

**Law No. 35/1997 on the organization and functioning of the People's Advocate Institution, republished\*),**  
– with subsequent amendments –

**CHAPTER I: General Provisions**

**Art. 1**

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

(2) The headquarters of the Ombudsman institution is located in the municipality of Bucharest.

**Art. 2**

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

(1<sup>1</sup>) The Ombudsman institution, by its Field on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Places of Detention, hereinafter called the Field on the Prevention of Torture in Places of Detention, performs the specific tasks of the National Mechanism for the Prevention of Torture in Places of Detention, for the purposes of the **Optional Protocol**, adopted in New York, on the 18<sup>th</sup> of December 2002, at the **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**, adopted in New York, on the 10<sup>th</sup> of December 1984, ratified by Law 109/2009, hereinafter called the **Optional Protocol**.

(2) In the exercise of his powers, the Ombudsman shall be no substitute for the public authorities.

(3) The Ombudsman may not be subject to any imperative or representative mandate. No one can compel the Ombudsman to obey any instructions or orders.

**Art. 3**

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

(2) At the request of persons whose rights and freedoms have been infringed, or due to well-grounded reasons, the Ombudsman may decide upon the confidential nature of his activity.

**Art. 4**

Public authorities have the obligation to communicate or, depending on the case, to provide the Ombudsman, under the terms of the law, any information,

documents or other acts that they possess related to the petitions submitted to the Ombudsman, as well as those related to the ex officio proceedings initiated by the institution and the announced and unannounced visits conducted for the purpose of fulfilling the specific tasks of the National Mechanism for the Prevention of Torture in Places of Detention, granting it support for the fulfilment of his duties.

(on the 30<sup>th</sup> of June 2014, Art. 4 from Chapter I, amended by Art I, point 2 from the Emergency Ordinance No. 48/2014)

#### **Art. 5**

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

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

### **CHAPTER II: The mandate of the Ombudsman**

#### **Art. 6**

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

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

#### **Art. 7**

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

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

**(3)** The candidate who obtained the largest number of votes from the deputies and senators attending the session shall be appointed as Ombudsman.

#### **Art. 8**

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

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

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

(3) The refusal of taking oath prevents him from taking up the office of the Ombudsman and starts the procedure for the appointment of another person.

(4) The mandate of the Ombudsman lasts until a new Ombudsman takes the oath.

#### **Art. 9**

(1) The Ombudsman's mandate terminates earlier in cases of resignation, removal from office, incompatibility with other public or private offices, incapacity to fulfil his duties for more than ninety (90) days, certified by a specialized medical exam, or in case of decease.

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

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

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

(5) The period of holding the position of Ombudsman shall be deemed as length of service in magistracy and length of service in legal specialty.

*(on the 30<sup>th</sup> of June 2014, Art. 9, para. (4), from Chapter II, supplemented by Art. 1, point 3, from the Emergency Ordinance No. 48/2014)*

### **CHAPTER III: The deputies of the Ombudsman**

#### **Art. 10**

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

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

(on the 30<sup>th</sup> of June 2014, Art. 10, para. (1), letter D, from Chapter III, supplemented by Art. 1, point 4 from the Emergency Ordinance No. 48/2014)

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

**(3)** The deputies of the Ombudsman shall take over his duties, in the order established by the Ombudsman, in case of a temporary inability of exercising his duties.

#### **Art. 11**

**(1)** The deputies of the Ombudsman shall be appointed for a 5 years term, by the Standing Bureaus of the Chamber of Deputies and the Senate, at the proposal of the Ombudsman, after taking the opinion of the legal committees of both Chambers of Parliament. The conditions for occupying the position Deputy Ombudsman shall be established by the Rules of organization and functioning of the Ombudsman Institution.

