

EVOLUTION OF THE PEOPLE' S ADVOCATE INSTITUTION IN THE ERA OF GLOBALIZATION

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Abstract

The article aims to show the evolution of the People's Advocate Institution through the comparative law and human rights, in the era of globalization. The comparative analysis of the effectiveness of these institutions for the promotion and protection of human rights shows the role of this institution in the modern society. The Ombudsman institution operates at the level of the European Union, in other Non-Member States and the article is focusing on the refugees/migrants crisis in our country and in The Republic of Macedonia.

Key Words: *minor, parental protection, guardianship, curatorship, restriction on legal capacity.*

JEL Classification: [K38, K40, K33]

1. Definitions of Globalization and Migrants

“Globalization is a process in which more and more people become connected in more different ways across larger distances. Space become less of a constraint on social life; more of the things we do become „deterritorialized”, more social relations become „supraterritorial” (Waters 2001; Scholte 2005).

It is well known that the globalization acts on the economic, political rights and the role of the Ombudsman as a protector of the citizens' rights is reflected in this paper.

On the other hand, migrants are those people who move from one country where they usually live or whose nationals they belong to another country. There is always a motivation for this this, such as, economic, educational, political, etc. Among these migrants there are people who will seek asylum, because of the numerous persecutions, abuses against their rights or threatening against their integrity. *The doctrine establishes that the term „asylum” relates places or territories where it is forbidden to arrest a person because there is a national force who protects those areas. (Bulgaru 2013)*

A problem of today's globalized world *„ is that of building one reasonable communities, within which we must find the fundamental values for the individual and for society: personal freedom and responsibility”(Zlătescu 2015).*

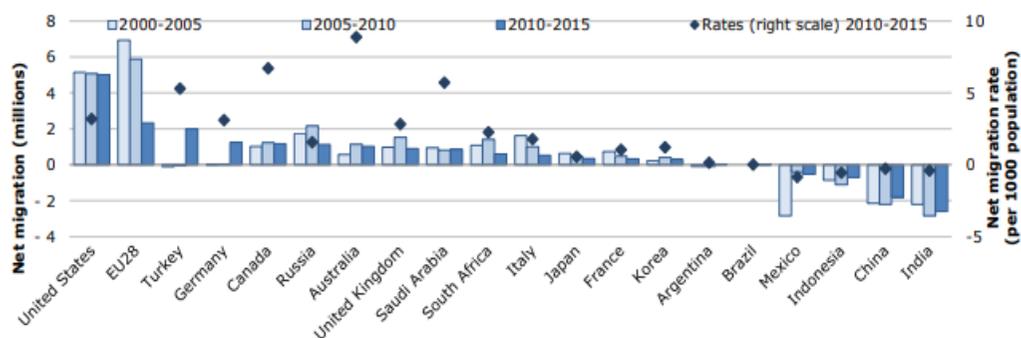
The Geneva Convention of 1951 defines in its Article 1 Paragraph 2 the term refugee as follows *„As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside*

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the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

Recent trends in migration flows and integration and evolution of stocks G20 countries population increased by 10 million between 2010 and 2015 due to net migration, which is at its highest level since the early 1950s (Box 1). The United States is the main net receiver country with 5 million more immigrants than emigrants between 2010 and 2015 (Figure 1). Turkey, which has received a large number of people in need of international protection recently, had the second highest net migration of the G20 in 2010-15 (+2 million). Germany follows (+1.2 million) with a significant increase between 2000-05 and 2010-15. At the other end of the spectrum, four G20 countries were still net emigration countries on average over the period 2010-15: Mexico, Indonesia, India and China. Net migration to Mexico is however considerably lower than it used to be back in 2005. Relative to the countries' population, Australia has the highest net immigration rate, with around 10 per thousand for the period 2010-15, as well as over the previous 5 year period followed by Canada (+6.7 per thousand), Saudi Arabia (+5.7) and Turkey (+5.3) (OECD 2017).

