



**PEOPLE'S ADVOCATE**



**REPORT**  
**of activity carried out**  
**in the year 2005**

***Bucharest***  
***2006***

**THE ADDRESS AND THE WEB SITE  
OF THE PEOPLE'S ADVOCATE INSTITUTION**

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**Mr. Chairman of the Chamber of Deputies  
Mr. Chairman of the Senate  
Ladies and Gentlemen Deputies and Senators**

*In the enforcement of constitutional provisions of art. 60 from Romanian Constitution as well as those of art. 5 of Law no. 35/1997 regarding the organization and function of the Institution of the People's Advocate, we present to the joint session of the Chambers the report of activity carried out in the year 2005.*

*I preface my opening remarks before you as comprising two parts. One regards the provisional duties as mandated by the office of the People's Advocate. The second comprises general considerations.*

*I hold that it is both legal and moral to inform you, in this official as well as public context, that **my term as People's Advocate is in the course of termination**, in both the letter and spirit of constitutional and legal provisions.*

*It is the reason for emphasizing several aspects of the activities I have undertaken since October 2001 up to the present.*

*It was a great honour for me to be chosen as the People's Advocate by the Senate of Romania.*

*I have been fully aware of the great responsibility entrusted to me in the continuation of some activities already begun by my colleague Paul Mitroi, itself an activity of real change profoundly appropriate within the Romanian constitutional system.*

***What have I proposed to accomplish during this mandate?***

*In the first place, I not only supported, but I also initiated efforts in terms of the constitutional and legal **consolidation** of this institution.*

*a) Experience already accumulated as well as the filing of accurate reports as required by the European Ombudsman have involved some **constitutional modifications**. Thus, in the year 2003, as the constituted power, the Romanian Parliament, yielded some improvements, such as: the establishment of rights of the People's Advocate to notify the Constitutional Court to rule on the*

*constitutionality of the laws before the promulgation of them; the motion of the People's Advocate to raise directly before the Constitutional Court exceptions of unconstitutionality; the appointment of specialised deputies according to areas of activity; the election of the People's Advocate, in the joint session of the Chamber of Deputies and the Senate, for a mandate of 5 years. All of these measures strengthened the institution's autonomy.*

*b) The period of my mandate has effected important **improvements of organic law** of the institution, such as: mandatory disclosure of the issues settled by the Constitutional Court in trials regarding human rights; the possibility to set up territorial offices was enhanced (numbering 14, in compliance with the territorial criteria of the Appellate Courts); a distinct authority was created for monitoring the activities in the area of protection of personal data (thus matching european legislation in the field); the constitutional dispositions regarding the deputies of the People's Advocate were detailed; the regulations regarding status of personnel and financial issues were completed and made better.*

*c) Sustained efforts were applied regarding the guarantee of material working conditions. In this respect, the Romanian Government supported us, but only after much reluctance to grant us the headquarters that would guarantee agreeable conditions. It is interesting that we should appreciate the great step from the initial premises of the institution that was provided by the Senate cafeteria, to the present location, which is a buidling well situated in the very heart of our city, making it functional and accesible to citizens, and moreover open to them.*

*d) Improvements to the institution's personnel. Like any new institution, the People's Advocate also has need of well-qualified experts and counsellors. The goal of making permanent improvements constant while dealing with permanent fluctuations in personnel, is routine work for budgetary institutions. To this end, I took some of the following measures: seminars for specialized issues, post university courses in judicial areas; short stays in foreign countries (England, France, Holland) obtained as follow up to collaboration through relationships with other foreign ombudsmen; training sessions with the participation of some experts from the National Ombudsman of Holland. Despite these efforts, we have not managed to displace bureaucratic clerk-*

*thinking everywhere —with the kind of critical thinking and action specific to the Ombudsman.*

*e) Achieving an efficient level of communication with public authorities. I was closely guided and controlled by the Romanian Parliament in terms of the framework of these preoccupations. In repeated turns (assemblies, press, radio, television, meetings with foreign ombudsmen, etc.) I publicly demonstrated that the Romanian Parliament was the public authority that most efficiently supported the Institution of the People's Advocate. Instances of parliamentary support were characterized also through a solidary parliamentary position in the respect that when the People's Advocate discussed specific problems with Parliament, there was no regrouping of the majority and the opposition. Everyone supported, articulately, of course, preoccupations in the field.*

*Some of the issues resolved were realized also in relation to executive power, but I would not say in an attentive reception of the problems at this level.*

*I must mention, however, in a positive sense, the communication with the Ministers that insure contact with Parliament, with the Minister of Public Finance, with police authorities and the administration of penitentiaries.*

*The communication with constitutional judges also had a rich content, a natural thing in the context of constitutional and legal provisions.*

*f) Collaboration and exchange of experience with foreign ombudsmen and associations in the field. I insisted that the institution be involved in the activities of the associations of ombudsmen (European, international and francophony), but also through exchange of experience with foreign ombudsmen (England, Spain, Holland, Czechoslovakia, Azerbaijan). Particularly, I mention a visit made to Romania by the European Ombudsman, Mr. Nikiforos Diamandouros, as well as by other foreign parliamentarians, who expressed their wonderful appreciation as regards the Institution of the People's Advocate. All of these helped us improve our activities.*

*g) The citizen and his problems. Proceeding from the reality that the role of the institution is to protect the rights and freedoms by reporting to public administration I focused diligently on gathering and examining petitions in order that they should be*

*addressed in a civil and efficient manner, so that any citizen who comes to the institution would receive support by way of action, an answer to their question, or in any case, explanation. Apart from my concerns for solutions to concrete problems, I took action for the protection of rights for certain segments of the population, when individual complaints in these fields were numerous (systems involving pensions plans, health plans, problems of those people who performed forced labor during the period of 1950-1960, etc.) Providing citizens with access to the institution, transparent disclosure of activities, explains the year-to-year growth of its petitioners.*

*Mediation of the institution. The large problem facing ombudsmen is mediation. The efforts applied took form in: public conferences, press conferences (though rarely) radio and television broadcasts, presence in the press.*

***What did I achieve of the things I proposed to accomplish?***

*The annual reports that I have presented to the Parliament have summed up the activities of the Institution.*

*The accomplishments were the fruits of a collective labour. Certainly, some things were not successfully realized, and for these I assume full responsibility. But this is an important thing for me as well, that I can assure you that I always acted in good faith, and I strove always to be efficient.*

*Some optimists encouraged me constantly and appreciated every effort. But I am not without pessimists, either, especially the critics and hecklers who still maintain the uselessness of the institution, who criticize the head of the institution for defective work methods, for harshness in acts of leadership, (for some, demanding and severity translate as the same thing). All of these attitudes and appreciations, however, I consider normal for a democratic society.*

***What do I think now at the conclusion of my term of office?***

*Accordingly, the laws of the Parliament of Romania have two solutions:*

- a) to renew my mandate as the People's Advocate*
- b) to name another in this office.*

*The first solution would allow me to continue my efforts toward the consolidation of the institution.*

*The second solution I will accept with grace and respect. It will be your decision.*

*I assure you that this decision will not affect in any way the respect I have for Parliament. I can tell you that at the end of my mandate, I feel like a man who has done something important.*

*The explanation is simple. For 16 years I had the honor of being chosen by parliamentarians, to support the drafting of some very important normative acts, to participate in the activity of parliamentary commissions, and even, though certainly more rarely, to support in full assembly of the Parliament certain texts of law. I recall, and many present persons here also recall that I worked as an expert in electoral laws during 1990 and 1992, that I was an expert in the Commission for the drafting of the Constitution of Romania, (1990-1991), that I was a member of the Commission for the revision of the Constitution (2002-2003, as the People's Advocate). I remember also, that I was elected judge on the Constitutional Court by the Chamber of Deputies, for a mandate of 9 years (1992-2001). An emotional moment for me was October 4, 2001, when the Senate of Romania voted unanimously for me as the People's Advocate.*

*I cite here just a few activities and significant aspects of my joint work with the Parliament of Romania, activities carried out with notable professionalism, in a civilized atmosphere of mutual respect. It is the reason why I respected and continue to respect the Parliament as a fundamental structure of the Romanian constitutional democracy. For the opportunities you granted to me, I thank all the members of parliament.*

***Mr Chairman of the Chamber of Deputies,  
Mr. Chairman of the Senate,  
Ladies and Gentlemen Deputies and Senators***

*In 2005, the activities of the institution of the People's Advocate benefitted as much from the constitutional framework, legally definitive and optimal, as from financial and human resources. These amplified the actions in which the Institution was involved, an inspiring considerable growth in activities. This fact emerges with clarity in the report we present to the Parliament of Romania. As I have explained in the report, due to some particularly tight*

*financial considerations, we were not able to organize all 14 territorial offices, but this is presently in the process of finalization.*

*Efforts to further harmonize with the European regulations in the field of personal data protection have resulted in the adoption of Law no. 102/2005 by Parliament, regarding the establishment, organization and functioning of the National Supervisory Authority for Personal Data Processing. This is the reason why the report contains references to this activity only up to the end of the month of October, 2005.*

*As concerns the volume of work, there has been appreciable progress in quantitative terms and, in contrast to 2004, qualitative terms as well.*

*In terms of global figures, these activities are presented thus: we received 8529 citizens in audience, with a 42.84% increase; 5465 petitions were registered, with an increase of 18.26 %; 3475 notifications at the reception desk; with an increase of 50.75 %; we conducted 52 investigations with an increase of 36.84 %; we drafted 11 recommendations, with an increase of 37.50 %.*

*The past problem of greater efficiency of the institution of the People's Advocate, commands the same attention in the present. We have always explained that, being an ombudsman-type of institution, the People's Advocate tries to solve the conflict between the citizens and administrative authorities by mediation, requesting the reconsideration of the solution. The efficiency of such work method is directly proportional to the professional quality and degree of openness of the persons involved. The People's Advocate does not dispose, nor should it dispose means of constraint (fines, cancellation of documents, etc.). Should it have such means available, it would no longer be an ombudsman-type institution. **Efficiency** should be compared to that of the mass media. As a matter of fact, both at the level of the European Ombudsman and the general ombudsmen, the problems are raised on the same grounds. In this manner, they bear witness to the annual report of activity that the ombudsmen presented to the national Parliament.*

*The efficiency of the institution depends in large measure on **its media presence**. In this direction, despite documented progress, we cannot yet speak of particular achievements, as the means available to the institution are still limited.*



*The institution's reception towards citizens and public authorities has increased. Better contact between citizens and the institution in 2005 has increased given the actions that have subsequently been carried out. As regards the interaction between the institution and public authorities, we must demonstrate that in 2005, we received special support on the part of the Romanian Parliament. The public administration authorities were likewise more receptive, particularly as the institution carried out investigations more frequently, and drafted recommendations. A wonderful collaboration was achieved in the area of examining the review of the constitutionality of laws. Thus, in 2005 we informed the Constitutional Court of an objection to the unconstitutionality of dispositions of the law regarding the right to freedom of movement of Romanian citizens in foreign countries, (admitted) with 2 exceptions of unconstitutionality (both rejected). We inform with the Constitutional Court, at the petitioning of these 1005 opinions, which represent an increase of 61.83% over last year.*

*In 2005 we continued the exchange of experience and the collaboration of similar institutes in foreign countries. Accordingly, we mention the continued collaboration with the National Ombudsman of Holland, within the framework of the MATRA Program "The strengthening of the organizational and institutional capacity of the People's Advocate", the visit by the President of the French Association of Ombudsmen and Mediators, and the visit by the Commissioner of Human Rights from the Republic of Azerbaidjan.*

*The volume of activity outlined into his report shows, without any doubt, the increased capacity of the People's Advocate, and it enables us to hope that we will be able to ensure more efficiently, the protection of the natural persons' rights and freedoms in 2006.*

**Ioan Muraru Ph.D.**  
**People's Advocate**



## **CHAPTER I.**

# **THE ACHIEVMENT OF THE PEOPLE'S ADVOCATE INSTITUTION CONSTITUTIONAL AND LEGAL OBJECTIVES**

### **1.1 The legal and functional organization of the Institution of the People's Advocate**

The People's Advocate is the constitutional designation that determines its organization, and its functions in Romania, according to the classic west european model of ombudsman, with the role of protecting the rights and freedoms of individuals in their reports with public administration. The regulations concerning the organization and function of the Institution of the People's Advocate are found in:

- The Romanian Constitution, art. 58-60, art. 65 paragraph. 2) art.146 letter a) and letter d);
- Law no. 35/1997 governing the organization and function of the Institution of the People's Advocate, republished in the Official Gazette of Romania Part I, no. 844, of September 15, 2004;
- The regulation of the organization and function of the Institution of the People's Advocate republished in the Official Gazette of Romania, Part I no. 619 of July 8, 2004;
- The Law no. 554/2004 of administrative litigations, published in the Official Gazette of Romania, Part I, no. 1154 of December 7, 2004, art. 1 paragraph. (3), art. 7 paragraph (5), art. 11 paragraph (3), art. 13 paragraph (2), art. 28 paragraph (2);
- The Law no. 206/1998 for the approval of the People's Advocate as an affiliate of the International Institute of Ombudsman, and of the European Ombudsman Institute published in the Official Gazette of Romania, Part I no. 445 of November 23, 1998.

