligation is established both by the constitutional text and by Law no. 35/1997 on the organization and operation of the People's Advocate Institution, republished.

The legal term in which a public administration authority can communicate its response to the Recommendation of People's Advocate is of 30 calendar days[10]. For exceptional situations, assessed as either very complex or likely to cause imminent or irreparable damage to human rights, the Ombudsman may, by means of the Recommendation, give the public administration authority a different response period, on a case-by-case basis.

However, considering that the legislation regarding People's Advocate does not provide for these response terms for exceptional circumstances, they should be included in the notion of *reasonable time/period*, in normal cases, with administrative authorities having to receive between one and two months for the response.[11]

If the public administration authority (orthe civil servant) fails to comply with the People's Advocate's Recommendation and does not conform its conduct to constitutional provisions, in cases where the complaint of the individual/or the information is well founded, a "sanction" from the People's Advocate will be applied, in the form of a notification of the authority hierarchically superior, the Government, and, subsequently, the Parliament[12].

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[10] According to art. 27 of the Law no. 35/1997, "(1) If the public administration or civil servant does not remove the illegalities committed within 30 days from the date of the referral, the institution of People's Advocate shall address to the authorities of the hierarchically superior public administration, who are obliged to communicate, within 45 days at most, the measures taken. (2) If the public authority or civil servant belongs to the local public administration, the People's Advocate institution shall address to the prefect. From the date of filing the complaint to the prefect of the county, a new term of 45 days shall run."

[11] See in this regard CDL-AD (2004) 041 - *Joint Opinion on the Draft Law on the Ombudsman of Serbia* by the Venice Commission, the Commissioner for Human Rights and the Directorate-General for Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004), para. 32, art. 28.4.

[12] According to art. 28, Law no. 35/1997: "(1) The People's Advocate shall be entitled to notify the Government regarding any illegal administrative act or fact of the central public administration and the prefects. (2) The non-adoption by the Government, within maximum 20 days, of the measures regarding the illegality of administrative acts or deeds signaled by the People's Advocate shall be communicated to the Parliament."

The doctrine (Brânzan, 1996, p. 30) has signaled, even before the law on the organization and operation of the People's Advocate, the need to impose pecuniary sanctions or similar sanctions in labour law for the failure of the public administration clerks to carry out their duties properly in regard to the People's Advocate.

Subsequently, it was proposed even the completion of the legislation on the organization and operation of the People's Advocate with provisions according to which the People's Advocate, directly or indirectly, through the hierarchically superior entity, may sanction the authority of the public administration that does not conform to the Recommendation addressed to it.

Any legal professional knows the fact that a law that does not provide for serious sanctions regarding its non-compliance, is a law that will not be observed. Recommendations of the People's Advocate, because there are no legal provisions to impose their strict observance, could be subject to the same axiom, considering the fact that public administration authorities to whom they are addressed cannot be obliged to modulate their conduct in accordance with the indications.

Nevertheless, the prerequisites for formulating these Recommendations, in a constitutional democracy, in connection with the protection of fundamental rights and freedoms enshrined in the Romanian Constitution, should supplement the lack of legal constraint.

If the reference to all the public administration authorities of the Recommendations of People's Advocate would adequately valorise the legal force and the importance of the fundamental law, then the mere respect owed to the supreme law in the state would require compliance with those provided, through Recommendation, by the Guarantor of Fundamental Rights and Freedoms.

It should also be borne in mind the fact that the unique legal nature of the Romanian Ombudsman's institution is also reflected in his legal acts, involving elements of Administrative Law, European Law, Constitutional Law, and even of Legal Sociology. For the “sanction” applied by the People's Advocate also has a morally imperative social aspect, if we consider that the Recommendations are made public and the cases can be highlighted in the Annual Reports presented to the Joint Chambers of Parliament.

The recommendation issued by the People's Advocate has only an indicative value for the possible conduct of the public administration authority, but its effectiveness, in fact, of any of the means of action at the disposal of the People's Advocate, remains closely related to the social impact of the institution and authority of the person who at one point fulfils the position of People's Advocate.

That is why, in all the countries in which this institution operates, the Ombudsman has proven that the efficiency of the institution depends to a large extent on the "qualities of the person appointed as an ombudsman and of his work". (Muraru & Tănăsescu, 2009, p. 163)

3. The Venice Commission and its role in strengthening the Ombudsman's institution

Through its specific nature and its connection with human rights, the institution of the Ombudsman has always interested the international legal community. Moreover, beyond the national, regional or local ombudsmen, bodies have been set up aid to concentrate the legal culture of this institution and enrich it.

The People's Advocate Institution is affiliated to the International Ombudsman Institute, the European Institute of Ombudsman, the Association of Ombudsmen and Francophone Mediators - and is in connection with all those institutions or bodies concerned with promoting the ombudsman's activity and role at international and regional level.

Through the participation of the People's Advocate to these international and European organizations "a serious and beneficial harmonization of the activity of the People's Advocate with the international and European rules in the field and especially with the acts issued by the European Ombudsman" is achieved. (Iancu, 2003, p. 352).

In addition to these bodies, the European Commission for Democracy through Law, known as *Venice Commission*, the Council of Europe's Consultative Body on constitutional issues, has played a particularly important role in setting up the Ombudsman institutions.

The Ombudsman institution benefits, in the present, from the role the Venice Commission has undertaken, that of providing legal advice to Member States in order to align their legal and institutional structures with the European standards and international experience in the fields of democracy, human rights and the rule of law. (Venice Commission, n.d)

Currently, at the initiative of the International Ombudsman Institute, an extensive Draft of Codification of Legal Principles regarding the Protection and Promotion of Ombudsman Institutions.

