

THE CONSTITUTION OF ROMANIA

TITLE II

Fundamental Rights, Freedoms and Duties

CHAPTER IV

Advocate of the People

ARTICLE 58: Appointment and role

(1) The Advocate of the People shall be appointed for a term of office of five years, to defend citizens' rights and freedoms.

The deputies of the Advocate of the People are specialized according to the domains of activities.

(2) The Advocate of the People and his deputies may not perform any other public or private office, except higher education didactic functions.

(3) The organization and functioning of the Advocate of the People institution shall be regulated by an organic law.

ARTICLE 59: Exercise of powers

(1) The Advocate of the People shall exercise his powers ex officio or upon request by the persons aggrieved in their rights and freedoms, within the limits established by law.

(2) It is binding upon the public authorities to give the Advocate of the People the necessary support in the exercise of his powers.

ARTICLE 60: Report before Parliament

The Advocate of the People shall submit reports before the two Parliament Chambers, annually or on request thereof. The reports may contain recommendations on legislation or measures of any other nature for the defence of citizens' rights and freedoms.

*** Unauthorised translation ***

☐ **LAW no. 35 of March 13, 1997 on the organization and functioning of the Ombudsman^{*)} – Republished**

☐ **CHAPTER I: General provisions**

☐ **Art. 1**

(1) The Ombudsman's office aims to protect the rights and freedoms of natural persons in their relations with public authorities.

(2) The Ombudsman's office is located in the municipality of Bucharest.

☐ **Art. 2**

(1) The Ombudsman's office is an autonomous public authority and independent from any other public authority under the law.

(1¹) The Ombudsman's office, within the Scope on the prevention of torture and other punishments or cruel, inhuman or degrading treatment in detention, hereinafter the Scope on preventing torture in places of detention, performs tasks specific to the National torture prevention mechanism in places of detention, within the meaning of the Optional Protocol, adopted in New York on December 18, 2002, at the Convention against torture and other punishments or cruel, inhuman or degrading treatment, adopted in New York on December 10, 1984, ratified by Law no. 109/2009, hereinafter the Optional Protocol.

(2) In exercising its powers, the Ombudsman does not replace 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, his deputies and employees working under its authority has a public character.

(2) At the request of persons whose rights and freedoms have been violated or due to valid reasons, the Ombudsman may decide upon the confidential nature of its work.

☐ **Art. 4**

Public authorities are required to communicate or, where appropriate, to provide the Ombudsman, under the law, with the information, documents or papers they hold relating to petitions that were submitted to the Ombudsman, as well as those relating to ex officio

complaints and announced or unannounced visits which it performs for the fulfillment of tasks specific to the National torture prevention mechanism in places of detention, granting it support for the exercise of its powers.

▣**Art. 5**

(1) The Ombudsman presents reports in the joint session of both Houses of Parliament annually or on request. The reports should include information on the activity of the Ombudsman's office. They may include recommendations for amendments to legislation or other measures to protect the rights and freedoms of individuals.

(2) The annual report aims the activity of the office in one calendar year and shall be submitted to the Parliament by February 1 of the following year to debate it in the joint session of both Houses. The annual report shall be published.

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

▣**Art. 6**

(1) The Ombudsman is appointed for a term of 5 years by the Chamber of Deputies and the Senate, in joint session. The mandate of the Ombudsman may be renewed only once.

(2) Any Romanian citizen who meets the conditions laid down for appointment as Constitutional Court judge can be appointed as Ombudsman.

▣**Art. 7**

(1) 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 Houses of Parliament.

(2) Candidates shall be heard by the legal committees of the Chamber of Deputies and the Senate. At the hearing, each candidate shall submit the documents which show the fulfillment of conditions laid down by the Constitution and this law to be appointed as Ombudsman. Candidates shall attend the debates.

(3) The candidate who assembles the highest number of deputy and senator votes is appointed as Ombudsman.

▣**Art. 8**

▣**(1)** The mandate of the Ombudsman is exercised from the filing date, before the presidents of the two Chambers of Parliament, with the following oath:

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

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

(3) Refusal to take oath prevents the appointment of the Ombudsman and initiates the procedure for the appointment of another person.