Pursuant to art. 58 of the Constitution, which determines the appointment and role of the People's Advocate, correlating with art. 65 paragraph (2) letter i) it results that the appointment of the People's Advocate is made in the joint sittings of the Chamber of

Deputies and Senate, having in view that, through the role it fulfills, it is an important guarantee of human rights. The appointment is made for a term of five years.

On the occasion of constitutional revisions a new provision was added with regard to the People's Advocate having deputies with expertise in their areas of activity. This provision grants an increased efficiency of the institution and the realization of a wholesome collaboration with regulations of other countries where ombudsmen function similarly.

Art. 59 of the Constitution (the exercise of their attributes) establishes that the People's Advocate shall exercise his powers *ex officio* or at the request of persons aggrieved in their rights and freedoms, within the limits established by law; public authorities are obliged to insure the necessary support to the People's Advocate in the performance of its duties.

For detailing the constitutional text, the Law no. 35/1997, regarding the organization and function of the Institution of the People's Advocate has been republished. In the foundation of the constitutional and legal provisions, the People's Advocate can be self-referential in problems concerning its own competence. Natural persons can address these kinds of problems by request, both by telephone or direct audience. In the context of resolving problems, the People's Advocate can conduct inquiries, and make recommendations.

Thus the People's Advocate has the right to carry out his/her own inquiries, to request the public administration authorities any information or documents necessary to the inquiry, to conduct hearings and to take depositions from the officials of public administration authorities, as well as from any civil servant who can provide information necessary to the solutions requested. Additionally, in the performance of its duties, the People's Advocate issues recommendations that cannot be submitted either by parliamentary control or judiciary control. Through the recommendations issued, the People's Advocate notifies the public administration authorities about illegalities relative to the administrative acts or facts.

Furthermore, in the event that the People's Advocate determines that the resolution of a request involves the competence of judicial authorities, it can, according to the case, address the Ministry of Justice, the Public Ministry or the president of a court of law, who

are obligated to communicate the measures taken. This represents a legal method through which the aforementioned public authorities can support the People's Advocate in the resolution of complaints involving the infringement of rights through an equitable and timely trial, as provided by art. 6 of the European Convention for defending the human rights and fundamental freedoms, validated by the provisions of art. 21 paragraph (3) of the Constitution.

Art. 60 of the Constitution (the report before the Parliament) establishes that the People's Advocate shall report before to both Chambers of Parliament annually or at the request thereof. The reports can contain recommendations regarding legislation or measures of another nature, for the defence of the rights and freedoms of citizens.

According to the provisions of art. 146 letter a) of the Constitution, the People's Advocate can notify the Constitutional Court with objections to unconstitutionality, while according to art. 146 letter d) of the Fundamental Law, the People's Advocate can raise before the Constitutional Court exceptions of unconstitutionality. The implication of the People's Advocate with respect to the examination of constitutionality is further solidified by formulating per request of the Constitutional Court, of opinions on exceptions to unconstitutionality of the laws and ordinances that refer to the rights and freedoms of citizens. These attributes in the area of constitutional justice consolidate the position of the People's Advocate and represent an efficient means by which it can function in the protections of human rights.

## **1.2 The territorial offices of the Institution of the People's Advocate**

In the course of 2005, three territorial offices of the institution were established in Cluj-Napoca, Târgu Mureș, Suceava, along with those already in existence in Brașov, Constanța, Bacău, and Alba Iulia. Measures were taken for the opening of other territorial offices of the People's Advocate, provided by the annex to Law no. 35/1997 regarding the organization and functioning of the Institution of the People's Advocate, republished, which follows the development of activities on a territorial area of jurisdictional competence of the courts of appeal.

The cumulative experience through the institution's activities from the establishment of the first territorial office, clarified the usefulness of these offices. These territorial offices in zones in which they were already functioning, guaranteed easy access to

natural persons at the People's Advocate; problems otherwise confronted by citizens in geographical zones in which the respective offices were created, were further closely followed along with the mediation of the constitutional and legal role of the institution.

### **1.3 The organizational structure and personnel chart of the Institution of the People's Advocate**

The institution is headed by the People's Advocate, who is assisted by deputies specialized in four fields of activity.

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

b) the rights of children, family, youth, retired persons, and people with disabilities;

c) army, justice, police and penitentiaries;

d) property, labor, social security, taxes and duties.

The Secretary General coordinates the economic and administrative activities of the Institution. The Consultative Council of the People's Advocate is composed of the People's Advocate, its deputies and counsellors, the Secretary General; as well as other staff designated, respectively, by the People's Advocate order.

Within the Institution's framework of the People's Advocate functioned until **November 1, 2005**, the Department for the protection of people had a view towards the processing of personal data. Subsequent to this date, the Supervisory National Authority effectively undertook the activity of personal data protection and personnel, from the Institution of the People's Advocate, according to Law no. 102/2005.

Personnel under the rubric of specializations of the Institution, composed of experts and counsellors, is assimilated in personnel according to the specializations structures of the Parliament. The Institution of the People's Advocate has a total of 90 positions in its personnel chart.

### **1.4 Promotion and training of personnel**

In 2005, according to legal provisions and, with respect to the restrictions they imposed, competitions for filling job vacancies were organized, after which experts and counsellors were selected based on preparedness of respective specialties.

Pursuant to Resolution no. 2 of June 7, 2005, of the Permanent Bureaus of the Chamber of Deputies and the Senate, as proposed by the People's Advocate, with the advice of the Legal Committees of the two Parliament Chambers, a deputy of the People's Advocate was named.

Within the scope of perfecting the personnel's professional skills of specialized personnel of the Institution of the People's Advocate, and the achievement of an exchange of experience and opinions with representatives of public administration authorities, seminars and debates of special topics were organized at the head office of the Institution. We mention in this regard, "Respecting of the Rights of Petitioners by the Public Administration Authorities", and "Supporting Family Leave for the Caring and Raising of Children".

Concomittantly, meetings with experts who develop activities in the context of newly established territorial offices, in Suceava, Târgu Mureș, and Cluj-Napoca, were also held at the institution headquarter.

Experts and counsellors within the Institution of the People's Advocate were involved in the development of the MATRA program, "The Strengthening of the Organizational and Institutional Capacity of the People's Advocate" divided in partnership with the National Ombudsman of Holland. This resulted in the efficient exchange of professional experience, with Romanian and Dutch experts closely following the identification of a few possible solutions for utilizing some informal procedures with regard to resolving petitions, including contact with public administration authorities.

Also during the same period in 2005, counsellors and experts working in the Institution of the People's Advocate participated in reunions, public debates, forums referent to the problems of the protection of the rights and freedoms of individuals. Among these we remind the following: "The role of the Romanian Committee for the problems of migration in the aid of Romanian citizens, whether repatriated or returning, organized by the Romanian Forum for Refugees and Migrants"; The conference organized by the Asociation supporting children with physical disabilities in Romania; "The Liberty of Religions"; The practice of anti-Semitism in political arenas, "The Company of information and promotion of non-discrimination on the basis of ethnicity, equal opportunities between men and women", "The different political

types in Romania”, “Prevention and combatting family violence”, and “The cooperation of women parliamentarians of south-eastern Europe”.

The scientific seminar “Judicial perspectives regarding the institution of Parliament”, organized by the Institution of the People’s Advocate in collaboration with the Faculty of Law of the University of Bucharest, had a special significance.

### **1.5 Work conditions**

In the course of 2005, the Institution of the People’s Advocate carried out its activity at the head office in Str. Eugeniu Carada no. 3, as well as in the territorial offices across the country. Working conditions were improved to meet higher standards by way of complimenting work space with technical equipment necessary to efficient work methods. In addition, measures were taken for introducing an informational program for the registration of documents at the institutional level, the nature of which should contribute to the rapid realization and, accuracy of statistics regarding the activities concerning the resolution of petitions, arranging audiences, and the fielding of telephone calls by the dispatcher. After a preliminary stage necessary for the instruction of the institution’s entire personnel in terms of the utilization of the information program previously mentioned, beginning in 2006, this is being effectively applied.

In the interest of offering internal seminars for professional training, and for organizing conferences or symposiums, an adequate space, suitably furnished was designated. In this location there is also a documentation area of the Institution of the People’s Advocate where employees can consult books and specialized journals.



## **CHAPTER 2.**

### **ACTIVITIES OF THE PEOPLE'S ADVOCATE ACCORDING TO AREAS OF SPECIALIZATION**

#### **2.1 The general volume of activity**

##### **a) Settlements of complaints**

In 2005 the People's Advocate and its territorial offices registered **5465 complaints** submitted by individuals from Romania and abroad (Annex no. 1, Annex no. 3, Annex no. 4).

##### **b) Activity carried out during hearings**

In 2005, the People's Advocate and its territorial offices held **8529 hearings** during which violations of the individuals' rights were invoked (Annex no. 1).

##### **c) Answering telephone requests**

Individuals, mainly those residing far from the institution's head office and individuals not able to travel contacted the institution by telephone. A total of **2850 telephone calls** were answered at the reception desk, while **625 telephone calls** were received at the territorial offices. Overall, **3475 telephone calls** were received (Annex no.1).

##### **d) Subject of the complaints submitted to the People's Advocate**

The complaints submitted to the People's Advocate referred to violations of citizens' rights and freedoms, as well as to abuses by public authorities. The complaints were examined according to the People's Advocate's areas of specialization (Annex no 2).

##### **e) Comparative analysis on the percentage of complaints per area of specialization**

The overall number of complaints relating to the violation of individuals' rights or freedoms was **5465**. One percent of **29.55%** of the total number of petitions refers to property, work, social

security, taxes and income taxes. In the field of the rights of children, family, youth, retired and disabled persons, **24.85% complaints** were received. In the field of human rights, equal opportunity between men and women, religious cults and national minorities, **23.16% complaints** were received, while in the field of army, justice, police and penitentiaries, **22.45% complaints** were received.

**f) Activity relating to the individuals' protection with regard to personal data processing**

In 2005, up to November 2005, the People's Advocate, fulfilling its role as the supervisory authority of personal data processing, had **1317** individuals and legal persons registered with the People's Advocate as personal data controllers (Annex no. 1). In the same field, **1222 notifications** regarding personal data processing were drafted and **577 recommendations** were made to personal data controllers (Annex no. 1).

**g) The People's Advocate activity with regard to the constitutional review of laws and ordinances**

In 2005, **1005 opinions** with regard to exceptions of unconstitutionality of laws and ordinances referring to individuals' rights and freedoms were communicated to the Constitutional Court. In addition, the institution notified the Constitutional Court of the **unconstitutionality objection** referring to the Law on the free movement of Romanian citizens in foreign countries, objection partially sustained by the Constitutional Court.