**(2)** The position of Deputy Ombudsman is assimilated to the position of Secretary of State.

**(3)** The mandate of the Deputy Ombudsman shall be exercised starting with the day of the following oath, taken in front of the Ombudsman and one member of the Standing Bureaus of both the Chamber of Deputies and the Senate, authorized for this: "I swear to respect the Constitution and the laws of the country, and to defend the citizens' rights and freedoms, by carrying out my duties as Deputy Ombudsman in good faith and impartiality. So help me God!"

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

**(5)** The refusal of taking oath prevents the nominated person from taking up the office of Deputy Ombudsman and starts the procedure for the appointment of another person.

**(6)** The mandate of the Deputy Ombudsman shall last until a new Deputy Ombudsman takes the oath, and may be renewed only once.

**(7)** The period of performing the function of Deputy Ombudsman by graduates of Law faculties shall be deemed as length of service in magistracy. The period of performing the function of Deputy Ombudsman by graduates of faculties other than Law shall be deemed as length of service in the graduated studies.

**(8)** The resignation, incompatibility, incapacity to fulfil their duties, or decease shall be established by the Ombudsman and shall be communicated to both Standing Bureaus of the Chambers of Parliament, within thirty (30) days from the occurrence of the event that determined the termination of the Deputy Ombudsman's mandate. Until the appointment of a new deputy, his/her duties shall be delegated, by Ombudsman's order, to a person of the specialized staff.

**(9)** The appointment of the deputies of the Ombudsman shall be published in the Official Gazette of Romania, Part I.

#### **Art. 12**

The deputies of the Ombudsman shall have the following duties:

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

### **CHAPTER IV: Duties of the Ombudsman**

#### **Art. 13**

**(1)** The Ombudsman shall have the following duties:

- a)** Coordinates the activity of the Ombudsman Institution;
- a<sup>1</sup>)** Coordinates the activity on the prevention of torture in places of detention, carried out by the Field on the Prevention of Torture in Places of Detention;
- a<sup>2</sup>)** Approves the visit reports drawn up within the activity on the prevention of torture;
- a<sup>3</sup>)** Approves the recommendations accompanying the visit reports drawn up in the cases where, following the visits conducted, there were found irregularities.

*(on the 30<sup>th</sup> of June 2014, Art. 13, para. (1), letter A, from Chapter IV, supplemented by Art. 1, point 5. from the Emergency Ordinance No. 48/2014)*

- b)** Decides on the petitions submitted by individuals aggrieved by violations of their rights and freedoms by public administration authorities;
- c)** Verifies the legal settlement of petitions received and asks the public administration authorities or civil servants concerned to put an end to the violation of individuals' rights and freedoms, to restore the petitioner his rights and to redress 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 Ombudsman Institution before the Chamber of Deputies, the Senate, and the other public authorities, as well as in its relations with any natural or legal persons;
  - h)** Hires the employees of the Ombudsman Institution and exercises disciplinary authority over them;
  - i)** Acts as Chief Authorizing Officer, task which he may delegate with the observance of the legal provisions on public finances;
  - j)** May notify the contentious administrative court, under the contentious administrative law;
  - k)** Performs any other duties established by law.
- (2)** The Ombudsman may delegate the exercise of these powers to his deputies or to other persons responsible for the management of the institution.

#### **Art. 14**

**(1)** The Ombudsman Institution shall exercise its duties ex officio or upon the request of individuals, companies regulated by Law No. 31/1990, republished, with subsequent amendments and supplements, associations or other legal persons,<sup>8</sup> and unannounced, through visits to places of detention, under the law.

*(on the 30<sup>th</sup> of June 2014, Art. 14, para. (1) from Chapter IV, supplemented by Art. 1, point 6 from the Emergency Ordinance No. 48/2014)*

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

#### **Art. 15**

**(1)** The petitions must be submitted to the Ombudsman in writing and must indicate the full name and domicile of the individual aggrieved in his rights and freedoms, the specific rights and freedoms violated, as well as the concerned administrative authority or civil servant. The complainant must also prove the delay or the refusal of the public administration to legally solve his/her request.

**(2)** Anonymous petitions cannot 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 Ombudsman no later than one year from the date on which the violation occurred or the date on which the person became aware of them.

