

Law no. 35 from 1997

On the Organisation and Functioning of the Institution of the Advocate of the People *) - Republished

CHAPTER I: General Provisions

Art. 1

- (1) The Institution of the Advocate of the People has as purpose the defense of the citizens' rights and freedoms in their relationships with the public authorities.
- (2) The seat of the Institution of the Advocate of the People is in Bucharest.

Art. 2

- (1) The Institution of the Advocate of the People is an autonomous public authority, independent of any public authority, under the terms of the law.
- (2) In the exercise of his powers, the Advocate of the People shall be no substitute for any other public authorities.
- (3) The Advocate of the People cannot be subjected to any imperative or representative mandate. No one can compel the Advocate of the People to obey any instructions or orders.

Art. 3

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

- (2) At the request of persons whose rights and freedoms have been infringed, or on due to motivated reasons, the Advocate of the People may decide upon the confidential character of his activity.

Art. 4

Public authorities have the obligation to communicate or, if it is the case, to make available to the Advocate of the People, under the terms of the law, any information, documents or other acts that they posse, related to the complaints lodged with the Advocate of the People, granting him support for the exercise of his duties.

Art. 5

- (1) The Advocate of the People shall submit 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 Institution of the Advocate of the People. They may contain recommendations concerning the amendment of legislation or measures, of other nature for the protection of the citizens` rights and freedoms.
- (2) The annual report shall present the activity of the institution for one calendar year and shall be forwarded to the Parliament until the 1st of February of the following year, in order to be debated in the joint session of both Chambers. The annual report is to be made public.

CHAPTER II: The Mandate of the Advocate of the People

Art. 6

- (1) The Advocate of the People is appointed for a five years term by the Chamber of Deputies and Senate, in joint session. The mandate of the Advocate of the People may be renewed only once.
- (2) Any Romanian citizen having the same qualifications as those required for holding the position of judges at the Constitutional Court can be appointed as Advocate of the People.

Art. 7

- (1) The candidacy proposals will be performed by the Standing Bureaux of the Chamber of Deputies and Senate, at the recommendation of the parliamentary groups of both Chambers of Parliament.
- (2) Candidates will be heard by the Juridical Committees of the Chamber of Deputies and Senate. In view of the hearing, each candidate shall submit the documents certifying that he is duly qualified, as required under the Constitution and this law, in order to be appointed as the Advocate of the People. The candidates shall attend the debates.
- (3) That candidate that obtained the largest number of votes of the deputies and senators attending the session shall be appointed as Advocate of the People.

Art. 8

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

“I swear to abide by the Constitution and the laws of the country, and to defend the citizens' rights and freedoms by carrying out my duties as Advocate of the People 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 the oath prevents him from taking up the office of the Advocate of the People and starts the procedure for the appointment of another person.
- (4) The mandate of the Advocate of the People shall last until a new Advocate of the People takes the oath.

Art. 9

- (1) The Advocate of the People's mandate ends before the expiry of its term in cases of resignation, removal, incompatibility with other public or private offices, incapacity to fulfil his duties for more than ninety (90) days, certified by a specialised medical exam, or in case of decease.
- (2) The removal from office of the Advocate of the People, as a result of violation of the Constitution and laws, shall be decided by Chamber of Deputies and Senate, in joint session, with a majority vote of the present senators and deputies, at the proposal of the Standing Bureaux of both Chambers of Parliament, based on the joint report of the juridical committees of both Chambers of Parliament.
- (3) The resignation, incompatibility, incapacity to fulfil duties, or decease is to be noticed by both Standing Bureaux of the Chambers of Parliament, within ten (10) days since the occurrence of the event that determines the end of the Advocate of the People's mandate.

CHAPTER III: The Deputies of the Advocate of the People

Art. 10

- (1) The Advocate of the People is assisted by deputies who are specialized on the following areas of activity:
 - a) human rights, equality of chances between men and women, religious cults and national minorities;
 - b) the rights of child, family, young people, pensioners, persons with disabilities;
 - c) army, justice, police, penitentiaries;
 - d) property, labour, social protection, taxes and duties;

- (2) The Deputies of the Advocate of the People shall carry out duties in their respective areas of activity, as well as any other duty entrusted to them by the Advocate of the People.
- (3) The deputies of the Advocate of the People shall take over his duties, in order of precedence as established by the Advocate of the People, in the event of a temporary inability of exercising his duties.

Art. 11

- (1) The Deputies shall be appointed by the Standing Bureaux of both Chambers of Parliament, at the proposal of the Advocate of the People, after taking the opinion of the juridical committees of both Chambers of Parliament. The qualifications for the position of Deputy of the Advocate of the People shall be laid down by the Regulation on the Organization and Functioning of the Advocate of the People Institution.
- (2) The appointment of the deputies of the Advocate of the People shall be published in the Official Monitor of Romania, Part I.

Art. 12

The provisions of Article 8 paragraph (1) shall apply accordingly, the oath being taken before the Advocate of the People and one vice-president of the Chamber of Deputies and one vice-president of the Senate.