Furthermore, the People's Advocate directly raised before the Constitutional Court **2 exceptions of unconstitutionality**: the exception of unconstitutionality in view of the theme of art. 29 paragraph (4) of Law no. 47/1992 regarding the organization and function of the Constitutional Court, republished, rejected by the Constitutional Court through Decision no. 353/2005 and exception of unconstitutionality of some dispositions from Law no. 163/2005 referring to the approval of the Government Emergency Ordinance no. 138/2004 for the modification and completion of Law no. 571/2003 regarding the fiscal Code, partially sustained by the Constitutional Court through Decision no. 568/2005 (Annex no.1).

**h) Activity carried out for providing information of citizens with regard to the protection of the individuals' rights and freedoms and for media awareness in respect of the People's Advocate role**

The People's Advocate is well aware of the fact that the key aspect of its activity is the information of individuals with regard to their rights and freedoms, including the right to submit complaints to the People's Advocate.

In 2005, the activity of informing the citizens and the media continued, mainly through the increase of contacts with the mass media interested in legal and human rights issues. Some newspapers and reviews certify it as: "22", "Realitatea Românească", "România Liberă", "Timpul", "Ziua", "Gândul", "Averea", "Balcanii și Europa", "Flacăra lui Adrian Păunescu", "Tricolorul", "Adevărul", "Curierul de Vâlcea".which related in a serious and competent way and also in a critic spirit every time when it was considered properly.

Trimesterly press releases were diffused, and constantly carried by the agencies ROMPRESS and AM PRES.

For a better understanding of the People's Advocate role and powers, a presentation leaflet and an information bulletin on the institution's activity and, with regard to the cases resolved through the intervention of the People's Advocate were published at the Institution's expenses. These informational materials were distributed free of charge to individuals and local and central public administration authorities (ministries, prefectures, county councils and local administrations).

One of the efficient means of stimulating media awareness of the Institution of the People's Advocate, is, in our opinion, radio and television: "Open Studio" (Radio România Actualități), a weekly public radio broadcasting, airing every Wednesday, in which experts and counsellors of the Institution give answers to listeners who call in with questions about its profile. The television station B1TV had, many times as its studio guest, Professor Ioan Muraru, The People's Advocate, who participated in dialogue with the two TV hosts, as well as studio audiences, presenting the possibility of the intervention of the institution of the People's Advocate in conflict resolution between individuals and public administration authorities.

Similarly, in the interest of coming to the aid of children who are confronted with special problems, on the occasion of the International Day of the Child, social services were accorded on behalf of the Institution of the People's Advocate at shelters day and night, for children of the street, "Casa Noastră" and the center for neuropsychomotor recuperation and social assistance, "Marin Pazon".

Furthermore, it is worth mentioning the collaboration of the Institution of the People's Advocate with the College of Political Science and Communication Sciences, at the University of Oradea, along with the Faculty of Law at University of Bucharest, for the realization of practical programs of the students at the Institution of the People's Advocate (for the period covering February 28-March 11 2005, and November , 21-28, 2005). The Institution's role and activities were presented, along with groups of high school students, participants in the program "The College of Democracy" supported by "Liga Pro Europa".

## **2.2 The People's Advocate procedures and specific means of action**

The People's Advocate's main goal is to ensure the efficiency of its actions aimed at resolving complaints. The People's Advocate procedures and specific means of actions are, therefore, essential.

In 2005, **52 inquiries** were carried out (Annex no. 7), which represents progress in this area of 36% compared to 2004. Through the intermediation of these investigations, information and documents pertinent to the successful resolution of complaints were requested from public administration authorities, audiences were given, and depositions were taken from supervisory public administration authorities or clerks, who infringed upon the rights or liberties of individuals. Thus we carried out:

- **23 inquiries** regarding the means by which administrative authorities observed the protection of children and youth, and the right to a decent living standard at: Work Inspectors Bucharest; School with instruction in the Romanian language Ghimeș, Bacău County; Center for Special Volunteer Scholars, Ilfov County; The Placement Centre, no. 6, Ilfov county; The Office for the Migration of Labor; the Municipal Pension House of Bucharest; City administration of sectors 1,3 and 4 of

the municipality of Bucharest; Pension Houses of sectors 2,3 and 6 of the municipality of Bucharest; City Administration of Râfov Commune, Prahova County; the Maximum Security Penitentiary, Bucharest-Rahova; the Directorate of Social Services and Child Protection with the City Administration of sector 2 of the municipality of Bucharest; The County Pension House of Prahova; The Military Unit 02405 Pitești, The Placement Center “St. Nicholas”, Trușești Commune, Botoșani County.

- **10 Inquiries** regarding the respect for private property rights at the municipal administration of Bucharest; the local administration of Tomsani, Prahova County, The Chancellory of the Department of the Prime Minister on the application of Law no.9/1998, the local administration of Țigănești Commune, Teleorman County; the local administration of Corbu Commune, Constanța County; the municipal administration of Constanta; the General Management of Urban Affairs and Territorial Planning under the Minister of Transportation, Construction and Tourism.
- **7 inquiries** regarding the observance of right to information and the right to petition at: The National Pension House and Other Social Security Rights; The Chancellory of the Department of the Prime Minister for enforcement of the Law no. 9/1998; the Museum of National History of Romania, municipal administration of Arad; the local administration of Soars Commune, Brașov County.
- **5 inquiries** referring to the enforcement of rights of labor and social security of employment, at: The Management of the protection of Romanian citizen rights who work in other countries within the framework of the Ministry of Labor Social Solidarity and Family; The Office of Medical Management under the Ministry of National Defense; The Military Hospital Emergency Clinic, “Carol Davila”; The House of Military Health Insurance, Public Ordinance, National Security and Judicial Authority.
- **4 inquiries** regarding the the right of individuals aggrieved by public authorities, at the Ministry of Education and Research; the Prosecutors Office in sector 2 of Bucharest; the National

Agency of Survey and Public Real Estate, the local administration of Snagov, Ilfov County.

- **1 inquiry** regarding the violation of right to life, physical and psychological integrity at the Placement Center, “St. Spiridon”, Botoșani county.
- **2 inquiries** with reference to respecting of the right to health protection and the right to a healthy environment, at the local administration of sector 4, of the municipality of Bucharest.

In addition, 2005 also produced the drafting of **11 recommendations** (Annex no. 8) which represents a growth of activity in the area of one percent of 38% ,compared to last year. Of the recommendations made, the People’s Advocate notified the public administration authorities over the illegalities of those documents or actions by the administration. They are as follows:

- **1 recommendation** addressed to the Municipality of Constanța, referring to the enforcement of the provisions of the Law no. 10/2001 regarding the violation of right to private property with reference to the legal policy of some real estate property taken over in abusive manner during the period of March 6 1945 – December 22 1989, republished;
- **1 recommendation** addressed to the Municipality of Sector 2 of Bucharest, referring to the violation of rights to private property and the right of the person aggrieved by a public authority, referring to the enforcement of the provisions of the Government Ordinance no. 85/2001 regarding the organization and function of the associations of owners, approved with modifications and completions by the Law no. 234/2004 and the Methodological Norms regarding the organization and function of the association of owners, approved by Government Decision no. 400/2003, with modifications and subsequent completions;
- **1 recommendation** addressed to the Municipality of Arad, with regard to the violation of right to information, referring to the enforcement of the application of art.39 of the Methodological Norms in the application of Law no. 50/1991 regarding the authorization of constructions execution, republished;

- **1 recommendation** addressed to the Mayor of commune of Jitia, Vrancea County regarding the violation of right to personal protection of persons with disabilities, in the enforcement of provisions of the Government Emergency Ordinance no. 102/1999 referring the to special protection and work appointment of persons with disabilities, approved with modifications and completions per Law no. 519/2002;
- **1 recommendation** addressed to the Sector 2 Municipality of Bucharest with regard to the violation of the right to health protection, the right to information and the right to a healthy work environment, with references to the right to private property, in the enforcement of provisions of the Law no. 50/1991, regarding the authorization of constructions execution, republished;
- **1 recommendation** addressed to the Mayor of Comănesti, Bacău County, regarding the violation of the right to a decent living standard in the enforcement of provisions of the Law no. 416/2001 regarding the guaranteed minimum income, with modifications and subsequent completions;
- **1 recommendation** addressed to the Pension House of Gorj County, in reference to the violation of the right to a decent living standard, in the enforcement of the Law no. 19/2000 with respect to the public system of pensions and other social security rights, modified and completed;
- **2 recommendations** addressed to the Ministry of Education and Research in reference to the application of art. 5 from the Labor Code and of art. 61 paragraph (6) of Law no.128/1997 regarding the status of teaching personnel, modified and completed, in the case of obstructing the legal procedures of naming university professors;
- **1 recommendation** addressed to the General Mayor of the municipality of Bucharest regarding the violation of right to private property, in the enforcement of provisions of Law no. 10/2001, republished and Law no. 247/2005 regarding the reform in the area of property and justice, as well as some adjacent measures;
- **1 recommendation** addressed to the Ministry of Culture and Cults regarding the violation of right to employment,

protection of workers's rights and non-observance of the principle of equal rights concerning procedures of organization and holding competitions provided by Annex no. 12 per the Government Decision no. 281/1993.

## **2.3 The area of human rights, equality of opportunities between men and women, religious cults and national minorities**

### ***A. Equality of rights (art. 16 of the Constitution)***

In 2005, **41 petitions** were registered concerning the possibility of violation of equal rights of citizens. In contrast to the previous year, we registered a growth in the number of petitions, from 33 to 41, which we hope does not indicate discriminatory attitudes on the part of public authorities or institutions (resulting in forms of manifestations, such as abuse, subjectivism, nepotism, hostility, etc), in proportion to the time interval since the election year. While the number of these complaints is reduced, it is owing to the hope for the change in the attitude of public authorities and institutions towards citizens, as the limit of the term for our entrance into the European Union draws to an end. Similarly, it is possible that our appreciation with regard to the number of petitions in which the People's Advocate was notified on cases of discrimination, was influenced by the possible growth of citizens' addresses before the National Council Against Discrimination, as an organ of specialization of the central public administration, subordinated to the Government, having role in implementing the principles of equality among citizens, establishing and sanctioning the infringements provided by Government Ordinance no. 137/2000, regarding the prevention and sanctioning of all forms of discrimination, with modifications and subsequent completions.

### **CASE STUDY – Cases resolved through the intervention of the Institution of the Peoples' Advocate**

**File no 14016/2005.** Lina (pseudonym) filed a protest with the Peoples' Advocate against a deputy with regard to discrimination, by the Ministry of National Defense, in candidates applying for admission to military instruction through the following criteria for recruitment: "one must not be pregnant effective on the date of the medical visit and one must be willing to be dropped from



matriculation, and responsible for covering tuition, in the event one becomes pregnant and gives birth, subsequent to this date, until the end of studies.”

The signal aspects were analyzed in the context of presumed violation of equal rights, stipulated in art.16, of the Romanian Constitution. The Institution of the People’s Advocate notified the Ministry of National Defence.

As a result of the measures undertaken by the People’s Advocate, the Ministry of National Defence, facilitating the opening of the promotion of equal rights between men and women, favorably resolved the request, in that the regulation at the basis of the protest was modified.

**File no. 108/2005.** – Tănase (pseudonym) notified the Institution of the People’s Advocate with reference to the delay of the administration of the municipality of Săcele, Brasov County in the communication of the date on which the selling and buying contract would terminate for his building construction, according to Law no. 152/1998 regarding the establishment of the National Agency for Housing. The land is situated in the neighborhood Bunloc - Sacele, Brasov County.