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

☐ **Art. 9**

(1) The mandate of the Ombudsman terminates earlier in case of resignation, removal from office, incompatibility with other public or private functions, inability to perform tasks for more than 90 days, determined by medical examination, or in case of death.

(2) Dismissal from office of the Ombudsman, due to the violation of the Constitution and laws, shall be made by the Chamber of Deputies and the Senate, in joint session, by a majority vote of deputies and senators on a proposal from the Standing Bureaus of the two Chambers of Parliament, based on the joint report of the legal committees of the two Houses of Parliament.

(3) The resignation, incompatibility, inability to fulfill duties, or death shall be established by the Standing Bureaus of the two Chambers of Parliament within 10 days from the occurrence determining the cause of the termination of the Ombudsman's mandate.

(4) The Ombudsman, fulfilling the appointment conditions set out for Constitutional Court judges, at the date of retirement or recalculation of the previously established pension, shall benefit from a pension calculated similarly to that of Constitutional Court judges.

(5) The period of the Ombudsman's function constitutes seniority in the magistracy and seniority in the legal field.

☐ **CHAPTER III: Deputies of the Ombudsman**

☐ **Art. 10**

☐ **(1)** The Ombudsman is assisted by deputies specialized in the following fields:

a) human rights, equality between men and women, religious cults and national minorities;

b) rights of children, family, youth, pensioners, persons with disabilities;

- c) army, justice, police, prisons;
- d) property, labor, social security, taxes and fees.
- e) prevention of torture and other punishments or cruel, inhuman or degrading treatment in detention.

(2) Deputies of the Ombudsman exercise their functions according to both fields of expertise, as well as any other duties entrusted to them by the Ombudsman.

(3) Deputies of the Ombudsman exercise, in the order set out by the Ombudsman, their duties in case of temporary inability to exercise their functions.

Art. 11

(1) Deputies of the Ombudsman shall be appointed for a period of 5 years by the Standing Bureaus of the Chamber of Deputies and the Senate, at the Ombudsman's proposal, endorsed by legal committees of the two Houses of Parliament. The conditions for the position of Deputy Ombudsman shall be established by the Rules of organization and functioning of the Ombudsman's office.

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

(3) The mandate of the Deputy Ombudsman is exercised from the filing date, before the Ombudsman and one member of the Standing Bureaus of the Chamber of Deputies and the Senate, authorized for this, with the following oath: "I swear to observe the Constitution and the laws of the country, and to defend the rights and freedoms of citizens, carrying out my duties of Deputy Ombudsman in good faith and impartially. So help me God!"

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

(5) Refusal to take oath prevents the appointment of the Deputy Ombudsman and initiates the procedure for the appointment of another person.

(6) The mandate lasts until the new Deputies of the Ombudsman take the oath and may be renewed only once.

(7) The period of the Deputy Ombudsman function by graduates of Law constitutes seniority in magistracy. The period of the Deputy Ombudsman function by graduates with a profile other than Law constitutes seniority in the specialty of graduated studies.

(8) The resignation, incompatibility, inability to fulfill duties, or death shall be established by the Ombudsman and the Standing Bureaus of the Chamber of Deputies and the Senate within 30 days from the occurrence determining the cause of the termination of the Deputy Ombudsman's mandate. Until the appointment of a new deputy, its functions shall be delegated by order of the Ombudsman to a person within the specialized staff.

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

Art. 12

Deputies of the Ombudsman shall fulfill the following duties:

- a)** coordinate the activities in their respective field;
- b)** inform the Ombudsman about the activity in their respective field;
- c)** distribute petitions in their respective fields;
- d)** endorse reports, recommendations and any other documents subject to approval by the Ombudsman;
- e)** fulfill, in the order set out by the Ombudsman, its duties in case of temporary inability to perform duties;
- f)** fulfill any other duties established by the Ombudsman, within the law.