Figure 1. Net migration to G20 countries, 2005-2015



Source: United Nations, Department of Economic and Social Affairs, Population Division (2015). World Population Prospects: The 2015 Revision, DVD Edition.

¹ All averages and totals for the G20 include EU28 and the 19 G20 countries, except indicated otherwise.

Immigrants have an important role in the host countries, because they can contribute to the economic growth of that country. People coming from different countries may contribute with their skills in all sectors of activities. But most countries need better integration policies for the immigrants.

European countries have to understand the impact of the immigrants in their societies and design efficient policies to manage migration flows. In this regard, Ombudsman institutions play an important role in respecting and defending the rights of the immigrants.

The majority of ombudsman institutions were created after the Second World War after year 1980, being a response to the expansion of human rights law and to democratisation.

2. The European Ombudsman

The European Ombudsman institution was created to deal with complaints from any citizen of the European Union. However, complaints concern the mismanagement of the activities of the institutions, community bodies, offices or agencies of the Union, with the exception of the Court of Justice, in the exercise of its judicial functions.

The Ombudsman can investigate cases of abuse of power, cases of discrimination, refusal to inform the delay in making the answers, ex officio. However, it also prohibits acts that involves a judicial procedure. With regard to his dismissal, the Court of Justice may take such a measure if he receives a complaint from the European Parliament which must be a serious offense or if the Ombudsman is no longer in a position to fulfill the conditions for the exercise of his or her own duties. It carries out its activity independently without any interference in its area of competence, but in the case of the invulnerability set out above, it may be dismissed.

This European institution was influenced by the Swedish model, but origins can also be found in antiquity, such examples are Egypt and ancient Greece.

With the end of the second world conflagration, ombudsman institutions appeared in several states. At this time, the European network of ombudsmen has over 90 institutions in 32 European countries. The network includes national and regional ombudsmen, as well as similar bodies from EU Member States, candidate countries to the EU and other European countries, as well as the European Ombudsman and the Petitions Committee of the European Parliament. National ombudsmen and similar Network Entities have each designated a liaison officer as a contact person with the other members of the Network.

The European Network of Mediators was set up in 1996. It creates a bridge between the European Ombudsman, the national and regional mediators, in order to ensure that complainants can get the assistance at the appropriate level. The network contributes to the exchange of information on EU legislation and its impact on EU Member States.

Facilitates cooperation between mediators in order to protect the rights of EU citizens and individuals under EU law. But each state has adapted this model to various forms and variants in terms of name, composition, competence, duration of mandate, etc. As an example, national names are different: Parliamentary Commissioner in the UK, People's Defender in Spain, Mediator in France, Citizen Protector in Canada, Parliamentary Delegate of Defense in Germany, Commissioner for Administration in Cyprus, Civil Rights Defender in Poland, The Ombudsman for Human Rights in Slovenia, the People's Advocate in Romania, the Parliamentary Advocate in the Republic of Moldova (Center for Human Rights of

Moldova), in other states - public mediator, parliamentary prosecutor, etc. (Jianu 2013).

By adopting the Recommendation of the Committee of Ministers of the European Union of September 1985, which suggests to the governments of the Member States to consider "the possibility of appointing Ombudsmen at national, regional, local or specific public administration areas" and "taking into account the Ombudsman's mandate to give particular attention, within his / her general competence, to human rights issues and, if not incompatible with national law, to initiate investigations and issue opinions when human rights issues are involved", this institution has become more important in the EU Member States.

The Ombudsman therefore shows the European Union's concern for a transparent, democratic administration, with the focus of its work on the protection of citizens' rights. The European Ombudsman makes recommendations in the field of relations between the citizens of Europe and the Community institutions with a view to ensuring freedom of information for citizens and the transparency of the European institutions. It helps to identify instances of maladministration in the work of Community institutions and bodies and to make recommendations to remedy the situation.

Any instance of maladministration in the activities of Community institutions or bodies may be reported by a complaint which may be made by a citizen of the Union or a natural / legal person residing or having its registered office in a Member State of the Union.