The complainant appreciated the refusal as unjustified because, according to art. 4 paragraph (1) letter c) of Law no. 152/1998, the credit beneficiaries for constructing this type of home have access to the land through buying and selling, while per Decision of Local Council (D.L.C.) no. 50/2003, D.L.C. no. 126/2003, and D.L.C. no 80/2004, the administration of the municipality of Sacele, regulated both the sale as well as the price of the land in question. Approximately 200 requests in terms of the selling of similar lands had already been started.

The request was analyzed from the perspective of equality of rights (art. 16 of the Romanian Constitution).

Pursuant to the intervention by the Institution of the People’s Advocate, the public authorities so notified communicated that on June 13, 2005, before the public notary, the contract for buying and selling within the municipality of Sacele, represented by the mayor and Tanase was concluded with regard to the aforementioned property.

### ***B. Right to life, to physical and mental integrity (art. 22 of the Constitution).***

In 2005 we registered **15 complaints** (15 times more than the preceding year) in which citizens had informed us of violations of this right. The case of a young man, who found himself in the

Placement Centre, struck us as especially interesting, a case signaled by the press and transformed into a complaint filed by the Institution of the People's Advocate. The case is presented below.

**File no. 16023/2005.** The procedure was initiated **ex officio** by the Institution of the People's Advocate, itself, under no. 16023 of 3 October 2005, having in view the possible violation of right to life and physical and psychological integration and, of the right regarding the protection of children and youth, stipulated by art. 22, and art. 49 of the Constitution. On the October 13, 2005, **two inquiries** were launched into activities at the Placement Centre "St. Nicholas", Trusesti Commune, Botoșani County, and the Placement Centre "St Spiridon" of the municipality of Botoșani.

In an article entitled "Violence in the Placement Centre Dorohoi", published in the weekly Botoșani County Journal, of August 27, 2005, it reports the fact that on August 26, 2005, around 7:00 PM, an 18-year old boy, from a placement centre in Dorohoi arrived at a county hospital with grave injuries, following a beating by an older colleague. Thus, Alex (a pseudonym) arrived at an emergency unit, where he received first response to his condition, after which he was sent to the ophthalmology unit, where he was hospitalized.

At the same time, we specify the fact that "the boy, following a brutal beating, suffered numerous contusions and cranio-facial trauma."

Likewise, it is noted that in accordance with guidelines for medical reports, that "the boy is very traumatized, having been affected by the events, [which] made the communication with him very difficult."

We discussed the highlights of the press story with the author of the article, which was the basis of the ex-officio procedure at the Institution of the People's Advocate, and with the General Director of the General Directorate of the Social Services for the Protection of Children, Botoșani.

According to the information received, the incident reported in the "Botoșani County Journal" could have been produced, in fact, by the Placement Centre "St. Nicholas" of the Trușești Commune, Botoșani County. At the same time, we discovered that Alex (pseudonym) could have been moved from the Placement Centre "St. Spiridon" of the municipality Botoșani.

Consequently, on October 13, 2005, the experts of the Institution of the People's Advocate, joined by the Deputy Director of the

General Directorate of Social Services for the Protection of Children, Botosani, went to:

**1. The Placement Centre of the family type “St. Nicholas”, of Trusesti Commune, Botoșani County.** In this context, we verified that the houses “Decebal” and “Traian”, forming part of the centre mentioned above, house children between the ages of 16 and 20 years of age. The Director of the centre presented the registry in which the attendance of the children in the centre is recorded daily, along with those given permission to leave (excused absences of the children in the centre), those containing school records, and those referring to school attendance and hospital stays (for those boarded at the dormitories of educational institutions, in which they take their studies). The kitchens were also visited, as well as the rooms in which the children reside. A discussion was held regarding the incident that took place at this centre. The fact was verified that everything started from the presumption that the victim committed a theft. According to the statements made by the Centre’s representative, during the school vacation period during which the majority of students are at camp, Alex (pseudonym), who was at the centre, could have broken into the dresser of a colleague, stealing his jacket. When the owner of the jacket returned from camp, and verified the item was missing and the dresser damaged, he conjectured to find out who could have done this deed. Directly after, together with two colleagues, they all decided to rectify the wrong and to punish the alleged thief by administering a beating. When the representative of the Institution of the People’s Advocate questioned the person responsible for taking care of the children, regarding the absence during the time of the incident, the response was that because of the age (19-20) some institutionalized children are very hard to supervise, and that the incident took place during the time the instructor and some other children were doing cleaning, in the yard of the house where they reside.

**2. The Placement Centre for children with disabilities “St. Spiridon” of the municipality of Botoșani.** On this occasion, the director of this center informed us that Alex (pseudonym) was in this center for approximately two weeks. Furthermore, he made available to the representatives of the Institution of the People’s Advocate the personal file of the young man. Having studied the documents in the file, we determined that a certificate identified Alex (pseudonym) as a having a disability verified in 1992, and that the young man was a resident of the Placement Centre listed above since October 7, 2005. In the present time, there is a certificate in the young man’s name listing him as a grade II disability (emphasized) with the diagnosis of medium to severe mental impairment.

Moreover, we interviewed an 18-year old man, however, we were not able to discover much because of his state of health, which prevented him from communicating well with others like himself. The young man does not show any evidence of violence to him, and seems to feel good in this center.

**3. The Day Centre for children with disabilities “Micul Prinț” and the Maternal Centre “Micul Prinț”.** After leaving the Placement Centre “St. Nicholas”, Trusesti Commune, Botoșani County, we visited the Day Center for Children with Disabilities “**Micul Prinț**” and the Maternal Center “**Micul Prinț**”. We were there informed that the Maternal Centre “**Micul Prinț**” is the only maternal centre from Botoșani County and that it houses six mothers together with their children, having a capacity of 12.

Furthermore, residence rooms for children with disabilities, along with other rooms with kitchens for mothers and their children were visited. The Deputy Director General stipulated that they relied on funds from PHARE for the construction of the aforementioned centers. We talked with the centre’s director, who furnished information regarding the conditions that mothers with children must meet in order to reside in the maternal center, as well as the conditions that families must meet in order to benefit from the services of the Day Center for Children with Disabilities.

**4. The Community Services Complex for child protection under the General Management of Social Services and Child Protection, Botoșani.** On this occasion, discussions were held with the youths who beat up Alex (pseudonym). We mention the fact that these young men resided in the house of the high school where they were taught, and the payment of rent for residents is supported by the General Directorate of Social Services and Child Protection, Botosani. The three youths explained that the situation was as it was also relayed by the Centre’s Director of Placement of the family type, “St Nicholas”, of the Trușești Commune, Botoșani County. In addition, the youths specified the fact that Alex (pseudonym), would not have been involved for the first time in this kind of thing. A while ago, Alex (pseudonym) would have taken a beating from other youths outside of the placement center, who would have also taken his clothes off, and sent him back naked to the centre, and they would not have taken any measures in this case. This incident would be attributed to the fact that Alex (pseudonym) would have stolen something from those youths. At the same time, the youths complained of discrimination that takes place between them and the

other children (with parents who take care of them), by the resident administrator of the home where they reside.

The Deputy Director of the General Directorate of Social Services and Child Protection, Botosani, sustained that they were not aware of the problems charged by the youths and they would never have made them aware of these types of problems.

At the request of the representatives of the Institution of the People's Advocate, the Deputy Director of the General Directorate of Social Services and Child Protection, Botoșani, enlisted himself to verify the complaints of the youths and, to inform the Institution of the People's Advocate in ten days of the results of the investigation, along with the appropriate measures taken. Also we were told that the three youths were brought before the commission for Child Protection, in whose context they were made aware of the gravity of the events that took place. Furthermore, the Deputy Director specified the fact that the youths were monitored and that they were registered in a counseling program for the prevention of the kind of events that evolved at the placement centre of the family type, "St. Nicholas", Trușești Commune, Botoșani County.

**5. Headquarters of the General Directorate of Social Services and Child Protection, Botosani.** Having left the headquarters of the General Directorate of Social Services and Child Protection, Botoșani, discussions were held with the Director General, the Deputy Director General, and the Administrative Director of the public institutions mentioned, regarding the problems they faced. Furthermore, the general ledger regarding the institution's budget was made available to the representatives of the Institution of the People's Advocate, that itemized categories, such as, allowances for things of a social nature, food, medicine and sanitary materials, equipment, and housing needs, material items suitable for a child or adult (with or without disabilities) and protected, in whole, by residential or family type [centre].

It was established that a contact person would answer to the proper handling of reports of the General Directorate of Social Services and Child Protection Botoșani with the Institution of the People's Advocate, respectively, the Deputy Director General of the General Directorate of Social Services and Child Protection, Botoșani.

Considering that the Institution of the People's Advocate succeeded in clarifying the problems raised and, to support their resolution, an internally- generated file was closed after being received by the General Directorate of Social Services and Child

Protection, Botoșani, with regard to the result of the investigation and, measures taken in the grievance made by the three youths of the Placement Centre, family type, in the Trușești Commune, Botoșani County.

***C. The right of free movement (art. 25 of the Constitution)***

The analysis of the complaints centering on possible violations of the right of free movement, determined that **16 petitions** were filed with the Institution of the People's Advocate, representing the same level of those registered in 2004.

The analysis of complaints having at their center possible violations of provisions in art. 25 of the Romanian Constitution, resulted in several complaints to the People's Advocate by people returning from different countries, with which our country has signed documents of readmission or, of persons who received interdictions for a specified period to travel outside the country, because of the fact that they remained outside the borders longer than their visa permitted. The visas were received from the consular authorities of the states in which they traveled.

The Institution of the People's Advocate was asked to intervene in granting refugee status in Romania. This category of complainants was advised to address the National Office for Refugees under the Ministry of Administration and Internal Affairs or, accordingly, the territorial organs of the Ministry of Administration and Internal Affairs, in conformity with the provisions of the Government Ordinance no. 102/2000 regarding the status of refugees in Romania, with modifications and subsequent completions.

Also, the Institution of the People's Advocate was informed with reference to hardships experienced by citizens requesting the release of their passport by the Management of Passports in the Ministry of Administration and the Internal Affairs.

**CASE FILE – Case resolved through the intervention of the Institution of the People's Advocate**

**File no. 16692/2005** Nicoleta (pseudonym) submitted a complaint to the Institution of the People's Advocate with reference to possible violation of the right to free movement and possible aggrievance by public authorities. The complainant sustained that the disposition of the Community Public Service for the issuance and Authentication of Simple Passports, Vaslui, suspended her

right to use her passport for a period of one year, because she overstayed her visit in the territory of the Italian State.

The request also reveals that the petitioner has grave health problems, the reason for which in the month of March 2005, she went to Italy, where she underwent surgical treatment, followed by a period of convalescence and recuperation.

Nicoleta contended the terms of suspending her right to use her passport to a competent organ, namely the General Management of Passports, however, for the reason that this authority did not communicate in terms of the 30 days prescription the resolving of the contestation, that forced Nicoleta to seek the support of the People's Advocate.

The aspects of the complaint were brought to the attention of the General Management of Passports and, following the measures effected by the Institution of the People's Advocate, we were advised of the process for resolving the complainant's contestation. A copy of the answer was sent by them on October 20, 2005.

#### ***D. The right to intimate life, familial and private (art. 26 of the Constitution)***

The violation of this right constituted the subject of **34 petitioners' requests** that were addressed to the Institution of the People's Advocate, which represents a significant growth in the landscape of requests addressed to the institution, in rapport with the previous year (with 9 requests in 2004 up to 34 requests in 2005). Most of the petitions were complaints with regard to the solutions given in courts of law in litigations among natural persons.

#### ***E. The right to information (art 31 of the Constitution)***

In 2005 the petitions having as subject, violations of the right to information occupied the second place in order of gravity, their number adding up to **704 requests**, which represents one percent, also nearly 13% of the total petitions received by the People's Advocate. The increase compared to the preceding year is from 403 petitions in 2004 to 704 petitions in 2005. This aspect engages our attention beyond the growth of interest of citizens's rights to be informed by competent organs and authorities and, above all comforts or restraints, what can be claimed of some authorities, as the growth of insurance, once stabilized in function with how they were invested.