CHAPTER IV: Duties of the Ombudsman

Art. 13

(1) The Ombudsman has following duties:

- a)** coordinates the activity of the Ombudsman's office;
- a¹)** coordinates the activity to prevent torture in places of detention, carried out within the Scope on the prevention of torture in detention;
- a²)** approves the visiting reports drawn up under torture prevention work;
- a³)** approves the recommendations accompanying the visiting reports drawn up in cases in which, following the visits, irregularities are noticed;
- b)** decides on petitions formulated by individuals injured by the violation of their rights and freedoms by public administration authorities;
- c)** checks the legal settlement activity related to petitions received and asks authorities or government officials to stop violating the rights and freedoms of individuals, the reinstatement of the petitioner and compensation for damages;

- 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)** may directly notify the Constitutional Court with the exception of unconstitutionality of laws and ordinances;
 - g)** represents the Ombudsman's Office before the Chamber of Deputies, the Senate and the other public authorities, as well as in relations with natural or legal persons;
 - h)** hires employees of the Ombudsman's Office and exercises disciplinary powers over them;
 - i)** exercises the function of Chief Authorizing Officer, which it may delegate with the observance of legal provisions on public finances;
 - j)** may notify the contentious administrative court under the contentious administrative law;
 - k)** performs other duties stipulated by law.
- (2)** The Ombudsman may delegate the exercise of these duties to its deputies or to persons responsible for the management of the office.

☐ **Art. 14**

- (1)** The Ombudsman's Office exercises its duties ex officio or at the request of natural persons, companies regulated by Law no. [31/1990](#), republished, with subsequent amendments and supplements, associations or other legal persons, and unannounced, through visits to places of detention, under the law.
- (2)** Petitions may be addressed by the persons mentioned in para. (1) irrespective of nationality, age, gender, political affiliation or religious beliefs.

☐ **Art. 15**

- (1)** Petitions submitted to the Ombudsman's Office must be made in writing and must indicate the name and address of the natural person whose rights and freedoms have been violated, the violated rights and freedoms, and the administrative authority or public official concerned. The petitioner must prove the delay or refusal of the administrative authority to legally resolve the petition.
- (2)** Anonymous petitions cannot be considered, and petitions against the violation of rights and freedoms of individuals through acts or actions of the public administration

authority shall be referred to the Ombudsman's Office no later than one year from the date on which the violation occurred or the date on which the person became aware of them.

(2¹) Citizens belonging to national minorities residing in administrative and territorial units where they account for over 20% of the people can submit petitions in their native language and shall receive an answer in Romanian and in the native language.

(3) The Ombudsman may reject petitions manifestly unfounded with motivation and may request additional data for analyzing and solving petitions.

(4) Petitions on documents issued by the Chamber of Deputies, the Senate or the Parliament, acts and actions of deputies and senators, the President of Romania, the Constitutional Court, the President of the Legislative Council, the judiciary and the Government, with the exception of laws and ordinances, are not covered by the activity of the Ombudsman's Office and shall be rejected without motivation.

Art. 16

Petitions submitted to the Ombudsman's Office are exempt from stamp duty.

Art. 17

(1) The management of prisons, juvenile rehabilitation centers, hospital prisons and the Public Ministry and the police are obliged to allow, without restriction, people who serve imprisonment or, where applicable, are arrested or detained, and minors in rehabilitation centers to address in any way the Ombudsman regarding the violation of their rights and freedoms, with the exception of legal restraints.

(2) The same obligation also applies to commanders of military units with respect to persons who fulfill military duties on the violation of their rights and freedoms, with the exception of legal restraints.

Art. 17¹

(1) The management of detention facilities referred to in art. 29² is required to allow, without restriction, persons deprived of liberty, based on a decision of the authorities, to address in any way the Ombudsman's Office regarding the violation of their rights and freedoms, with the exception of legal restraints.

(2) In order to fulfill the duties incumbent on the Ombudsman's Office, the administration of detention facilities referred to in art. 29² is required to allow access to the Ombudsman,

the deputy within the Scope on the prevention of torture in places of detention, as well as representatives of the Office, without restriction, in all places of detention monitored for visits, announced or unannounced, and ordered investigations to resolve petitions received.