**(2<sup>1</sup>)** Citizens belonging to national minorities who have their domicile or residence in administrative units where they account for over 20% of the local

population can submit petitions in their native language and shall receive the answer in Romanian and their native language.

(on the 30<sup>th</sup> of June 2014, Art. 15, paragraph (2) from Chapter IV, supplemented by Art. 1, point 7. from the Emergency Ordinance No. 48/2014)

**(3)** The Ombudsman can reject, on a motivated basis, petitions which are patently unsubstantiated, or may ask additional for analysing and solving petitions.

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

#### **Art. 16**

Petitions submitted to the Ombudsman are exempt from stamp duty.

#### **Art. 17**

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

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

#### **Art. 17<sup>1</sup>**

**(1)** The administration of the places of detention referred to in art. 29<sup>2</sup> is required to allow, without restriction, to persons deprived of their liberty on the basis of a decision of an authority, to address, in any way, the Ombudsman about the violation of their rights and freedoms, except for legal restraints.

**(2)** In order to enable the Ombudsman Institution to fulfil its legal duties, the administration of the places of detention provided for in art. 29<sup>2</sup> must allow to the Ombudsman, to his deputy in charge of the Field on the Prevention of Torture in Places of Detention, as well as to the representatives of the institution, without restriction, access to all the places of detention that are subject to monitoring, for carrying out their announced or unannounced visits,

as well as conducting the investigations ordered, with a view to resolving the complaints received.

**(3)** Petitions on torture, cruel, inhuman or degrading treatment in detention shall be settled, according to the issues notified, by the Field on the Prevention of Torture in Places of Detention, in collaboration with the other structures of the Ombudsman Institution.

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

*(on the 30<sup>th</sup> of June 2014, Art. 17, from Chapter IV, supplemented by Art. 1, point 8 from the Emergency Ordinance No. 48/2014)*

### **Art. 18**

If the Ombudsman Institution finds that solving a petition is for the competence of the Judiciary, it may notify, as the case may be, the Minister of Justice, the Superior Council of Magistracy, the Public Ministry or the president of the court of law, who has the legal obligation to communicate the measures that have been taken.

### **Art. 19**

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

### **Art. 20**

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

*(on the 30<sup>th</sup> of June 2014, Art. 20, para. (1), from Chapter IV, amended by Art I, point 9 from the Emergency Ordinance No. 48/2014)*

**(2)** The Ombudsman has the obligation not to disclose or make public any of the secret information or documents to which he had access. This obligation stands even after ceasing his activity as Ombudsman, 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 Ombudsman issues recommendations.

**(2)** Through his recommendations, the Ombudsman notifies the public administrative authorities about the illegality of their administrative acts or

deeds. The silence of the public administrative bodies and the delay in issuing acts are assimilated to administrative acts.

**(3)** The Ombudsman's recommendations within the Field on the Prevention of Torture in Places of Detention, issued when irregularities are found, have as purpose the correction of those irregularities and the improvement of treatment and detention conditions for the persons deprived of their liberty and the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

(on the 30<sup>th</sup> of June 2014, Art. 21, para. (2), from Chapter IV, amended by Art I, point 10 from the Emergency Ordinance No. 48/2014)

#### **Art. 22**

**(1)** The Ombudsman, his deputies and the specialized staff have the right to conduct their own inquiries, to request from the public administration authorities any information or documents necessary for 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 petition, under this law.

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

#### **Art. 23**

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

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

#### **Art. 24**

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

**(2)** If the concerned public authority or the civil servant belongs to a local public administration, the Ombudsman Institution shall address 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 Ombudsman is entitled to notify the Government regarding any illegal administrative act or deed done by the central public administration and the prefects.

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

#### **Art. 26**

**(1)** The Ombudsman Institution shall inform the petitioner about the way the complaint lodged with them was solved. The Ombudsman may also make public these results through the media, with the consent of the person or persons concerned and in compliance with article 20, on secret information and documents.