There are some requirements that a complaint must fulfill, such as a determined object, the identity of the person making the complaint, but there is also the possibility of option for the confidentiality of the complaint. As regards the deadline for submission, the period of 2 years from the date on which the facts justifying it are brought to the attention of the author, not before the appropriate administrative steps have been taken by the institutions and bodies concerned.

Any complaint to the Ombudsman follows its course and does not interrupt any appeal in court or administrative proceedings.

There is also a duty of diligence by the Ombudsman to inform the complainant of the complaint as soon as possible

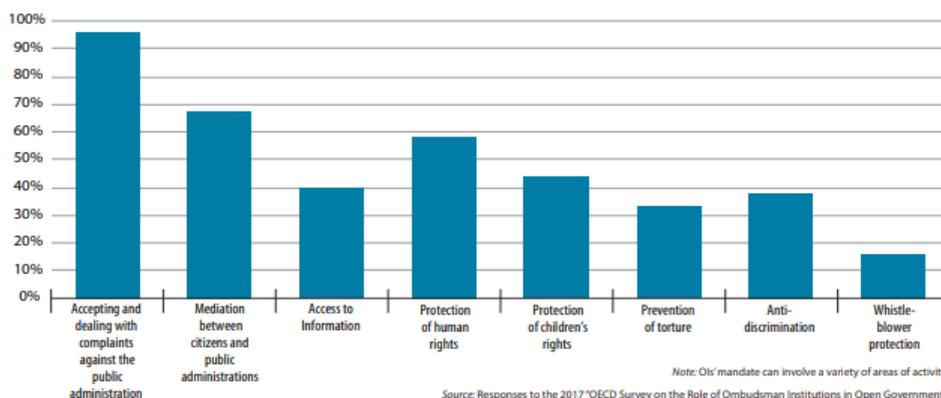
Its activity is not limited to complaints, but may also, on its own initiative or following a complaint, conduct any inquiry to clarify possible cases of maladministration in the activities of Community institutions and bodies. The Ombudsman shall, in so far as possible, inform the institution or body concerned, who may provide him with any useful observation, that the Ombudsman seeks to find, together with the institution or body concerned, a solution eliminating instances of maladministration and satisfactorily resolve the complaint. If the Ombudsman discovers a case of maladministration, he shall refer the matter to the institution or body concerned and, if necessary, present him / her with several draft recommendations. The notified institution or body shall send it a detailed opinion within three months. The Ombudsman is appointed by the European Parliament

after each election and throughout the legislature. Its mandate may be renewed. The Ombudsman is chosen from among the persons who are citizens of the Union, enjoys all civil and political rights, presents all guarantees of independence and fulfills the necessary conditions in the country of origin for the exercise of the highest judicial functions or possesses experience and competence recognized for the fulfillment of Ombudsman functions.

Upon taking up his duties, the Ombudsman takes his solemn undertaking before the Court of Justice to exercise his functions in complete independence and impartiality and to observe the obligations arising out of his duties, including his duty of independence, during and after the term of office, honesty and discretion in accepting certain functions or benefits after leaving the Ombudsman.

In European countries and not only were established a wide range of Ombudsman institutions having different role, such as complaints against the public administration, or safeguarding human rights. In the table below there can be observed the diversity of the mandates of the Ombudsman institutions.

Figure 2.1. Ombudsman institutions areas of activity according to their mandate



With regard to the protection of fundamental rights, the European Ombudsman plays a significant role. With regard to migrants, the Ombudsman received a complaint from NGOs and Spanish citizens on a complaint to the Commission regarding the EU-Turkey agreement agreed in 2011.