(3) Petitions about torture, cruel, inhuman or degrading treatment in places of detention shall be settled according to the issues notified, within the Scope on preventing torture in places of detention, in collaboration with other structures of the Ombudsman's Office.

(4) The provisions of this law are made available to detainees in Romanian or in the language they understand, immediately after reception in detention places.

Art. 18

If the Ombudsman's Office finds that the resolution of the petition brought before it is for the judiciary, it may, where appropriate, address the Minister of Justice, the Superior Council of Magistracy, the Public Ministry or the president of the court, who is obliged to communicate the measures 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.

Art. 20

(1) The Ombudsman and its deputies have access, under the law, to classified information held by public authorities, to the extent deemed necessary to solve the petitions that were addressed to them, and ex officio referrals and announced or unannounced visits they perform to fulfill the duties specific to the National mechanism to prevent torture in places of detention.

(2) The Ombudsman has an obligation not to disclose or make public secret information or documents to which it had access. This obligation shall be maintained even after the termination of its activities as Ombudsman and extends to its deputies and staff under the sanction under the criminal law.

Art. 21

(1) In performing its duties, the Ombudsman makes recommendations.

(2) Through its recommendations, the Ombudsman notifies the public administration authorities on the illegality of administrative acts or actions. The silence of public administration bodies and late issuance of documents are treated as administrative acts.

(3) The Ombudsman's recommendations within the Scope on preventing torture in places of detention issued in the event of irregularities are aimed at their removal, improved treatment and conditions of detention of people deprived of freedom, prevention of torture and inhuman or degrading treatment or punishment.

☐Art. 22

(1) The Ombudsman, its deputies and specialist staff of the Ombudsman's Office are entitled to make their own inquiries, to require public administration authorities any information or documents necessary for the inquiry, to hear and to take declarations from the heads of public administration authorities and any clerk who can give information necessary to solve the petition, according to this law.

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

☐Art. 23

(1) If, after examining the petitions received, it appears that the petition of the injured natural person is well founded, the Ombudsman's Office shall write to the public administration authority that violated the rights of the natural person and ask to reform or revoke the administrative act and repair the damages caused, as well as to restore the natural person injured in the previous situation.

(2) The public authorities concerned shall immediately take the necessary measures to remedy irregularities found, compensate damages and remove the causes that have generated or favored the infringement of the injured person's rights and shall inform the Ombudsman's Office thereupon.

☐Art. 24

(1) If the public administration authority or public official does not remove, within 30 days from the date of referral, the illegalities committed, the Ombudsman's Office shall address the superior public administration authorities, which are obliged to inform it, within 45 days, of the measures taken.

(2) If the public authority or public official belongs to the local public administration, the Ombudsman's Office shall be addressed to the prefect. A new 45 days term shall run from the filing date of the referral with the prefect.

☐ **Art. 25**

(1) The Ombudsman is entitled to notify the Government of any illegal administrative act or action of the central public administration and prefects.

(2) Failure by the Government to adopt, within 20 days, the measures regarding the illegality of administrative acts or actions reported by the Ombudsman's Office shall be communicated to the Parliament.

☐ **Art. 26**

(1) The Ombudsman's Office shall inform the person who addressed the petition of the method of settlement. It can be made public by the Ombudsman through mass media, with the consent of the person or persons concerned and in compliance with art. 20 on secret information and documents.

(2) If the Ombudsman finds, during inquiries conducted, gaps in legislation or serious cases of corruption or breaches of the laws of the country, it shall present a report containing its findings to the Presidents of both Houses of Parliament or, where applicable, to the Prime Minister.

☐ **Art. 27**

The Ombudsman can be consulted by the initiators of draft laws and ordinances, which by the content of regulations aim the rights and freedoms of citizens provided by the Constitution, covenants and other international treaties on fundamental human rights to which Romania is a party.

☐ **Art. 28**

This law also applies to administrative provisions of autonomous administrations.

☐ **Art. 29**

(1) The Ombudsman's Office shall hold regional offices in pursuit of its duties under this law, according to the Annex which forms an integral part of this Law. The presidents of county councils and mayors shall provide spaces for the functioning of the territorial offices.