CHAPTER IV: Duties of the Advocate of the People

Art. 13

The Advocate of the People shall have the following duties:

- a) co-ordinates the activity of the Institution of the Advocate of the People;
- b) receives and distributes complaints lodged by persons aggrieved by public administration authorities through violations of their civic rights and freedoms, and decides on these complaints;
- c) follows up the legal solution of the complaints received and requests from the public administration authorities or civil servants concerned to put an end to the respective violation of civic rights and freedoms, to reinstate the complainant in his rights and to redress for the damages thus caused;
- d) formulates points of view, at the request of the Constitutional Court;
- e) may notify the Constitutional Court on the unconstitutionality of laws, before their promulgation;
- f) brings directly in front of the Constitutional Court the exception of unconstitutionality of laws and ordinances;
- g) represents the Institution of the Advocate of the People in front of the Chamber of Deputies, the Senate, and the other public authorities, as well as in its relationships with any natural or legal persons;
- h) employs the staff of the Institution of the Advocate of the People and exercises disciplinary powers over this staff;
- i) acts as the principal authorizer for payment and receipt of public moneys;
- j) performs any other duties as established by the law or by the Regulation on the Organisation and Functioning of the Institution of the Advocate of the People.

Art. 14

- (1) The Advocate of the People exercises his duties ex officio or upon complaints lodged by aggrieved persons as provided under Article 13 (b).
- (2) The complaints may be lodged by any individual, irrespective of his citizenship, age, sex, political affiliation, or religious beliefs.

Art. 15

- (1) The complaints lodged with the Advocate of the People must be done in writing and must indicate the full name and domicile of the person aggrieved in his civic rights and freedoms, of the specific rights and freedoms thus violated, as well as of the concerned administrative authority or civil servant. The complainant must also prove the delay or the refusal of the public administration of legally solving his or her request.
- (2) Anonymous complaints can not be taken into consideration and those directed against violations of civic rights or freedoms through acts or deeds of the public administrative authorities, shall be brought to the Advocate of the People no latter than one year since the violation took place or the person concerned learned about those facts.
- (3) The Advocate of the People can reject, on a motivated basis, the complaints which are patently unsubstantiated, or may ask additional information to analyze and solve the case.
- (4) Any complaints dealing with acts issued by the Chamber of Deputies, the Senate, or Parliament, acts and facts of deputies and senators those of the President of Romania, the Government, as well as of the Constitutional Court, the president of the Legislative Council, and the judicial authority cannot be subjected to the Advocate of the People Institution, therefore shall be rejected without motivation.

Art. 16

The complaints lodged with the Advocate of the People are exempted from stamp tax.

Art. 17

- (1) The administration of penitentiaries, re-education centres for minors, of penitentiary hospitals as well as the Public Ministry and the police bodies must allow, with no restriction whatsoever, to anyone who serves imprisonment or is, as the case may be, under arrest or kept in detention, as well as to minors who are in re-education centres, to address to the Advocate of the People in any possible way concerning a violation of his rights and freedoms, except for legal restraints.
- (2) The same obligation rests with the commanding officers of military units with respect to persons who serve their military service, regarding infringements upon their rights and freedoms, except for legal restraints.

Art. 18

In case the Advocate of the People finds that the resolution of a complaint lodged with him is under judicial authority jurisdiction, he may notify, as the case may be, the Minister of Justice, the Public Ministry or the president of the court of law, who shall inform him or her on the measures that have been taken.

Art. 19

In the case of notifying the Constitutional Court with the exception of unconstitutionality of laws and ordinances which refer to citizens' rights and freedoms, the Constitutional Court shall request the point of view of Advocate of the People.

Art. 20

- (1) The Advocate of the People has access, under the terms of the law, to any classified information held by the public authorities, as far as he considers it necessary in order to solve complaints lodged with him.
- (2) The Advocate of the People has the obligation not to disclose or make public any of the secret information or documents he had access to. This obligation stands even after the Advocate of the

People has ceased his activity, and it extends to his deputies as well as to the staff, subject to criminal liability.

Art. 21

- (1) In the exercise of his duties, the Advocate of the People issues recommendations that cannot be subjected to either parliamentary or judicial control.
- (2) Through his recommendations, the Advocate of the People notifies the public administrative authorities about the illegality of the administrative acts or facts. The silence of the public administrative bodies and the delay in issuing acts are assimilated to administrative acts.

Art. 22

- (1) The Advocate of the People has the right to conduct his own inquiries, to request from the public administration authorities any information or documents necessary to the inquiry, to hear and take depositions from the chief-officials of the public administrative authorities or from any civil servant who may provide useful information for the resolution of the complaint.
- (2) The provisions of paragraph no. (1) apply to public administrative authorities, public institutions, as well as any public services placed under the authority of the public administrative authorities.

Art. 23

- (1) When the Advocate of the People finds, following the lodged petitions, that the aggrieved person's complaint is founded, he will notify in writing the public administration authority, which has violated the complainant's rights, with the request to reform or revoke the administrative act, to redress the damage thus caused to reinstate the person to the former state.
- (2) The public authorities concerned shall immediately take all necessary measures to remove the established illegality, to redress the damages and to remove the reasons that caused or fostered the violation of the aggrieved person's rights, while duly informing the Advocate of the People thereof.