The main aspects reported in these petitions refers to: the requests of information regarding the delivery of necessary proofs for the completion of pension files, specifies information that is tied to the provisions of Law no. 544/2001 regarding the free access to information of public interest; documents necessary to obtain the rights as provided by Law no. 18/1991 on the land fund and, aspects tied to the Law no. 9/1998 regarding the granting of compensation to Romanian citizens for profits passed to the property of the Bulgarian State as a result of the treaty concluded between Romania and Bulgaria, signed at Craiova, on September 7, 1940, republished, etc.

In examining these petitions, the fact is proven that some authorities and public institutions do not respect the constitutional obligation to give solicitors the requested information, according to Law no. 544/2001 regarding free access to information of public interest.

The Institution of the People's Advocate took prompt action, notifying the administrations, the prefects, the National Archives, and authorities and public institutions which did not observe the obligation to answer solicitors of petitions, with regard to public business, and problems of personal interest.

### **CASE STUDY - cases resolved through the intervention of the Institution of the People's Advocate**

**File no. 14882/2005** Cati (pseudonym) submitted a complaint to the Institution of the People's Advocate with reference to the mayor of the city of Ludus and his refusal to issue legal documents necessary for recalculating her pension.

The points were analyzed in the context of a possible violation of the right to petition and, the right to freedom of information, per provisions of articles 51 and 31, respectively, of the Romanian Constitution. The Institution of the People's Advocate notified the mayor of the city of Luduş.

As a result of the intervention by the Institution of the People's Advocate, the request was resolved in terms of the complainant being granted the issuance of the documents per Decision no. 8941 on September 20, 2005.

**File no 83/2005.** Mircea (pseudonym) submitted a complaint to the Institution of the People's Advocate, with reference to the delay by the prefect of Covasna County, to formulate an answer to a request through which he asked for the delivery of copies of certificates of an address drawn up by the local commission, Sf.



Gheorghe, in application of Law no. 18/1991, a request which was sent to the County Commissioner of Covasna in application of the respective normative act.

As a result of the measures undertaken by the Institution of the People's Advocate, the prefect of the County of Covasna confirmed the notifications and they informed us that they expedited to the complainant, at his home, a copy of the document in which he was interested. The complainant, through a subsequent communication, informed us that he received a copy of the requested address.

**File no. 14016/2005.** Irina, (pseudonym) submitted a complaint to the Institution of the People's Advocate, with reference to the refusal by the National Archives to issue a copy of necessary documents, regarding the contents of her file, according to provisions of Law no. 9/1998 relative to the granting of compensation to Romanian citizens, for profits passed to the property of the Bulgarian State, following the enforcement of the treaty between Romania and Bulgaria, signed at Craiova, September 7, 1940, republished.

The request was analyzed in the context of alleged violations of the right to information (art. 31 of the Romanian Constitution) and the right to petition (art. 51 of the Romanian Constitution).

The Institution of the People's Advocate solicited information from the National Archives.

As a result of the measures undertaken by the Institution of the People's Advocate, the National Archives resolved the request in terms of availing the complainant a copy of all the requested documents.

#### ***F. The right to protection of health (art. 34 of the Constitution)***

In 2005 the Institution of the People's Advocate registered **42 petitions**, which had as their subject, health care. Many of the petitions were not considered inside of the institution jurisdiction, while others did not attempt affirmation with regard to alleged violations; the majority referred to real problems of the citizens in their reports with institutions that were concerned with public health. The lack of medication in pharmacies, and the impossibility of some people to succeed in obtaining necessary medication before compensatory funds were exhausted, were serious problems that affected the lives of some of the complainants. There were petitions which regarded the relationships between citizens and institutions or, administrative

organs of the sectors of public health. We provide below some possible means of solution to some of the petitions in the area of health.

### **CASE STUDY – Cases resolved through the intervention of the Institution of the Peoples' Advocate**

**File no. 13067/2005** Ana (pseudonym) submitted a complaint to the Institution of the People's Advocate with respect to the fact that although she was a beneficiary of Law no. 189/2000 regarding the approval of Government Ordinance no. 105/1999, for modification and completion of the Decree-Law no. 118/1990, in compliance on the granting of rights to persons persecuted for political reasons by communist dictatorship, beginning with March 6, 1945, as well as those deported in foreign countries, or constituted prisoners, republished, with subsequent modifications, was entitled to a voucher for a free treatment in a health resort, The Local House of sector 3, of the municipality of Bucharest, did not deliver it for four years.

The request was analyzed from the perspective of an alleged violation of the right to health protection, (art. 34 of the Romanian Constitution), and the right of individuals aggrieved by a public authority, (art. 52 of the Romanian Constitution.)

The Institution of the People's Advocate notified the Local Pension House of sector 3, of the municipality of Bucharest. In as much as the Local Pension House of sector 3 did not answer in the 30-days legal limit, according to their competency, the Institution of the People's Advocate appealed to the the Municipal Pension House of Bucharest.

Pursuant to the intervention by the Institution of the People's Advocate, the request was resolved favorably in terms of the complainant being allocated a voucher for free treatment for the IV trimester of 2005.

**File no. 296/2005.** Tudor (pseudonym) submitted a complaint to the territorial office Alba Iulia of the Institution of the People's Advocate, with reference to the fact that he did not get an answer within the legal term limits to a request addressed to the House of Insurance of Health, Alba County in order to benefit from medical health services at the local hospital. The key aspects were analyzed within the context of possible violations of the right to health protection and, the right to petition, as provided by art. 34 and art. 51 of the Romanian Constitution. Information from the House of

Insurance for Health, Alba County was requested, with reference to that provided by the complainant.

Pursuant to measures taken by the Institution of the People's Advocate, the territorial office of Alba Iulia town, the authority, accordingly notified, responded that the complainant is registered on the basis of data of the House of Insurance of Health Alba with "OPSNAJ", not being validated as a person insured by this house of health protection. It is stipulated that validation of persons registered with the comment "OPSNAJ" is made monthly by the House of Health Insurance and Protection, Public Orders, National Security and the Judicial Authority (OPSNAJ). In order to clarify his situation, the complainant was advised to address the "OPSNAJ" House.

### ***G. The right to a healthy environment (art 35 of the Constitution)***

In 2005 the petitions addressed to the institution of the People's Advocate which concerned the violation of the right to a healthy environment, as provided in art. 35 of the Constitution, had a spectacular growth compared to the previous year. This growth (from 8 requests in 2004, to 111 requests in 2005) cannot be explained otherwise than by the knowledge, quality and appreciation of this right, recently introduced in the Constitution by a growing mass of citizens, as well as by a better understanding of the European spirit, regarding ecology and the environment. The exercise of the right to free movement by a growing number of Romanian citizens has had an affect on that which regards attitudes towards the environment.

The aspects raised in these petitions referred to the pollution of surrounding environments and, the observance of legal dispositions regarding the insuring of healthy surroundings, and ecological balance. In these cases, the Institution of the People's Advocate notified the public authorities who, according to the law, are obliged to protect and ameliorate surrounding environments, as one can see in the cases presented below.

### **CASE STUDY – Cases resolved through the intervention of the Institution of the Peoples' Advocate**

**File no. 11355/2005.** Maria (pseudonym) submitted a complaint to the Institution of the People's Advocate in reference to a possible violation of the right to a healthy environment and the right to

private property (art 35 and 44 of the Romanian Constitution) by the police department, of the locality Berca. The complainant solicited the support of the Institution of the People's Advocate, towards the clarification and resolution of the problem regarding the destruction of the bridge at Mărăcineni, and the consequences produced by this event.

Because, the traffic was rerouted through the location of the complainant's domicile, in Berca, Buzău County, where the commuters (especially during heavy traffic), did not respect the maximum legal speed limit allowed. As a consequence, the vibrations at ground level, affected the foundations of buildings in the vicinity. In addition, Maria has affirmed that despite her having sought the help of local organs, like the police, in terms of enforcing the maximum speed limit, no action toward taking any measures was taken.

As a result of the intervention by the Institution of the People's Advocate, the County Inspector of Police Buzău, informed us that light traffic was diverted through the area of Berca, however, in order to insure that traffic move smoothly and traffic lights were implemented.

At the same time, actions were taken "for enforcing the load limit for drivers who do not observe those restrictions, as well as preventing accidents generated by these types of diversions, in zones where the road configuration permitted this kind of thing to happen." Actions were taken for combating excessive speeding, with the appropriate monitoring devices, many sanctions being applied in this regard. Furthermore, on May 28, 2005, two military bridges crossing the Buzău River were opened to traffic circulation and, afterwards, traffic easily resumed its initial flow.

#### ***H. The right of petition (art. 51 of the Constitution)***

After examining the petitions addressed to the Institution of the People's Advocate, it was determined that in 2005 the number of complaints referring to the violation of the right to petition, took third place of importance, the total number of all petitions received and analyzed was **700**. Due to the essential features of this right, its violation is often associated with the violations of one or more rights, for example, the right to private property, guaranteed by art. 44 in the Constitution, the right to a decent living standard, as provided by art. 47 in the Constitution, the right to information, provided by art. 31 of the Fundamental Law, and the right of the person aggrieved by a public authority, as provided by art. 52 of the Constitution.

Thus individuals have brought to the attention of the People's Advocate the fact that, some public authorities were addressed via requests, complaints, notifications, and propositions for the resolution of certain problems of a personal nature, regarding pensions, property, taxes and income taxes, granting social help, granting explanations regarding the stages of resolutions on cases which were filed to those so entitled, according to Law no. 10/2001, regarding the legal procedures concerning the abusive seizure of property, during the period of Mar 6, 1945 to December 22, 1989, the stages of resolution of files regarding the granting of compensation according to Law no. 9/1998 or the solicitation of information of public interest according the provisions of Law no. 544/2001, but they were met with difficulties on the part of the public authorities notified.

Some authorities refused to register petitions, while in other cases, complainants were not given responses in the stipulated time frame, due to delays in action on the significant aspects of the petitions. The institution of the People's Advocate intervened in the favour of complainants and their requests promptly received answers. We render below the results of an inquiry carried out by the People's Advocate and some cases, as they were solved by our institution.

**File no. 13558/2005** Per request no. 13558 of July 20, 2005, Gheorghe, (pseudonym) domiciled in the municipality of Bucharest, member of the steering committee, ASOCIAȚIA 21 Decembrie 1989, submitted a complaint to the Institution of the People's Advocate of an alleged aggrievance by the Local Administration of Snagov, Ilfov County, regarding the lack of answer to a request addressed to that institution, as provided by art. 51 of the Romanian Constitution. Whereas the non-observance of the provisions stipulated in art. 5 paragraph (1) letter g) of Law no. 341/2004 regarding the recognition of hero-martyrs and fighters who contributed to the victory of the Romanian Revolution in december 1989.

Therefore, the complainant informed us that he had formulated a request to the Local Administration of Snagov Commune, registered with no. 9249 on August 2, 2004, through which he requested information about some land based on art. 5 paragraph (1) letter g) of Law no. 341/2004, to which he received no answer. As a result of the authorities' refusal to answer the complainant, we considered it timely to address the Local Administration of Snagov Commune, whose attention we presented the situation that had been created.

By virtue of address no. 13303 of September 29, 2005, registered at the Institution of the People's Advocate with no. 15872 of September 29, 2005, the Local Administration of Snagov Commune communicated that thus far, the resolution of the application of Law no. 18/1991, republished, had not yet taken effect in the commune, and at the same time, a land deficit exists, which further applies to the coefficient of its reduction of 12%.

Having in view the communication addressed to the administration, as well as the fact that we did not receive an answer on the part of the Secretary of the Local Administration of Snagov, regarding aspects sustained during telephone conversations on the date of October 6, 2005, we began **an inquiry**. The inquiry had, as its basis, discussions with competent public servant about the reasons for which a course of action was not granted to the complainant.