(1¹) The territorial offices of the Ombudsman which have their headquarters or conduct their audience activities in administrative and territorial units where citizens belonging to national minorities represent more than 20% of the total population shall also ensure the usage of the language of those national minorities, in writing and orally, in relations with petitioners.

(2) In justified cases, the Ombudsman may establish territorial office in towns other than the capital of the county, in the area of competence of the Court of Appeal.

☐ **CHAPTER IV¹: Activity within the Scope on preventing torture in places of detention**

☐ **SECTION 1: General Provisions**

☐ **Art. 29¹**

(1) The Ombudsman's Office is the only national structure designated to perform the duties provided for in the [Optional Protocol](#), adopted in New York on December 18, 2002, at the [Convention against torture and other punishments or cruel, inhuman or degrading treatment](#), adopted in New York on December 10, 1984, ratified by Law no. [109/2009](#).

(2) Under this law, the Subcommittee on Prevention means Subcommittee on Prevention of Torture and Inhuman or Degrading Treatment or Punishment, set up by the [Optional Protocol](#).

☐ **Art. 29²**

(1) For the purposes of this law, place of detention is any place where persons are deprived of their liberty by a decision of an authority, at its request or with its express or tacit consent.

(2) Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private place of detention which it cannot leave at will, by the decision of any judicial, administrative or other authority.

☐ **(3)** Under this law, the following are considered places of detention and, where appropriate, places where the Ombudsman exercises its duties on the prevention of torture:

- a)** prisons, including hospital prisons;
- b)** educational centers, detention centers;

- c)** detention and preventive arrest centers;
- d)** residential services for minors who have committed crimes and are not criminally liable;
- e)** psychiatric and safety hospitals, psychiatric hospitals;
- f)** transit centers;
- g)** accommodation centers for aliens taken into public custody subordinated and managed by the General Inspectorate for Immigration;
- h)** special reception and accommodation centers for asylum seekers subordinated to the General Inspectorate for Immigration, having the legal regime of transit area;
- i)** centers which grant assistance services for drug users in closed regime;
- j)** any other place that fulfills the requirements of para. (1) or part of the health system or the social assistance system.

☐ **SECTION 2: Duties within the Scope on preventing torture in places of detention**

☐ **Art. 29³**

The Scope on preventing torture in places of detention regularly monitors the treatment of persons in detention in order to strengthen their protection against torture and other cruel and inhuman or degrading treatment and to exercise indiscriminately their fundamental rights and freedoms by:

- a)** visiting, announced or unannounced, the places of detention in order to verify the conditions of detention and treatment of persons deprived of liberty;
- b)** formulating recommendations to the managements of visited places of detention following the visits;
- c)** formulating proposals for amending and supplementing the relevant legislation or comments on the existing legislative initiatives in the field, under art. 27;
- d)** drafting the project of the component part on preventing torture of the annual activity report of the Ombudsman;
- e)** formulating proposals and comments on the development, modification and completion of public policies and strategies in the prevention of torture and inhuman or degrading treatment or punishment under the law;
- f)** liaising with the Subcommittee on Prevention;

- g)** analyzing, implementing, monitoring and evaluating, under the direction of the Ombudsman, international programs with technical and financial assistance for achieving the goal of the Scope on preventing torture in places of detention;
- h)** coordinating the organization of awareness, education and training campaigns in order to prevent torture and punishment or cruel, inhuman or degrading treatment;
- i)** performing any other duties established by the Ombudsman, within the law.

SECTION 3: The organization of the prevention of torture and cruel, inhuman and degrading treatment in places of detention

Art. 29⁴

- (1)** The Scope on preventing torture in places of detention is organized in the central and territorial structures.
- (2)** The central structure comprises the Bucharest zonal centre. The territorial structure consists of 3 zonal centers.
- (3)** The Ombudsman establishes by order the places where the zonal centers are located and the counties that fall under their jurisdiction, and the criteria for the selection of staff within the Scope on preventing torture in places of detention.
- (4)** The torture prevention activity shall be attended by representatives of NGOs working in the field of human rights protection, selected based on their work by the Ombudsman.