There is an agreement by which Turkey takes back illegal migrants coming to Greece, while the EU promised more aid to Turkey. The applicants accused the Commission of not responding or giving an inappropriate response to the concerns they had expressed about the lack of an assessment of the impact of the agreement on the human rights of asylum seekers and migrants returning from Greece to Turkey. „The Ombudsman asked the Commission to include in its forthcoming interim reports on the implementation of the agreement a distinct section focusing on human rights risks and measures to reduce them. The Ombudsman also wrote to

the Council separately to point out that the only accredited source of information on the EU-Turkey agreement was a press release. It indicated that the European Court of First Instance had stated at the beginning of 2017 that the EU-Turkey Declaration could not be considered as a measure adopted by the European Council or by any other EU institution. It therefore called on the Council to consider revising the wording in the press release so that it would more accurately reflect the legal reality”(European Ombudsman 2017).

3. The People's Advocate Institution in Romania

„An area in which the role the legislative, the executive and the courts are limited, par excellence, or even nonexistent in the case of the courts, for example, it represents the good knowledge and raising awareness of human rights, including the European protection system of them, both by the public authorities and by the general public, subjects of rights and beneficiaries of their protection. The key role is conferred for the national, independent institutions, such as ombudsmen etc.”(Zlătescu 2007).

In the Romanian Constitution adopted in 1991, Title II "Fundamental Rights, Liberties and Duties" provided for the establishment of the People's Advocate Institution, meant to protect the rights and freedoms of citizens in their relations with public authorities.

The People's Advocate Institution is organized and functions in Romania to defend the rights and freedoms of individuals in their relations with public administration authorities, capitalizing on the tradition and experience of the classic Western European Ombudsman.

The institution developed significantly. Initially, the organizational structure of the institution, comprised 8 specialized departments/domains. Today has 6 domains of activity- human rights, equality of chances between men and women, religious cults and national minorities, rights of young people, family, pensioners, persons with disabilities, protection and promotion of children's rights, army, justice, police, prisons, property, labor, social protection, taxes and duties, prevention of torture and other punishments or cruel, inhuman or degrading treatment in places of detention.

In this context, by Government Emergency Ordinance no. 48/2014 for amending and completing the 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 by Law no. 181/2015, the People's Advocate Institution, through the Domain of Prevention of Torture in Places of Detention, was designated as the only national structure that fulfills the specific attributions of the 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.

The role of the Domain of Prevention of Torture in places of detention is to regularly monitor the conditions of detention and the treatment applied by public authorities custody of persons deprived of their liberty who, for various reasons, are deprived of liberty as a result of committing deeds are either hospitalized in psychiatric hospitals or in centers of the health system or social assistance system, or benefit from a form of protection in the territory of the Romanian State.

4. Mechanism of the prevention of torture and other cruel, inhuman or degrading treatment or punishing in places of detention

The phenomenon of globalization has involved all European institutions and last, but not least, ombudsman institutions. Regarding the People's Advocate Institution in Romania, the Domain of Prevention of Torture in Places of Detention has been designated as the only national structure that exercises the specific attributions of the National Mechanism for Torture Prevention in detention facilities within the meaning of the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading punishments or treatments (in accordance with Government Emergency Ordinance No. 48/2014 amending and supplementing Law 35/1997 on the organization and functioning of the People's Advocate Institution and amending and supplementing certain acts normative, approved by Law No. 181/2014). Under Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, The field of prevention of torture in the places of detention exercises its attributions in the regional centers of procedures and accommodation for the asylum seekers, the border police sorting centers and the centers for the accommodation of the aliens taken in custody, which are part of the places of detention provided in art. 34, par. (1) - (3) of the law.

There are 88 detention facilities in Romania under the jurisdiction of the Ministry of Internal Affairs (public custody - 2, procedures and accommodation centers - 6, sorting rooms - 67, airports - 13).

In accordance with Art. 35 lit. h of Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, The field of prevention of torture in the places of detention has the role of "coordinating the organization of information, education and training campaigns in order to prevent torture and punishment or cruel, or degrading".

The visits aimed strengthening the protection of asylum seekers / migrants against torture and inhuman or degrading treatment and punishment, verification of accommodation conditions, verification of compliance with the rights to: access to regional asylum procedures and accommodation centers, asylum and access to the asylum procedure, medical assistance, psychological assistance, assistance with a lawyer, access with an interpreter, protection of children, as well as verification of other issues relevant for the activity of the National Torture Prevention Mechanism in the places of detention.