To start, we contacted the secretary of the Local Administration of Snagov Commune by telephone, and we were assured that the secretary would be present at the local meeting in order to discuss the situation at hand, something which, however, did not, in fact, happen.

Therefore, the problems which formed the basis of the inquiry were discussed with the mayor of Snagov Commune.

1. The first problem exposed, regarded the allotment of some land, according to Law no.134/2004. In this regard, the mayor of the Snagov Commune, Ilfov County, in his capacity as president of the Local Commission of the Land fund, maintained that the procedure for **reinstating the right to property**, based on Law no. 341/2004 was suspended at once, with the apparition of Law no.247/2005 regarding reform in the area of property and justice, as well as some adjacent measures.

Having in view the fact that Law no. 247/2005 **regulates only the reinstatement of terms to persons entitled to the reconstitution of rights to property**, without providing for the suspension of the **constitution of right to property** based on other laws, we have determined that the measure of suspending procedure that reinstates the right to property, is not justified.

Similarly, we were informed at the local administrative level of Snagov, that there is a deficit of land of 12%. With regard to the possibility of the Local Commission to undertake measures for allowing passage of some lands into the private domain, it was made clear to us that a project was initiated regarding the release of certain areas of land of 125 ha found in the administration of Self-governing Department for Administration of the State Heritage and

Protocol (RAAPPS). However, even if this project were to conclude in a favorable way, the persons who requested the reinstatement of right to property would have priority, but only in the case in which land would remain at the disposal of persons who are entitled to the reinstatement of right to property, as beneficiaries of Law no 341/ 2004, despite the fact there is no such normative act to institute a preferential treatment in this regard.

2. The second problem focused on the number of persons benefiting from Law no. 42/1990, abrogated by virtue of Law. 341/2004, who were granted land. Thus we were made aware that even though a deficit of land existed from the beginning, nevertheless, reinstatement of right to property was given to 100 revolutionaries, over a surface of land of different sizes, between 1000 sq. m. and 5000 sq. m. . More than that, we were told, that on the basis of Law no. 341/2004, land was not granted. The last annexation approved by County Commission in the framework of the Prefect of the Ilfov County, was in July 2004. Therefore, the requests made to the administration after the validation of the last annex were no longer honored, because of lack of land.

With respect to obtain written documents of information claimed, the mayor of the commune informed us that he could not provide any documents whatsoever, since the secretary, as well as persons responsible in the office for surveys, are not at the village administrative headquarters, and he assured us that on November 4, 2005, he would send all the necessary documents.

Pursuant to the inquiry made, the mayor of Snagov' stated that, the reinstatement of land based on Law no. 341/2004 was not a priority for the Local Commission to establish the right to property. The cause invoked for this was **the lack of land**, as well as the reopening of the procedure grounded in the Law no. 247/2005.

Taking into consideration the facts exposed, and because the mayor of Snagov Commune did not forward any written proofs of his claims, continuing measures were proposed toward the resolution of the request no. 13558 of July 20, 2005, by notifying the Prefect of Ilfov County, with respect to the following aspects:

- the criteria that forms the basis of granting lands in the past, according to Law no. 42/1990, abrogated by the Law no. 341/2004, despite the existence of a deficit of land, expressed by a coefficient of 12%, from the beginning;
- what is the last annex approved by the Prefect, completed with regard to the granting of land in conformity with Law no. 42/1990, or Law no.341/2004;

- what are the reasons for deciding to suspend the procedure for reinstating right to property on the basis of special laws, before concluding the procedure of reinstating the right to property, having in view that Law no. 247/2005 does not provide this kind of measure, but only the restoration of conditions for the reinstatement of property rights in legal terms;
- in what measure were nominal lists of situations granting rights back to those persons stipulated in Law no. 341/2004, in conformity with the provisions of art. 12, sent to the Secretary of State for Revolutionaries' Problems;
- what are the legal measures that are imposed toward the resolution of the requests of the complainant.

At the same time a response was prepared to the complainant informing him of the measures taken, their results and the possibilities of notification the court of law.

### **CASE STUDY – Cases resolved through the intervention of the Institution of the People's Advocate.**

**File no. 13611/2005.** Daniel (pseudonym) submitted a complaint to the Institution of the People's Advocate with respect to the refusal of the Ministry of Administration and Internal Affairs to answer his request regarding the delivery of certificates of salary.

The significant aspects were analyzed in the context of presumed violations of the right to petition provided by article 51 of the Romanian Constitution. The Institution of the People's Advocate notified the Minister of Administration and the Internal of Affairs.

As a result of the measures undertaken by the Institution of the People's Advocate, the requests was resolved in terms of the Archival Services under the Secretary General of the Minister of Administration and Internal Affairs having responded to the complainant via address no. 31047/A on August 23, 2005.

**File no. 14861/2005.** Balthazar (pseudonym) a German citizen, submitted a complaint to the Institution of the People's Advocate, with regard to the refusal of the Romanian Embassy in Germany to respond to his petition of May 5, 2005.

The aspects were analyzed in the context of a presumed violation of the right to petition provided by art. 51, of the Romanian Constitution. The Institution of the People's Advocate notified the Romanian Embassy in Germany.



Pursuant to the intervention of the Institution of the People's Advocate, the request was resolved in terms of having the petitioner's request being forwarded to the General Department of Consular Affairs from the Ministry of Foreign Affairs, with the request to effect the necessary measures with competent institutions, with a view to resolve this problem as quickly as possible.

**File no. 13218/2005.** Sturdzana (pseudonym), domiciled in Germany, submitted a complaint to the Institution of the People's Advocate, with regard to the refusal on the part of the County Office of Survey and Real Estate Building Advertisement Iasi, to furnish information regarding land claims.

The aspects were analyzed in the context of a presumed violation of the right to petition and, the right to information, provided by articles 51 and 31 of the Romanian Constitution. The Institution of the People's Advocate notified Iași County Office of Survey and Real Estate Advertisement.

As a result of the measures undertaken by the Institution of the People's Advocate, Iași County Office of Survey and Building Advertisement resolved the request by sending the complainant the requested documents.

**File no. 12696/2005.** Anton (pseudonym) submitted a complaint to the Institution of the People's Advocate, with regard to the refusal of the National Authorities for Consumers' Protection to respond to petitions where he claimed a violation by the firm MEDIA GALAXY, of its obligation to give, alongside purchased products, the translation in Romanian for instructions for use.

The aspects were analyzed in the context of presumed violations of the right to petition provided by art. 51 of the Romanian Constitution. The People's Advocate notified the National Authority for Consumers' Protection.

As a result of the intervention of the Institution of the People's Advocate, the National Authority for Consumers' Protection resolved the request by providing the complainant with a translation of the instructions.

**File no. 15699/2005.** Marcu (pseudonym) submitted a complaint to the Institution of the People's Advocate, with respect to the refusal by the County Libraries in Călărași, and Satu Mare, respectively, to answer petitions through which the reimbursement for the value of books sent was solicited, unsuccessfully.

The aspects were analyzed in the context of an alleged violation of the right to petition, and the right to private property, provided in articles 51 and 41 of the Romanian Constitution. The Institution of the People's Advocate notified the County Library "Alexandru Odobescu", in Călărași and the County Library Satu Mare.

Pursuant to the intervention of the Institution of the People's Advocate, the request was resolved, both libraries expediting the appropriate sums to the complainant.

**File no. 14016/2005.** Ionica (pseudonym) submitted a complaint to the Institution of the People's Advocate, regarding the refusal of the National Archives to issue copies of documents necessary to benefit of the provisions under Law no. 9/1998 with respect to the granting of compensation to Romanian citizens for goods passed to the Bulgarian State after the enforcement of the Treaty between Romania and Bulgaria, signed at Craiova, September 7, 1940, republished.

The aspects were analyzed in the context of alleged violations of the right to petition in articles 51 and 31 of the Romanian Constitution. The Institution of the People's Advocate notified the National Archives.

Pursuant to the intervention of the Institution of the People's Advocate, the National Archives resolved the request by availing the complainant all the documents requested.

**File no. 14215/2005.** Eliza (pseudonym) submitted a complaint to the Territorial Office in Bacău with regard to the refusal of the Local Council of Sector 3 Bucharest, to send the successive annex necessary to the trial of dividing. Because the address to the authorities did not yield a positive result, the Territorial Office in Bacău forwarded the file for continuing measures.

The Institution of the People's Advocate notified the Prefect of Bucharest.

Pursuant to the intervention of the Institution of the People's Advocate, the Prefect of Bucharest favorably resolved the request by his intervention to the Mayor of sector 3, to insure that adopted measures be brought to the awareness of the complainant within the legal term limit.

**File no. 13682/2005.** A deputy submitted a complaint to the Institution of the People's Advocate, with reference to the refusal of the Ministry of Justice – Commission for establishing the qualification of fighter in the Anti-Communist Resistance to respond to a petition from Mr.Sabin (pseudonym), regarding the establishment of qualification of "fighter" in the Anti-Communist Resistance.

The aspects were analyzed in the context of some alleged violations of the right to petition, as provided by art. 51 of the Romanian Constitution. The Institution of the People's Advocate notified the Minister of Justice – Commission for establishing the qualification of fighter in the Anti-Communist Resistance.

Pursuant to the intervention of the Institution of the People's Advocate, the petition was resolved in terms of the Minister of Justice responding to the complainant.

**File no. 14411/2005.** Coralia (pseudonym) submitted a complaint to the Institution of the People's Advocate, with reference to the refusal of the Municipal Administration of Bucharest, to respond to request no. 450086, regarding the clarification of the legal situation of the apartment in which she resides.

The significant aspects were analyzed in the context of the presumed violations of the right to a decent living standard, provided in art. 47, and the right to petition, according to art. 51 of the Romanian Constitution. The Institution of the People's Advocate notified the Municipal Administration of Bucharest.

As a result of the measures undertaken by the Institution of the People's Advocate, the request was resolved in terms of the complainant being informed that per evidence of the Commission for the application of Law no. 10/2001, it described the restitution as one of loss for her apartment, granted through the files identified as no. 834, 4663 and 20501.

### ***I. Right of a person aggrieved by a public authority (art. 52 in the Constitution)***

The right of a person aggrieved by a public authority was invoked in **256 petitions**.

In terms of the rights invoked in relation to the public authorities, the petitions make reference to the infringement on some rights and legitimate interest, through the non-observance of certain legal dispositions, regarding the right to pension, social assistance, as provided in the Law. no. 416/2001 regarding the guaranteed minimum income, the delivery of some property titles conforming to the provisions in the Law no. 18/1991 on the land fund, or Law no. 10/2001, concerning the legal procedure of some real estate seized abusively during the period of March 6, 1945 to December 22, 1989, modified and completed.

## **CASE STUDY – Cases resolved through the intervention of the Institution of the People’s Advocate.**

**File no. 80/2005.** Radu (pseudonym) submitted a complaint to the Institution of the People’s Advocate with regard to the fact that he addressed the Public Service for Taxes and Duties, Constanța, with a request regarding the alleged debt of taxes for the years 2000-2005. The complainant mentions in his request that he put on term the necessary documents consistent with qualifications as beneficiary of the Decree–Law no. 118/1990 however, he maintained that he was sent a tax bill that was illegally assessed. Specifically, he solicited the institution, asking that they correct this error, a request to which he received no answer.

The aspects were analyzed in the context of the right of the person aggrieved by a public authority, in accordance with the provisions of art. 52 of the Romanian Constitution.

The facts revealed that in conformity with art. 4, and art. 22, respectively, of Law no. 35/1997 regarding the organization and function of the Institution of the People’s Advocate, republished, we requested information with respect to the petition sent to the Public Service of Taxes and Duties, Constanta.

Following the intervention of the Institution of the People’s Advocate, the Fiscal Agency 1, Constanta gave a response through address no. 82424/01. 08. 2005, in reference to items specified by the complainant. According to the response the complainant received, he benefited from a decrease in the payment of local taxes by 50%.