**(2)** If, during the course of his inquiries, the Ombudsman finds gaps in legislation or serious cases of corruption or violations of the country's laws, he shall submit a report on his findings to the presidents of the two Chambers of Parliament or, where applicable, to the Prime Minister.

#### **Art. 27**

The Ombudsman may be consulted by the initiators of draft 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, to which Romania is a party.

#### **Art. 28**

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

#### **Art. 29**

**(1)** The Ombudsman Institution shall set up territorial offices in order to exercise the powers established by the present law, according to the Annex that is part of the present law. The presidents of county councils and the

mayors shall provide the necessary spaces for the functioning of territorial offices.

**(1<sup>1</sup>)** The Ombudsman Institution's territorial offices which have their premises or conduct audiences in administrative units where citizens belonging to national minorities account for over 20% of the local population, shall also ensure the use of the respective minorities' mother tongue, both orally and in writing, in the relations with the petitioners.

(on the 30<sup>th</sup> of June 2014, Art. 29, para. (1), from Chapter IV, supplemented by Art. 1, point 11 from the Emergency Ordinance No. 48/2014)

**(2)** In justified cases, the Ombudsman may establish the seat of the territorial offices in other city than the county capital city, in the area of competence of the Court of Appeal.

## **Chapter IV<sup>1</sup>: The Activity in the Field on the Prevention of Torture in Places of Detention**

### **Section 1: General Provisions**

#### **Art. 29<sup>1</sup>**

**(1)** The Ombudsman is the only national structure designated to exercise the powers provided in the [Optional Protocol](#), adopted in New York on the 18<sup>th</sup> of December 2002, at the [Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Places of Detention](#), adopted in New York on the 10<sup>th</sup> of December 1984, ratified by Law 109/2009.

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

#### **Art. 29<sup>2</sup>**

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

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

**(3)** For the purposes of the present Law, are considered places of detention, or as case may be, places where the Ombudsman exercises its legal duties on the prevention of torture, the following:

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

**b)** re-education centres, detention centres;

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

## **Section 2: The duties of the Field on the Prevention of Torture in Places of Detention**

### **Art. 29<sup>3</sup>**

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

- (a)** carrying out announced or unannounced visits to the places of detention, for the purpose of checking the detention conditions and the treatment of persons deprived of their liberty;
- (b)** making recommendations to the management of the visited detention facilities, following the visits;
- (c)** formulating proposals for amending and completing the relevant legislation or comments on existing legislative drafts in the field, under Art. 27;
- (d)** preparing the draft of the part on the prevention of torture of the annual activity report of the Ombudsman;
- (e)** formulating proposals and comments on the development, amendment and supplementation of public policies and strategies on the prevention of torture and inhuman or degrading treatment or punishment, under the law;
- (f)** liaising with the Subcommittee on Prevention of Torture;
- (g)** analysing, implementing, monitoring and evaluating, under the lead of the Ombudsman, international programs of technical and financial assistance, in order to achieve the goal of the Field on the Prevention of Torture in Places of Detention;

- (h) coordinating the activity of organizing awareness raising, education and training campaigns, on the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- (i) performing any other tasks set by the Ombudsman, within the limits of the law.

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

#### **Art. 29<sup>4</sup>**

- (1) The Field on the Prevention of Torture in Places of Detention comprises the central structure and the territorial structure.
- (2) The central structure also encompasses the Bucharest Zonal Centre. The territorial structure consists of 3 zonal centres.
- (3) The Ombudsman establishes by order the places where the zonal centres are located and the counties that fall under their jurisdiction, as well as the selection criteria for the staff of the Field on the Prevention of Torture in Places of Detention.
- (4) The activity on the prevention of torture shall be attended by representatives of non-governmental organizations active in the field of human rights protection, selected, based on their activity, by the Ombudsman.