Art. 29⁵

- (1)** For carrying out activities within the Scope on preventing torture in places of detention at central level, external collaborators are also co-opted from other specialties than the permanent employees, under contracts for services. The external collaborators are selected by the Ombudsman, based on proposals received from the College of Physicians of Romania, the Romanian College of Psychologists, the Sociologists Society of Romania, the National College of Social Workers or other professional associations to which they belong.
- (2)** During the performance of duties, external collaborators shall follow the Office's staff obligations regarding the confidentiality of works and other rules of internal discipline of the Office.
- (3)** In carrying out specific activities on the prevention of torture in places of detention, visiting team members are independent.

(4) In addition to the Deputy Ombudsman, within the Scope on preventing torture in places of detention, in the central structure of the Scope, including the Bucharest zonal Centre, operate a total of 11 employees, of which: 4 employees specialized operating staff with legal training, 3 specialists – physicians, psychologists, social workers, sociologists and other professionals necessary for carrying out specific work, and 4 employees in the financial, payroll, human resources and administrative department.

☐ **Art. 29⁶**

(1) For carrying out activities within the Scope on preventing torture in places of detention at territorial structure level, external collaborators are also co-opted from other specialties than the permanent employees, under contracts for services. External collaborators at territorial level are selected by the Ombudsman, based on proposals received from the College of Physicians of Romania, the Romanian College of Psychologists, the Sociologists Society of Romania, the National College of Social Workers or other professional associations to which they belong.

(2) The provisions of art. 29⁵ para. (3) shall apply accordingly also to external collaborators co-opted within territorial structures.

(3) Within the 3 zonal centers of the territorial structure of the Scope on preventing torture in places of detention operate a total of 12 employees. Each zonal center comprises: an employee specialized operating staff with legal training, 2 specialists – physicians, psychologists, social workers, sociologists or other professions necessary for carrying out specific work, and an employee – administrative staff.

☐ **SECTION 4: Carrying out visits in places of detention**

☐ **Art. 29⁷**

(1) Visiting teams carry out announced or unannounced visits in places of detention, 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 NGOs as stipulated in art. 29⁴ para. (4).

(3) Visits are conducted ex officio, based on an annual visitation plan, proposed by the Deputy Ombudsman within the Scope on preventing torture in places of detention and approved by the Ombudsman, or unannounced or based on the referral of any person or

acknowledgment by any mean of the existence of a situation of torture or cruel, inhuman or degrading treatment in a place of detention.

☐(4) When preparing the annual visitation plan, the following minimum criteria must be envisaged:

- a) existing types of places of detention;
- b) geographical distribution of the places of detention;
- c) referrals 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 within the Scope on preventing torture in places of detention and other areas of activity of the Office.

☐Art. 29⁸

(1) The institutions visited are obliged to provide 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 they can acquire, requested by them in order to fulfill their legal duties.

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

☐Art. 29⁹

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

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

(3) Meetings take place only with the consent of the person deprived of liberty or its legal representative and shall be confidential.

(4) The meeting may not be attended by representatives of the place of detention, except at the express request of the members of the visiting team, and only to ensure their protection. In this case, representatives of the place of detention shall provide only visual surveillance, observing the confidentiality of the meeting.

(5) The name and other personal data of the person being interviewed may not be disclosed without its prior written consent or that of its legal representative.

(6) For conducting interviews with people who do not understand or speak Romanian, an interpreter shall be provided, interpreting costs being borne from the funds allocated to the Scope on preventing torture in places of detention.

(7) Visiting team members may request meetings with any other person which they consider that can provide relevant information, with that person's consent.

☐ **Art. 29¹⁰**

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

☐ **Art. 29¹¹**

(1) The findings of the visits shall be included in a visiting report that, in cases where irregularities are noticed, shall be accompanied by reasoned recommendations to improve the treatment and conditions of detainees and to prevent torture and inhuman or degrading treatment or punishment.

(2) The visiting report shall be drafted by the visiting team members not later than 30 days from the date of its completion and shall be approved by the Ombudsman.