Some of the visits made also aimed at verifying the implementation of the recommendations made by representatives of the People's Advocate Institution in

the visits made in the previous year (Regional Center for Accommodation and Procedures for Asylum Seekers Șomcuta Mare, Regional Center of Procedures and Accommodation for Applicants by Asylum Galati, the Center for Accommodation of Foreigners Taken in Otopeni Public Custody, the Regional Accommodation and Procedures Center for Asylum Seekers in Bucharest).

With regard to the protection of migrants' rights, I would mention the Sculeni and Borș Retention and Settlement Centers, where in the sorting rooms were mounted in the wall the necessary metal bars, according to the personnel's information, the handcuffing of the violent persons or those known to be dangerous.

For example, at the Sculeni Retention and Recovery Center, the visiting team considered that this safety measure was excessive and disproportionate. In the conditions in which, on the one hand, the immobilization was done with handcuffs, and on the other hand the sorting room was monitored video. Moreover, the use of a metal bar for handcuffing in the presence of other persons and under inappropriate accommodation, where natural light and ventilation were insufficient, constitutes a form of violation of human dignity.

The People's Advocate recommended to the Border Police Territorial Inspectorate Iasi the elimination of the metal bars in the sorting rooms, as well as the modification of the System Procedure regarding the organization and functioning of the Border Police Chamber for Classification. The leadership of the Territorial Inspectorate of the Border Police Iasi responded to the recommendation that as of 10 August 2008 the System Procedure regarding the organization and operation of the Chamber of Sorting was modified according to the recommendations of the People's Advocate by removing the metal handles (People's Advocate Institution 2018).

In the same context, following the visit to Borș Retention and Reservation Center, Bihor County, the People's Advocate recommended amending the Provision of the Inspector General of the General Inspectorate of the Border Police no. 11.206 / 2016 and the System Procedure concerning the organization and functioning of the Border Police Chamber of Classification no. 44.3600 / 2016, for the purpose of eliminating the provision of metal bars in the sorting chambers, given that this safety measure is excessive and disproportionate, provided that handcuffing of violent persons or those known to be dangerous or which were violently manifested. Thus, it was considered that video surveillance would be a sufficient way of surveillance that would no longer require the immobilization of a metal bar.

The General Inspectorate of the Border Police informed us that the recommendation regarding the removal of the handkerchief from the sorting rooms was implemented by modifying the system procedure for the organization and operation of the sorting room and the General Inspector's disposal regarding the location and endowment of this space (People's Advocate Institution-Annual report 2018). Following the visits made in 2018, 5 visit reports were prepared and recommendations were made to the authorities.

But Romanian Ombudsman is not the only mechanism to deal with migration's problem. The situation of a Balkan country, the newly-named Northern Republic of Macedonia it is also difficult in the context of mass migration.

5. Macedonia, Refugee crisis

In co-operation with the Macedonian Ombudsman's institution, were identified some of the issues that were developed in the work on refugee issues.

Regarding the Northern Republic of Macedonia, in the way of those who want to get to Europe's most developed countries as soon as possible, the large number of migrants who have either crossed or remained in the country during 2012-2014 was a key indicator of the influx of refugees, for which the authorities have shown little attention.

By the Law on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Macedonia. The Ombudsman is appointed as a National Prevention Mechanism of Torture in Places of Detention. The preventive powers of this National Mechanism are implemented through visits to all places where people are or may be deprived of their liberty (police stations, criminal and recovery institutions, psychiatric institutions, including unofficial posts for which the Ombudsman will be informed that the persons were lacking freedom). The purpose of these visits is to establish the situation and examine the treatment of persons deprived of their liberty to prevent torture, treatment and inhuman or degrading treatment.