#### **Art. 29<sup>5</sup>**

- (1) For carrying out the activities of the Field on the Prevention of Torture in Places of Detention, within the central structure are also co-opted, under service contracts, external collaborators having other specialties than the permanent employees. The external collaborators are selected by the Ombudsman, on the basis of proposals received from the Romanian College of Physicians, the Romanian College of Psychologists, Sociologists' Society in Romania, the National College of Social Workers or from other professional associations to which they might belong.
- (2) During the fulfilment of their duties, the external collaborators shall be subject to the same obligations as the institution's staff, with regard to maintaining the confidentiality of their work and other rules of internal discipline of the institution.
- (3) When carrying out the specific activities of the Field on the Prevention of Torture in Places of Detention, visiting team members are independent.
- (4) In addition to the Deputy Ombudsman for the Field on the Prevention of Torture in Places of Detention, in the central structure of the Field, including the Bucharest Zonal Centre, operate a total of 11 employees, of which 4 employees as specialty personnel with legal studies, 3 specialists - physicians,

psychologists, social workers, sociologists or any other professions necessary to conduct the specific activities and 4 employees for the department of financial, payroll, human resources and administrative.

(on the 9<sup>th</sup> of January 2015, Art. 29<sup>5</sup>, para. (3), from Chapter IV<sup>1</sup>, section 3, supplemented by Art. 1, point 1, from the Law No. 181/2014)

#### **Art. 29<sup>6</sup>**

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

**(2)** The provisions of Art. 29<sup>5</sup>, para. (3), shall also apply accordingly to the collaborators co-opted in the territorial structure.

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

(on the 9<sup>th</sup> of January 2015, Art. 29<sup>6</sup>, para. (2), from Chapter IV<sup>1</sup>, section 3, supplemented by Art. 1, point 2, from the Law No. 181/2014)

### **Section 4: Conducting visits in places of detention**

#### **Art. 29<sup>7</sup>**

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

**(2)** The visiting team shall be composed of at least one physician, depending on the specialization required, and a representative of the non-governmental organizations mentioned in Art. 29<sup>4</sup> para. (4).

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

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

- a)** the existing types of places of detention;
- b)** the geographical distribution of the places of detention;
- c)** complaints received on the existence of situations of torture or cruel, inhuman or degrading treatment;
- d)** known vulnerability of certain types of places of detention;
- e)** previous reports by the Field on the Prevention of Torture in Places of Detention and by other fields of activity within the institution.

#### **Art. 29<sup>8</sup>**

- (1)** It is incumbent upon the visited institutions to provide to the representatives of the visiting team, under the law, before, during or after the visit, any documents or information that is available to them or that they can get hold of, requested by the visiting team for fulfilling their legal duties.
- (2)** The management of the visited place of detention is obliged to provide assistance and to meet with the members of the visiting team, in order to achieve the purpose of the visit.

#### **Art. 29<sup>9</sup>**

- (1)** For fulfilling their legal duties, the members of the visiting team may meet in private with any person deprived of liberty, within the institution visited.
- (2)** At the request of the members of the visiting team, the visited institution is obliged to provide an adequate place for the meeting.
- (3)** The meetings may take place only with the consent of the person deprived of liberty or with the consent of their legal representative and are confidential.
- (4)** The confidential meeting cannot be attended by representatives of the place of detention, except at the express request of the members of the visiting team and just for the purpose of ensuring their protection. In that case, the representatives of the place of detention shall provide only visual surveillance, respecting the confidentiality of the meeting.
- (5)** The name and other personal data of the person interviewed may not be disclosed without his/her prior written consent or his/her legal representative's prior written consent.
- (6)** For conducting interviews with persons who do not understand or speak Romanian, an interpreter shall be provided, interpreting costs being covered from the funds allocated to Field on the Prevention of Torture in Places of Detention.
- (7)** The members of the visiting team may request meetings with any person if they consider he/she can provide relevant information, with that person's consent.