The subject matter was debated within the European Assembly of the International Ombudsman Institute, which took place in October 2018 in Brussels. And the set of principles intended to strengthen and defend the Ombudsman's institution was brought to the attention of the Venice Commission, the first statement on this subject being made to the Venice Commission by the European Region of the Institute of the International Ombudsman.

The year 2019, therefore, is announced as an interesting year for the Ombudsman's institution. This is the year when the Venice Commission will adopt the document intended to strengthen the role of the Ombudsman's institution and entitled *The Venice Principles*. (Venice Commission, n.d.)

What the Venice Commission proposes through this international document is to bring together the immense and varied institutional culture of Ombudsmen everywhere (currently, the number of countries that have developed Ombudsman institutions in Europe and the world is over 160), the Studies, Opinions and Recommendations elaborated by the Venice Commission over time, on this subject.

Among the states that have requested the Venice Commission to rule in regard to the establishment or strengthening of the position of the Ombudsman's institution in their country, we mention: Republic of Moldova, Malta, Luxembourg, Armenia, Azerbaijan, Bosnia and Herzegovina, Montenegro, Serbia and "The former Yugoslav Republic of Macedonia" (currently the Republic of North Macedonia), Kazakhstan, Kosovo.

Since the idea of codifying this set of constitutional and legal principles was born, building on the previous acts adopted by the Venice Commission on this matter, the Commission has made a continuous effort to gather information, opinions and proposals from the states in which Ombudsman institutions operate.

Certainly, such information was also requested from the People's Advocate in Romania, and the People's Advocate welcomed the initiative of the International Ombudsman Institute to develop, with the support of the Venice Commission, this set of legal principles which, basically, concern both Ombudsmen, as well as the direct beneficiaries of Ombudsmen's activity, whether natural or legal persons or authorities.

At the same time, he took advantage of the opportunity to consult the principles that have already been outlined and to contribute to the final material to be considered for the coding work.

Given the fact that, in the fight against all forms of violation of human rights and individual freedoms, the Ombudsman's institutions use about the same legal instruments and access the same international programs in the field of promoting and defending human rights, we consider that the completion of this set of legal principles with a set of good practices of the Ombudsman would be necessary.

Such a step could create an Ombudsman's international working instrument, consisting of principles and good practices, to which any Ombudsman could refer to.

This does not mean that the National Ombudsman will be restricted to the possibility of setting up his own mechanisms, where the differences in

legal, cultural and social systems require so, building regulations and means adapted to the specifics of the state form in which he operates, and enriching with the results of his own activity, set of common values.

Regarding the aspects concerning the protection of Ombudsman institutions, we believe that the establishment of a mechanism dedicated to the cross-border support of these institutions could be envisaged, in order to protect the supreme values of the Ombudsman's Institutions when necessary, *exempli grazia,* in the case of the functional independence of an Ombudsman, subjected, at national level, to pressures, attacks and interferences that threaten the Ombudsman's mission itself.

In any part of the world these would occur, the international legal community must make a clear statement that an oppressed ombudsman is no longer an independent Ombudsman, or independence is the essence of the Ombudsman's institution.

At the same time, a suitable method of promoting at national level the need for loyal cooperation between the institution of the National Ombudsman and the rest of the public institutions and authorities must be found.

"An Ombudsman institution without formal power is dependent on the understanding, acceptance and respect of the outside world. Therefore, cooperation is a key word. Cooperation with Parliament. With relevant organisation. With the media. And not least with the administrative authorities. The last thing an Ombudsman institution can do is to barricade itself in standoffishness. It may sound strange to talk about cooperation with the authorities. After all, the Ombudsman oversees the authorities (...). But, if an Ombudsman institution really wishes to influence the public administration, it must make itself available in a constructive way". (Sørensen, 2016, p. 7)

The example of the states that have accomplished this can be particularly valuable for countries where the Ombudsman's institution is at the beginning or encounters political or other nature oppositions that prevent it from carrying out its work properly with the legally conferred role.

Once this set of principles regarding the strengthening and protection of the Ombudsman's institutions has been completed, the constant promotion of this information must be considered, so that it can be received by all those concerned and thus fulfil its purpose.

Conclusions

Although the Ombudsman's institution is a West European creation, it has an unprecedented spread throughout the world.

In the states where it has been legally established, the Ombudsman contributes to strengthening the rule of law and democratic behavior, being an institutional instrument dedicated to completing any gaps would arise from the

vast state institutional system for the protection of human rights and freedoms. (Ignat, 2016, p. 90)

This is the main cause of the increased interest shown for the Ombudsman institution by the international legal community. Therefore, in the present, it seeks common values and joint solutions tostrengthen the national Ombudsman status by giving him all the guarantees he needs to effectively exercise his legal powers.

In this era of globalisation, more than ever, it is necessary to outline a coherent, internationally standardized legal and institutional framework for the protection and promotion of the Ombudsman.

In this context, we look forward for the *Venice Principles*, believing that they will soon enrich not only the Ombudsman institution, but also the common legal patrimony of mankind.

Moreover, this will be reflected directly in the authority of the Ombudsman's Recommendation, which will acquire a force of self-imposition comparable to that of a binding legal act.

Between the Paris Principles and the Venice Principles, the Ombudsman institutions charged with the protection and promotion of human rights, will be able to fulfil their role better by proving that they are a principled institution.

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