**File no. 1071/2005** Alexandru (pseudonym) submitted a complaint to the Institution of the People’s Advocate with regard to the refusal by the County Prefect of Brasov, to communicate the information he needed in conformity with provisions of art. 13 paragraph (1) letter h) of Law no. 44/1994 respecting war veterans and other rights of the disabled and widows of war, respectively, of the Methodological Standards of application of provisions in art. 13 paragraphs (3) and (4) of this law to be granted monetary compensations, representing the value the land (500 sq.m. land for a house, and 1 ha arable land in the environs).

The request was analyzed in the context of the right of the person aggrieved by a public authority, provided in art. 52 of the Romanian Constitution.

As a result of the intervention of the Institution of the People’s Advocate, the public authority so notified contacted us and

informed us that through Decision no. 98/2004, the County Commission of the Application of Laws of the Land Fund, approved the granting of monetary compensation, which is represented the value of the land, for the entitled veterans of war, under conditions stipulated by Law no. 441994.

**File no. 205/2005** Mann (pseudonym) submitted a complaint to the Territorial Office of Alba Iulia of the Institution of the People's Advocate, with reference to the delay in resolving a petition registered at the City Administration of Cugir.

The aspects were analyzed in the context of individual rights of the person aggrieved by a public authority, according to art. 52, of the Romanian Constitution.

Information was requested to the City Administration of Cugir, with reference to information provided by the complainant and it was established that the problem he addressed should have been verified by community police agents within the administration.

Pursuant to the intervention of the Institution of the People's Advocate, the authority stated that on August 31, 2005, the complainant was given an answer, which gives the measures taken in restoring his rights as provided by law.

## **2.4 The area of the rights of children, family, youth, retired persons and persons with disabilities**

### ***A. Protection of children and youth (art. 49 in the Constitution)***

Natural persons, including children, can address the People's Advocate, through legal representatives, when their rights were violated through the activity or inactivity of administrative public authorities.

The petitions addressed to the Institution of the People's Advocate, originated as much from young people, as they did from adults who complained about violation of their rights or freedoms of children, by authorities and public institutions.

Moreover, in two cases, the People's Advocate **initiated the ex officio procedure**. Thus, following some articles published in the press, in which abuses toward children institutionalized in Placement Centres of Botoșani and Arges were related, the People's Advocate began an **inquiry** in the Placement Centre of Botoșani County, and the National Authority for the Protection of the Children Rights, the public and competent institution, to take

measures in the situation of children in the Placement Centre in Arges county.

In 2005, **39 petitions** were registered, regarding the problems of children and youths, in the context of the following categories of rights: the right to a decent living standard, the right to life and physical and psychological integrity, the right to the protection of children and youths, the right to health care, the rights concerning persons with disabilities, and the right to education; **3 inquiries were made.**

Thus, the Institution of the People's Advocate was addressed by maternal workers who complained of the measures taken by the Directorates of the Social Aid and Child Protection, by whom children were unjustifiably removed from their professional caregivers, and returned to their natural families, who live in conditions which, from a material standpoint, cannot provide adequate conditions for the care and raising, education and health of the children.

The complainants signaled abuses that took place at the Placement Centres of institutionalized children, the lack of funds for payment of the maternal workers of children with disabilities, and cases in which children did not benefit from the legal aid from which families with children could benefit.

Similarly, many petitions addressed the Institution of the People's Advocate had as their basis, the violation of the right of the child to a decent living standard. Thus, the complainants petitioned that, whether they were not paid, whether the payment for the care of children was delayed by the employers, that this payment should be made by the pension houses. Even though the money was supported by the budget of Social Security, conforming to Law no. 19/2000 regarding the public system of pensions and other rights of social security, with modifications and subsequent completions, and not by the employers, the pension houses refused the payment for caring for a child, maintaining that this payment becomes the burden of the employer.

Regarding the information reported, the Institution of the People's Advocate undertook measures at the territorial pension houses, The National Pension House and other Rights of Social Security, the county directorates for the protection of children, the county school inspectors, the Minister of Education and Research, the National Authority for the Protection of Children's Rights.

Following the intervention of the Institution of the People's Advocate, the public authorities who were notified, took action in

solving the problems of the complainants, and initiated enforceable legal measures. In addition, the complainants were informed and advised to explore legal solutions for resolving the problems they confronted with.

The preoccupation and the interest of the Institution of the People's Advocate in view of the problems that confronted children and families with children materialized in an initiative regarding the modification of legislation regarding the support of families in terms of caring for and raising children. Thus, on November 24, 2005, a **seminar** was held at the headquarter of the Institution of the People's Advocate, whose topic was "Supporting the Family in terms of caring and raising the child". The initiative of the Institution of the People's Advocate was appreciated by everyone who participated.

The participants of the seminar included The National Agency for the Protection of Family, The Romanian Office for Adoptions, The National Authority for the Protection of Childrens Rights, the General Directorate of Social Aid and Child Protection, sector 1, sector 3, sector 4, sector 5, sector 6, the General Directorate of Social and Child Protection with the General Council of the Municipality of Bucharest, the National Institute of Statistics, local and county councils.

Discussions that took place on this occasion advanced from the propositions made by the representatives of the Institution of the People's Advocate, regarding the possibilities of organizing a new store to sell a limited range of products (basic products of requisition, hygienic and sanitary materials, clothes and footwear), at a price reduction of 20% compared to the mean price stabilized in every administrative unit, the establishment of the medium price mentioned earlier, on the basis of a simple monthly pattern by local councils, or county councils, according to case, with the special assistance of the county directorates of statistics, the granting by local councils for commercial societies as well as producers, who sell their products through the above mentioned stores, at a discount, in legal conditions for taxes, income taxes and other receivables of the local budget. Furthermore, the participants' attention was drawn to the analysis of possible exemption of Value Added Tax (V.A.T.) of the basic products for children.

In order to come to the aid of persons without material possibilities who address the Institution of the People's Advocate, through Law no. 35/1997, a **special fund** was created at the disposal of the People's Advocate.

Thus, on the occasion of June 1 Day, the International Day of the Child, the People's Advocate granted social aid to the children at two placement centres in Bucharest.

### **CASE STUDY - Cases resolved by the intervention of the Institution of the People's Advocate.**

**File no.13435/2005** Cristina (pseudonym) submitted a complaint to the Institution of the People's Advocate, with regard to the fact that she was cut off from special assistance for the care and raising of her child up to the age of 2, because she had received during the period of January to May 2005, supplementary money also, available and granted to persons under the conditions of the Government Emergency Ordinance no. 8/2003 regarding the stimulation of the process of restructuring, reorganizing, privatizing some of the national societies, national companies, commercial societies with major state capital, as well as of the commercial societies and self management public companies subordinated to the local public administration authorities, with modifications and subsequent completions. Furthermore, we were informed that she was asked to return sums received under the title of special skills for the care and raising of her child to age 2, during the period of January to May of 2005.

Pursuant to the intervention by the People's Advocate, at the National Pension House, the Direction for the Guidance of Methodology, her request was resolved, the complainant being guided to address Employment Municipal Agency Bucharest, with regard to taking back the payment for the special skills for the care and raising of the child.

**File no. 14397/2005** Ioana and Dana (pseudonyms) submitted a complaint to the Institution of the People's Advocate with regard to the fact that the County Directorate of Social Aid and Protection of Children's Rights, Botoşani refused to keep them in the placement centre, even though they continued to prepare professionally through post-graduate courses.

Pursuant to the intervention by the People's Advocate, at the Direction of Social Aid and Protection of Child Rights Botosani, and at the National Authority for the Protection of Child's Rights, the two girls were maintained at the placement centre.

**File no. 18423/2005** The People's Advocate initiated **ex officio** procedure following an article entitled "The Placement Centre Priboieni, Arges – Institutionalized Children Make Accusations of



Bad Treatment!”, published in the daily newspaper, “Free Romania” of November 25, 2005, in which they exposed grave abuses and irregularities in the placement centre Priboieni, Arges. In light of the situation presented, measures were initiated at the National Authority for the Protection of Child’s Rights.

As a result of the intervention by the People’s Advocate, the National Authority for the Protection of Children’s Rights initiated an investigation, after which measures were taken regarding a remedy for the charged deficiencies.

Moreover, the President of the County Council of Arges put forth a proposition to evaluate the managerial capacity of the Executive Director of the County Directorate of the Social Assistance and the Protection of Children’s Rights, Arges.

### ***B. The right to a decent living standard (art. 47 of the Constitution)***

In 2005, **995 petitions** were registered referring to problems of retired persons and other categories of individuals, in the context of alleged violations of the right to a decent living standard.

Principle aspects in the petitions addressed to the Institution of the People’s Advocate, referred to the dissatisfaction with the way pensions were recalculated, to irregularities regarding the determination of percentages and stages of subscription, the delay in effecting pensions’ payments, as well as the transfer of files of retired persons. In order to resolve the problems reported, the Institution of the People’s Advocate informed the territorial pension houses, the Military Unit 024025 Pitesti, the County Direction of the National Archives and the National Pension House and Other Rights of Social Securities and made inquiries to authorities and public institutions.

Pursuant to the intervention of the People’s Advocate, territorial houses of pensions proceeded to repair the losses produced through two decisions on pension, recalculating pensions, and the restoration of sums held without justification.

In some cases, the Institution of the People’s Advocate did not receive information solicited on the part of some pension houses, both local and county level, namely, the Local Pension House Sector 1, Local Pension House Sector 2, Local Pension House Sector, 3 Local Pension House Sector 4, Local Pension House Sector 5, and the Municipal Pension House of Bucharest. For these reasons, the Institution of the People’s Advocate addressed the National Pension House and Other Rights of Social Security, which

as in the preceding year, manifested in the most prompt reaction. Likewise, having in view the difficulties confronted in resolving the petitions addressed by the complainants, as well as the delay in receiving some responses on the part of the local pension houses, and the Municipal Pension House of Bucharest, the Institution of the People's Advocate initiated in 2005 **inquiries** into: the Department for Labor in Foreign Countries, under the Ministry of Labor, Social Solidarity and Family, having as its subject, the alleged violation of labor rights as well as social protection of workers and the right to petition regulated by art. 41 and art 51 of the Romanian Constitution; at the Local House of Pension Sector 3 and Local House of Pension Sector 4, with regard to a possible violations of their rights to a decent living standard, as well as the right to petition, at the Municipal House of Pension of Bucharest, with respect to possible violations by other Local Pension Houses in Bucharest, of the right to a decent living standard, as well as the right to petition at the County Pensions House, Arges, the Military Unit 02405 Pitesti, the National Pension House and Other Rights of Social Security, with reference to possible violations of local pension houses and the Municipal Pension House of Bucharest, of the right to a decent living standard, as well as the right petition.

As a result of the **inquiry** made to the Municipal Pension House of Bucharest, a **recommandation** was issued having in view the fact that the complainants were aggrieved in theirs rights by the Local Pension Houses in Bucharest, and the Municipal Pension House of Bucharest.

In discussions held with representatives of the public institutions cited above, the fact re-emerged that the formaluted responses addressed to the Institution of the People's Advocate, as well as those to the complainants, arrive with delay to their destinations, because of the large number of duties attributed to each clerk. In addition it was affirmed this it is impossible to hire other clerks, because the hiring outline of the institution doesn't permit it.

At the same time we were made aware of the fact that on many occasions, complainants are not given responses, except in the moment the decisions are rendered to the complainant, following recalculations.

In some significant cases of complainants, they were granted the necessary guidance only when they didn't have proof of the delay, or of the refusal of the public administration to resolve the request, or when their petitions were competent exclusively only in the court of law. In those situations they were granted the necessary guidance.

## **CASE STUDY - Cases resolved by the intervention of the Institution of the People's Advocate**

**File no. 15164/2005** Cornel (pseudonym) submitted a complaint to the Institution of the People's Advocate regarding his petition to the Local Pension House, Sector 1, with respect to the recalculation of his pension, keeping track of the period during which he attended day courses at college, to which he received no response.