#### **Art. 29<sup>10</sup>**

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

#### **Art. 29<sup>11</sup>**

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

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

#### **Art. 29<sup>12</sup>**

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

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

**(3)** If the institution concerned does not comply, the Ombudsman or, depending on the case, the Deputy Ombudsman for the Field on the Prevention of Torture in Places of Detention shall inform on the matter the higher authority or the local or central public administration authority that issued the license for the private detention facilities, and may act under the provisions of this Law and of the Regulation on the Organization and Functioning of the Ombudsman Institution.

#### **Art. 29<sup>13</sup>**

The visit report and the reasoned response referred to in art. 29<sup>12</sup>, when one was sent, are public and shall be posted on the website of the institution concerned, of the higher authority or the local or central public administration authority that issued the operating permit, and also on the Ombudsman's website, except for the parts that concern personal data or classified information.

#### **Art. 29<sup>14</sup>**

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

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

(3) The institutions concerned are required to comply immediately with the proposals and recommendations, or to formulate an answer within 3 calendar days, under the provisions of Art. 29<sup>12</sup>.

#### **Art. 29<sup>15</sup>**

It is incumbent upon the Ombudsman to immediately notify the judiciary when, in the exercise of his duties, becomes aware of clues concerning possible offenses committed under the criminal law.

#### **Art. 29<sup>16</sup>**

(1) The Deputy Ombudsman for the Field on the Prevention of Torture in Places of Detention drafts the annual report on the activity of the Field, as part of the annual report of the Ombudsman Institution, and submits it to the approval of the Ombudsman.

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

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

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

#### **Art. 29<sup>17</sup>**

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

#### **Art. 29<sup>18</sup>**

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

### **Art. 29<sup>19</sup>**

Funding the current and capital expenditure of the Field on Prevention of Torture in Places of Detention shall be provided from the state budget and the funds allocated to it are part of the Ombudsman Institution's budget.

(on the 30<sup>th</sup> of June 2014, Chapter IV, supplemented by Art. 1, point 12, from the Emergency Ordinance No. 48/2014)

## **CHAPTER V: Liability, incompatibilities and immunities**

### **Art. 30**

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

### **Art. 31**

**(1)** During the exercise of his mandate, the Ombudsman may be investigated and prosecuted for criminal offences, other than those referred to in article 30, but he may not be detained, searched or arrested without the consent of the presidents of both Chambers of Parliament.

**(2)** The deputies of the Ombudsman may be investigated and prosecuted for criminal offences other than those provided for at article 30, but they may not be searched or arrested without prior notification of the Ombudsman.

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

### **Art. 32**

**(1)** During the exercise of their offices, the Ombudsman 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 in para. (1) shall also apply to the specialized staff, holding management or execution positions.

## **CHAPTER VI: The services of the Ombudsman Institution**

### **Art. 33**

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

### **Art. 33<sup>1</sup>**

Within the Ombudsman Institution, in addition to the fields of activity, are organized the following:

**a)** Constitutional contentious, appeal in the interest of the law, administrative and legal contentious, analysis of normative legal acts, external relations and communication, subordinated directly to the Ombudsman, headed by a Chief of Service, which coordinates: Constitutional contentious and appeal in the interest of the law Office, Administrative and Legal Contentious Office, Analysis of normative legal acts, external relations and communication Office.

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

(on the 30<sup>th</sup> of June 2014, Art. 33 from Chapter VI, supplemented by Art. 1 point 13, from the Emergency Ordinance No. 48/2014)

#### **Art. 34**

The management or specialized operating functions within the Ombudsman Institution can be occupied through contest, according to the terms of the law.

#### **Art. 35**

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

### **CHAPTER VII: Transitory and final provisions**

#### **Art. 36**

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

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

**(3)** The function of Ombudsman is assimilated as rank, remuneration and conditions of retirement with that of minister, and the position of Deputy Ombudsman is assimilated as rank, remuneration and conditions of retirement with that of secretary of state, with all the appropriate rights. The management and specialized operating functions are assimilated with those in the Parliament.