Art. 24

- (1) Where a public administrative authority or civil servant does not remove such illegality within thirty (30) days since the notification, the Advocate of the People shall address to the hierarchically superior administrative authority, and the latter shall inform him on the measures that have been taken, within forty-five (45) days since the notification.

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

Art. 25

- (1) The Advocate of the People is entitled to notify the Government regarding any illegal administrative act or fact of the central public administration and the prefects.

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

Art. 26

- (1) The Advocate of the People shall inform the petitioner about the way the complaint lodged with him has been solved. The Advocate of the People may also make public these results through the media, with the consent of concerned person or persons and observing the provisions under Article 20, on secret information and documents.

- (2) If, during the course of his inquiries, the Advocate of the People finds gaps in legislation or serious cases of corruption or violations of the country's laws, he will submit a report on his findings to the presidents of the two Chambers of Parliament or, as the case may be, to the Prime Minister.

Art. 27

The Advocate of the People may be consulted by the initiators of the laws and ordinances, which, by their provisions, concern the citizens' rights and freedoms, provided by the Constitution of Romania, by the pacts and the other international treaties regarding fundamental human rights, which Romania is party to.

Art. 28

The provisions of this law shall also apply to the administrative acts issued by autonomous stage management.

Art. 29

The Advocate of the People 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 prefect offices will provide the necessary spaces for the functioning of the territorial offices.

CHAPTER V: Liability, Incompatibilities and Immunities

Art. 30

The Advocate of the People and his deputies are not legally liable for the opinions or acts performed, complying with the law, while exercising their duties provided for in the present law.

Art. 31

(1) During the exercise of the mandate, the Advocate of the People may be investigated and presented to the court of law for criminal offences, other than those provided for at article 30, but he may not be detained, searched or arrested without the approval of the presidents of both Chambers of Parliament.

- (2) The deputies may be investigated and presented to the court of law for criminal offences other than those provided for at article 30, but they may not be searched or arrested without prior information of the Advocate of the People.
- (3) If the Advocate of the People or his deputies are arrested or presented to the court of law for a criminal offence, they shall be de jure suspended from office until the court decision remains final.

Art. 32

- (1) During the exercise of his office, the Advocate of the People and his 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 at paragraph (1) shall also apply to the specialised staff who hold management positions and to specialised execution staff.

CHAPTER VI: The Services of the Institution of the Advocate of the People

Art. 33

The organisational structure, the positions-sheet and the number of staff necessary for the institution's activity shall be approved by the Advocate of the People within the limits of the annual budget.

Art. 34

The management or speciality execution positions, part of the Institution of the Advocate of the People structure can be held after an examination, according to the terms of the law.

Art. 35

The infringement upon this law or upon the Regulation on the Organization and Functioning of the Institution of the Advocate of the People, 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 Regulation on the Organisation and Functioning of the Institution of the Advocate of the People.

CHAPTER VII: Transitory and final provisions

Art. 36

- (1) The Institution of the Advocate of the People has its own budget, which is part of the State budget. The annual budget laws may approve a fund at the disposal of the Advocate of the People, for granting financial support.
- (2) The budget project shall be approved by the Advocate of the People, with the advisory opinion of the Ministry of Public Finances, and must be forwarded to the Government to be included distinctively in the State budget project, to be legislated. The objections of the Advocate of the People, upon the budget project of Government shall be brought to the Parliament for settlement.
- (3) The position of Advocate of the People is assimilated to that of a minister. The position of deputy of the Advocate of the People is assimilated to that of head of department, and the management and speciality execution positions are assimilated to those specific to the Parliament structure.
- (4) Within 30 days since the publication of the present law, in the Official Monitor of Romania, Part I, the Government and the General Council of Bucharest shall provide to the Advocate of the People Institution the necessary location for its functioning.

Art. 37

If the person nominated to hold the position of Advocate of the People is a magistrate, the maintenance of his position is obligatory.

Art. 38

The Regulation on the Organisation and Functioning of the Institution of the Advocate of the People is approved by the Standing Bureaux of the Chamber of Deputies and Senate, at the proposal of the Advocate of the People.

*) Republished according to the provisions of art. II from the Law no. **233/2004** for the amendment and completion of the Law no. **35/1997** regarding the organisation and functioning of the Institution of the Advocate of the People, published in the Official Monitor of Romania, Part I, no. 553 from 22 June 2004, giving a new numbering of the texts.

Law no. **35/1997** was published in the Official Monitor of Romania, Part I, no. 48 from 20 March 1997 and was also amended and completed through:

- Law no. **125/1998**, published in the Official Monitor of Romania, Part I, no. 229 from 24 June 1998;
- Law no. **181/2002**, published in the Official Monitor of Romania, Part I, no. 268 from 22 April 2002;

ANNEX: Territorial Offices of the Institution of the Advocate of the People

| Office No. | Location | Counties within 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. | București | 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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