☐ **Art. 29¹²**

(1) The visited institution is required to submit, within 30 days, a reasoned response to the proposals and recommendations contained in the visiting report, indicating the view to the findings, the reasoned deadline for the measures to be taken to comply with their content or, if applicable, the reasons for which cannot comply.

(2) For valid reasons, the 30-day period provided in para. (1) may be extended by 30 days, with the approval of the Deputy Ombudsman within the Scope on preventing torture in places of detention.

(3) If the institution concerned does not comply, the Ombudsman or, where appropriate, the Deputy Ombudsman within the Scope on preventing torture in places of detention shall inform on this matter the higher authority or the local or central public administration authority that issued the operating permit, for private detention facilities, and may act according to this law and the Rules of organization and functioning of the Ombudsman's Office.

☐ **Art. 29¹³**

The visiting report and the reasoned response referred to in art. 29¹², when it was sent, are public and shall be posted on the website of the institution targeted by it, of the superior authority or local or central public administration authority that issued the operating permit, and of the Ombudsman, except for the parts that concern personal data or classified information.

▣ **Art. 29¹⁴**

(1) In cases where there is a breach of human rights through torture or cruel, inhuman or degrading treatment 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 preparation and adoption of the preliminary report is 3 days and may be extended for valid reasons by another 3 days.

(3) Targeted institutions are required to comply urgently with the proposals and recommendations or to formulate a response under art. 29¹² within 3 calendar days.

▣ **Art. 29¹⁵**

The Ombudsman has the obligation to immediately notify the judiciary when, in exercising its duties, it becomes aware of indications on offenses committed under criminal law.

▣ **Art. 29¹⁶**

(1) The Deputy Ombudsman within the Scope on preventing torture in places of detention drafts the annual report on the Scope's work, part of the annual report of the Ombudsman's Office, to be submitted for approval to the Ombudsman.

(2) The annual report comprises: analysis and conclusions of visits carried out during that year; proposals and recommendations formulated; measures taken by national authorities thereof; proposals to improve the legislative framework in the field of activity, and any other data or information relevant to the work of the Scope on preventing torture in places of detention.

(3) The Activity Report within the Scope on preventing torture in places of detention is part of the Annual Report that the Ombudsman presents at the joint session of the two Houses of Parliament.

▣ **SECTION 5: Liaising with the Subcommittee on the prevention of torture**

▣ **Art. 29¹⁷**

In performing its duties, the Ombudsman or, where appropriate, the Deputy Ombudsman for the prevention of torture liaises with the Subcommittee on the prevention of torture, sends it information and meets with its members.

☐ **Art. 29¹⁸**

The specialized operating staff with legal training and specialists may receive training and technical assistance from the Subcommittee on the prevention of torture under the Optional Protocol.

☐ **Art. 29¹⁹**

Current and capital expenditure funding for activities to prevent torture and cruel, inhuman or degrading treatment shall be provided from the state budget and funding for it are part of the budget of the Ombudsman's Office.

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

☐ **Art. 30**

The Ombudsman and its deputies are not legally liable for the opinions or acts they perform, in compliance with the law, when exercising the duties envisaged by this law.

☐ **Art. 31**

(1) During the exercise of its mandate, the Ombudsman may be pursued and prosecuted for criminal offenses other than those referred to in art. 30, but cannot be detained, searched, arrested at home or preventively arrested without the consent of the Presidents of both Houses of Parliament.

(2) Deputies of the Ombudsman may be pursued and prosecuted for criminal offenses other than those referred to in art. 30, but cannot be detained, searched, arrested at home or preventively arrested without prior notification of the Ombudsman.

(3) If the Ombudsman or its deputies are arrested or criminally prosecuted, they will be suspended from office, by right, until the final court decision.

☐ **Art. 32**

(1) While in office, the Ombudsman and its deputies cannot be members of any political party and cannot perform any other public or private function, with the exception of higher education activities and functions.

(2) The incompatibilities provided in para. (1) shall also apply to management and specialist operating staff.