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

**(3<sup>1</sup>)** The period of employment of the specialized personnel with legal studies in the Ombudsman Institution shall be deemed as length of service in the specialty of the studies graduated and length of service in magistracy, under the terms provided by Art. 86 of Law No. 303/2004, regarding the status of judges and prosecutors, republished, as subsequently amended and supplemented.

**(3<sup>2</sup>)** The period of employment of the managerial and non-managerial personnel in the Ombudsman Institution, with other studies than the legal specialty, shall be deemed as length of service in the specialty of the studies graduated.

*(on the 30<sup>th</sup> of June 2014, Art. 36 para. (3), from Chapter VII, supplemented by Art. 1, point 14, from the Emergency Ordinance No. 48/2014)*

**(4)** The Ombudsman and Deputies of the Ombudsman who don't have their domicile or personal home in Bucharest, shall benefit, from the date of their appointment, of the reimbursement of expenses with accommodation and transportation from their place of residence to the work place in Bucharest, under the law.

*(on the 30<sup>th</sup> of June 2014, Art. 36 para. (4), from Chapter VII, supplemented by Art. 1, point 15, from the Emergency Ordinance No. 48/2014)*

**(5)** The Government and the General Council of the Municipality of Bucharest shall provide the necessary headquarters for the functioning of the Ombudsman Institution.

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

### **Art. 37**

**(1)** If a magistrate is elected for the position of Ombudsman, his/her job reservation is compulsory.

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

### **Art. 38**

The Rules of organization and functioning of the Ombudsman Institution shall be approved by the Standing Bureaus of the Chamber of Deputies and Senate, at the proposal of the Ombudsman.

\*

**NOTE:**

We reproduce below the provisions the provisions of Art. III of Law No. 258/2010, amending and supplementing Law No. 35/1997 on the organization and functioning of the Ombudsman Institution, which are not incorporated in the republished form of the Law No. 35/1997, and which will henceforth apply as provisions of the amending act:

“Art. III

Upon the entry into force of this Law, any contrary provisions are repealed.”

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\*) Republished under Art. 107 para. (3) of Law **No. 255/2013** for the implementation of Law **No. 135/2010** on the **Code of Criminal Procedure** and for amending and supplementing certain normative legal acts which contain provisions on criminal procedure, published in the Official Gazette of Romania, Part I, No. 515 of August 14, 2013, as amended, giving a new numbering to the texts.

Law **No. 35/1997** was published in the Official Gazette of Romania, Part I, No. 844 of September 15, 2004, and was also amended and supplemented by:

- Law **No. 383/2007** amending and supplementing Art. 36 of Law **No. 35/1997** on the organization and functioning of the Ombudsman Institution, published in the Official Gazette of Romania, Part I, No. 900 of December 28, 2007;
- Law **No. 258/2010** amending and supplementing Law **No. 35/1997** on the organization and functioning of the Ombudsman Institution, published in the Official Gazette of Romania, Part I, No. 847 of December 17, 2010.

➤ **ANNEX: TERRITORIAL OFFICES OF THE OMBUDSMAN INSTITUTION**

No.	Headquarters	Counties under territorial jurisdiction
1.	Alba Iulia	Alba, Sibiu, Hunedoara
2.	Pitești	Argeș, Vâlcea
3.	Bacău	Bacău, Neamț
4.	Oradea	Bihor, Satu Mare
5.	Suceava	Suceava, Botoșani
6.	Brașov	Brașov, Covasna
7.	Slobozia	Călărași, Giurgiu, Ialomița, Ilfov, Teleorman
8.	Cluj-Napoca	Cluj, Bistrița-Năsăud, Maramureș, Sălaj
9.	Constanța	Constanța, Tulcea
10.	Craiova	Dolj, Gorj, Mehedinți, Olt
11.	Galați	11. Galați, Brăila, Vrancea

12.	Iași	12. Iași, Vaslui
13.	Târgu Mureș	13. Mureș, Harghita
14.	Ploiești	14. Prahova, Buzău, Dâmbovița
15.	Timișoara	15. Timiș, Arad, Caraș-Severin

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