After each visit, the National Prevention Mechanism presents a Special Report that includes a detailed analysis of the practical situations and proposes specific measures to alleviate the deficiencies and eliminate identified risks.

The National Mechanism for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment Forms began its activity on April 1, 2011, consisting of three councilors, who also fulfilled their duties in 2012.

The National Prevention Mechanism succeeded, in a relatively short time, to position itself in society with a very visible role, skills and powers recognized by state authorities.

The visit as a National Mechanism for Torture Prevention in places of detention in the institution in the Reception Centres for Foreigners and Asylum Seekers has shown that Macedonia has neither material nor personal conditions to deal with a large mass of refugees and migrants. In this regard, the Macedonian Ombudsman alerted the authorities to take measures and implement activities that focus on strengthening national and international systems. Because of the lack of accountability and irresponsible policies of the authorities, Macedonia was sank in the refugee crisis.

The consequences were massive violations of the rights of migrants and refugees which affected the security and safety of the state and its citizens.

As a result of legal barriers at the beginning of the crisis, many women and children became victims of smugglers and traffickers and were at risk of threats, blackmail, robbery, rape, emotional abuse and, last but not least, exploitation.

Fearing to be caught by authorities, many refugees used the railways which proved to be fatal. More than 20 refugees, mostly women and children, died on railways in Macedonia in railroad casualties as a result of the authorities' irresponsible policy in response to the refugee crisis and the failure of the state to protect the fundamental right to life.

Since the beginning of the crisis, many refugees were caught in Macedonian territory as illegal migrants and illegally detained in the Reception Center for Foreigners in inhuman, degrading and under-standard conditions.

The migrant / refugee crisis began in June 2015 and lasted until the official closure of the borders and the so-called Balkan Route in March 2016. All this time a chaotic reception and transport system affected the refugee.

In order to improve the conditions of the refugees, were settled two Temporary Transit Centers, at the border lines with Greece and Serbia. But the incidents didn't stop because of the lack of communication and coordination between the authorities at the border.

This was the moment who determined the Macedonian Ombudsman to appeal to the authorities because many of the migrants made their trip on foot in spite of the difficult weather.

The poor registration system, together with the check and profiling of refugees who entered and crossed the country, left those in need of protection without help and threatened the security of the Macedonian state, but also of the other states (Macedonian Ombudsman 2018). But the Ombudsman didn't stop but made appeals to the authorities who failed. Many of the refugee remained without the necessary means for a human being. On the other hand, sometimes authorities were not able to identify the real dangerous persons infiltrated easily among refugees.

And this was a real danger for the security of the countries in Europe. The lack of irresponsible security affected the peace of some European cities. The perception of the citizen changed and a large increase of the xenophobia, was noticed towards refugee population.

Many countries closed their borders as a form of protection against the wave of refugee. This attitude doesn't respect the Principles of International Law.

We were contemporary of a large number of violations of refugee / migrant rights and abuse.

In this respect, the Ombudsmen should not only silently acknowledge the violation of their rights but must rise up with power and clarity to promote, protect and prevent violations of the rights of vulnerable persons. Against the background of massive violations of the rights of migrants / refugees, they should not be satisfied with several cases of human rights violations that have been successfully completed. It must respond adequately to this global challenge by implementing

joint actions and efforts to respect human rights for all, irrespective of race. To summarize, I would mention the principle of solidarity as this is the basic principle of international refugee law and therefore to require states not to shirk responsibility for providing assistance and protection to millions of refugees living in Turkey.

Conclusions:

The People's Advocate Institution plays an important role in the Globalization era, in the modern society. Whether we are talking about the Romanian or Macedonian Ombudsman, both institutions are created to defend and protect human rights. The comparative analysis of the effectiveness of these institutions for the promotion and protection of human rights shows the role of this institution in the modern society. The Ombudsman institution operates at the level of the European Union, in other Non-Member States and among other activities it is concentrated on the refugees / migrants crisis, whether we are talking about Romania or Macedonia in our country and in The Republic of Macedonia.

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