▣ **CHAPTER VI: Services of the Ombudsman's Office**

▣ **Art. 33**

The organizational structure, the list of functions and staffing necessary for the work of Office shall be approved by the Ombudsman, in the annual budget limit.

▣ **Art. 33¹**

In addition to the fields of activity, within the Ombudsman's Office the following shall be organized:

a) The constitutional contentious service, appeal on points of law, administrative and legal contentious, analysis of legislation, external relations and communication, reporting directly to the Ombudsman, headed by a Chief of Service, who coordinates: the Office for constitutional contentious and appeal on points of law, Administrative and legal contentious office, and Normative acts analysis office, External relations and communication.

b) Financial, payroll and human resources office and administrative office. The Coordinating Director guides and answers for the Financial, payroll and human resources and the Administrative offices' activity.

▣ **Art. 34**

Management and specialized operating functions within the Ombudsman's Office shall be occupied following a competition, under the law.

▣ **Art. 35**

Violation of this law or the Rules of organization and functioning of the Ombudsman's Office by its staff attracts criminal, disciplinary or administrative liability, as appropriate. Disciplinary liability is determined by the Rules of organization and functioning of the Ombudsman's Office.

▣ **CHAPTER VII: Transitional and final provisions**

▣ **Art. 36**

(1) The Ombudsman's Office has its own budget, which is part of the state budget. The annual budget laws may approve a fund to the Ombudsman by granting aid.

(2) The draft budget shall be approved, with the advisory opinion of the Ministry of Public Finance, by the Ombudsman, and shall be forwarded to the Government to be included

separately in the draft state budget under enactment. The Ombudsman's objections to the Government's draft budget shall be submitted to the Parliament for settlement.

(3) The function of Ombudsman is treated as rank, pay and pension conditions as the function of minister, and the function of Deputy Ombudsman is treated as rank, pay and pension conditions as the function of secretary of state, benefiting properly from all their rights. Management and specialized operating functions are similar to those in the Parliament. The Deputies of the Ombudsman shall be appointed for a mandate of 5 years, which may be renewed only once.

(3¹) The activity carried out by specialized operating staff with legal training within the Ombudsman's Office constitutes seniority in the specialty of studies graduated and in magistracy, as provided by art. 86 of Law no. [303/2004](#) on the statute of judges and prosecutors, republished, with subsequent amendments and supplements.

(3²) Management and operating staff with a specialty other than the legal one within the Ombudsman's Office benefits from seniority in the specialty of studies graduated.

(4) The Ombudsman and its Deputies who do not have their residence or personal home in the Municipality of Bucharest shall benefit, from the date of their appointment, from the reimbursement of accommodation and transport from their home town to their place of work in the Municipality of Bucharest, under the law.

(5) The Government and the General Council of the Municipality of Bucharest shall provide the Ombudsman's Office with the necessary headquarters for its functioning.

(6) The Ombudsman's Office shall be guarded, without charge, by the Romanian Gendarmerie.

Art. 37

(1) In the event that a magistrate is elected for the function of Ombudsman, it is mandatory to reserve his/her job.

(2) In the event that a judge, a prosecutor, a lawyer, a notary, a legal advisor, an economist or a person fulfilling other similar positions is appointed as Deputy Ombudsman, it is mandatory to reserve his/her job.

Art. 38

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

*

NOTE:

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

"- Art. III

Upon entry into force of this law, any contrary provisions are repealed."

*) Republished under art. 107 para. (3) of Law no. [255/2013](#) for the implementation of Law no.. [135/2010](#) on the [Criminal Procedure Code](#) and for the amendment and supplementation of certain normative acts which include criminal procedure provisions, published in the Official Gazette of Romania, Part I, no. 515 of August 14, 2013, as amended, giving the texts a new numbering.

Law no. [35/1997](#) was republished in the Official Gazette of Romania, Part I, no. 844 of September 15, 2004 and has been 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's Office, 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's Office, published in the Official Gazette of Romania, Part I, no. 847 of December 17, 2010.

☐ ANNEX: TERRITORIAL OFFICES OF THE OMBUDSMAN'S OFFICE

| Office 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 | 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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