Due to intervention of the Institution of the People's Advocate, the request was resolved in terms of recalculating his pension to include that period during which he took courses at a university for higher learning. This decision, together with the recalculation bulletin, was also communicated to the complainant. At the same time, the public authorities notified us that the rightful debt would be paid through a postal mandate in the month of October, 2005, with the remark that this information was communicated to the complainant.

**File no. 14323/2005** Elena (pseudonym) submitted a complaint to the Institution of the People's Advocate regarding the fact that while the decision over her work loss based on a Grade II disability status, the Local Pension House Sector 2, granted by decision her pension for disability by a Grade III disability status. In addition, the complainant maintains that she repeatedly addressed the Local Pension House, Sector 2, to no avail, the answer being that her file could not be located.

As a result of the intervention of the People's Advocate, the complaint was resolved by realizing that the complainant's pension was correctly established as Grade II disability, however, the code was erroneously given as Grade III. The mistake was corrected, and the final results communicated to the complainant.

**File no. 15142/2005** Iulian (pseudonym) submitted a complaint to the Institution of the People's Advocate with regard to the fact that he addressed the Local Pension House, Sector 2, asking for a recalculation of his pension for the age limit, attaching documentation that demonstrated his seniority at work, and he received no response.

As a result of the measures taken by the People's Advocate, the complaint was resolved in terms of adjusting the difference in pension effective October 2005.

**File no. 14943/2005** Ioana (pseudonym) submitted a complaint to the Institution of the People's Advocate with regard to her having

contacted the County Pension House Teleorman, to request a recalculation of her pension, however, she received no response.

As a result of the intervention of the Institution of the People's Advocate, the complaint was resolved in terms of the complainant receiving notification that not only that her pension was recalculated, and confirmed in writing, but also that she was registered to pension rights beginning with March 1, 2005

**File no. 14432/2005.** Corina (pseudonym) submitted a complaint to the Institution of the People's Advocate with regard to her having repeatedly addressed the County Pension House Constanta, to add her seniority for the period in which she worked at the Agricultural Cooperative of Production (C.A.P.), however, she received no response within the legal term limit of 30 days. Because the public authority mentioned that our solicitation did not fall within the 30-day legal term limit, we appealed to the National Pension House and Other Rights of Social Security.

As a result of the intervention of the Institution of the People's Advocate, the complaint was resolved by adding the median percentage corresponding to her period of work at C.A.P to the existing percentage dating to January 2005.

**File no. 12707/2005.** Ion (pseudonym) submitted a complaint to the Institution of the People's Advocate with regard to the fact that, although the Commission for the application of Law no. 189/2000, by Decision 13517/162 of September 8, 2004, recognized his qualification as beneficiary of Law no 189/2000 with modifications and subsequent completions, the Local Pension House Sector 1, did not grant him the rights provided by the aforementioned law, basing this refusal on the basis that no file existed in his name, in order to execute the "rights necessarily granted to graduates of courses taken at a university". In addition, the complainant specified that he had contacted the Local Pension House Sector 1 regarding a solution to the problems he confronted, however, he received no response.

As a result of the intervention of the Institution of the People's Advocate, the complaint was resolved with the rightful payments owed representing the provisions advised in Law no. 189/2000, made effective by postal mandate in the month of October, 2005, that decision was communicated to the complainant as well.

**File no. 14493/2005** Mihaela (pseudonym) submitted a complaint to the Institution of the People's Advocate with reference to her having contacted the Local Pension House, Sector 2, with a request to recalculate her pension, taking into account the period

during which she took courses and the Faculty of Chemistry at the University of Bucharest, and she received no response. Because the Institution did not receive a response within the 30-days legal limit, we considered the opportunity to address the Municipal Pension House of Bucharest.

Pursuant to the intervention of the Institution of the People's Advocate, the complaint was resolved in terms of factoring in the period of superior studies in conformity with Law no. 276/2004.

**File no. 14345/2005** Constantin (pseudonym) submitted a complaint to the Institution of the People's Advocate with respect to the fact that he is a beneficiary of Law no. 416/2001 regarding the guaranteed minimum income, with modifications and subsequent completions and, that despite taking action within the 72 hours period in terms of an actions or works of local interest, he receives no social assistance, while when he does get it, it is minimum. The Institution of the People's Advocate notified the County Council and Direction of Labor, Social Solidarity and Family.

Pursuant to the intervention of the Institution of the People's Advocate, the complaint was resolved; "the payment of social assistance for the months of January to July, 2005 and December 2004, were made."

**File no. 13958/2005** Marian (a pseudonym) submitted a complaint to the Institution of the People's Advocate with reference to the fact that he retired in 1997, with a status of Grade III invalid, based on Law no. 3/1977 regarding pensions through social security and social assistance, abrogated by Law no. 19/2000 on the public system of pensions and other rights to social securities, with modifications and subsequent completions. Additionally, the petitioner sustains that reaching 60 and 62 years age, respectively, he addressed the County Pension House Vrancea in order to opt for a pension for legal retirement age limit, being, however, rejected for reasons that he did not reach the standard age of retirement.

Pursuant to the intervention of the People's Advocate, the complaint was resolved by the complainant being informed that he fulfilled the conditions for obtaining a pension for age limit.

**File no. 14412/2005.** Andrei (pseudonym) submitted a complaint to the Institution of the People's Advocate, with reference to his having repeatedly contacted the Local Pension House, Sector 3, regarding his request to have his pension recalculated, conforming to art. 95 paragraph (1) of Law no. 19/2000 regarding the public system of pensions and other rights to

social security, with modifications and subsequent completions, however, and the public authority did not issue such a decision.

Pursuant to the intervention by the Institution of the People's Advocate, the complainant's pension was recalculated.

**File no. 15452/2005.** Laurentiu (pseudonym) submitted a complaint to the Institution of the People's Advocate in reference to his not having received a recalculated pension conforming to those two stages at which point recalculations are figured.

As a result of the intervention of the Institution of the People's Advocate, the complaint was resolved with the complainant benefiting from the recalculation of the pension at stage II, respectively, in the month of July, 2005.

**File no. 14224/2005.** Sorina (a pseudonym) submitted a complaint to the institution of the People's Advocate with regard to having given her pension file to the Local Pension House Sector 3, for age limit. In January, 2004, she received a decision by which she was rejected the right to pension. On February 17, 2004 she contested this decision, while the Bucharest Court annulled the decision and ordered the Local Pension House Sector 3 to issue a new decision through which to admit the complainant's request for pension, and to establish her rights to pension beginning July 31, 2003. On June 2004 the complainant filed the original sentence with the Local Pension House Sector 3, but on July 4, 2005, she filed proofs with the bounties and increments given to her on permanent basis during the period along these activities took place, however, she received no response within the 30-days legal limit. The complainant returned to the Institution of the People's Advocate with supplementary information, namely that on August 19, 2005, she received the decision on her pension, thus officially being attested that the corresponding amount for legal retirement age limit is smaller than the pension for Third Degree disability status. The Institution of the People's Advocate notified the Local Pension House of Sector 3. Because the public authority did not reply within the 30-days legal limit, we addressed the Municipal Pension House of Bucharest.

Pursuant to the intervention by the Institution of the People's Advocate, the complaint was resolved by a decision being issued on August 18, 2005, that revised by adding pay raises to the salary listed in the file, and subsequently resulted in a pension of 273 RON.

**File no. 14198/2005** Ion (pseudonym) submitted a complaint to the Institution of the People's Advocate with reference to the fact

that he addressed the Local Pension House Sector 3, asking to be informed if it were possible to benefit from pension for early retirement so that he could exercise his right to option for the most advantageous pension, however he did not get a response within the 30-days legal limit. The Institution of the People's Advocate notified the Local Pension House, Sector 3. Because the public authority did not respond within the 30-days legal term limit, we appealed to the Municipal Pension House of Bucharest.

Pursuant to the intervention by the Institution of the People's Advocate, the complaint was resolved by way of informing the complainant that he has the right to pension for the job he performed, and early retirement.

**File no. 16683/2005** Cristi (a pseudonym) submitted a complaint to the Institution of the People's Advocate with regard to the fact that he addressed the County Pension House Buzau about obtaining an agricultural pension for his mother, but he did not receive a response to that request.

As a result of the measures undertaken by the Institution of the People's Advocate, the complaint was resolved in terms of the petitioner's mother being informed that she must present a decision of suspending survivor's pension in order to make an option for a pension of early retirement in the public pension system of retirement.

**File no. 15271/2005.** Dorina (pseudonym) submitted a complaint to the Institution of the People's Advocate with regard to the fact that she addressed the Local Pension House Sector 1, requesting a recalculation of her pension based on art. 95 of Law no. 19/2000 regarding the public pension system and other rights to social security with modifications and subsequent completions, attaching evidentiary documents in this respect, though she did not receive any response.

The Institution of the People's Advocate notified the Local Pension House Sector 1. Because the public authority did not respond within the 30-days legal limit, we appealed to the Municipal Pension House of Bucharest.

Pursuant to the intervention of the Institution of the People's Advocate, the complaint was resolved in terms of issuing a decision through which, conforming to the provisions of art. 95 of Law no. 19/2000 with modifications and subsequent completions, the stage of contribution included also the period of work performed after retirement.



**File no. 14277/2005.** Paula (pseudonym) submitted a complaint to the Institution of the People's Advocate about the fact that while she addressed repeatedly, the Local Pension House Sector 1, with regard to recalculating her pension, by way of including the seniority of her years of study at a higher-learning institution, she did not receive a response. The Institution of the People's Advocate notified the Local Pension House, Sector 1. Because the public authority so notified did not respond within the 30-days legal limit, we took the opportunity to address the Municipal Pension House of Bucharest.

Pursuant to the intervention by Institution of the People's Advocate, the complaint was resolved in terms of the complainant's job seniority during the period which he took courses at a university, being factored in.

**File no 15390/2005.** Dumitru (pseudonym) submitted a complaint to the Institution of the People's Advocate with regard to the fact that he repeatedly addressed the Local Pension House Sector 1, about the recalculation of his pension, taking into account the period during which he took courses at the Polytechnical Institute in Bucharest, however he received no response. The Institution of the People's Advocate notified the Local Pension House Sector 1. Because the public authority notified did not answer within the 30-days legal limit, we appealed to the Municipal Pension House of Bucharest.

Pursuant to the intervention of the Institution of the People's Advocate, the complaint was resolved in terms of a decision issued in conformity with provisions of Law no. 276/2005, the complainant was acknowledged as qualifying for stage II of contributions, by virtue of the period during which he took courses at the faculty.

**File no. 14984/2005.** Marius(pseudonym) submitted a complaint to the Institution of the People's Advocate regarding that while he submitted his complete pension file to the Local Pension House Sector 3, the documentation of his salary obtained, and job performed were not mentioned in his employment history. These were not taken into consideration in recalculating the pension, thus the complainant's pension remained unmodified following the recalculation. The Institution of the People's Advocate notified the Local Pension House Sector 3. Because the public authority did not respond within the 30-days legal limit, we took the opportunity to address the Municipal Pension House of Bucharest.



Pursuant to the intervention of the Institution of the People's Advocate, the complaint was resolved in the manner that on July 5, 2005, following the process of recalculation, the complainant's pension was increased from 561 to 567 RON.

**File no 13868/2005.** Paul (pseudonym) submitted a complaint to the Institution of the People's Advocate with regard to the fact that he was issued a decision concerning the recalculation of his pension, in which the total rights to pension allowed in the public pension system were 2.495.170 ROL, however, he did not receive the major pension. The Institution of the People's Advocate notified the Local Pension House Sector 1. Because the public authority did not respond within the 30-days legal limit, we appropriately made our address to the Municipal Pension House of Bucharest.

As a result of the intervention by the Institution of the People's Advocate, the complaint was resolved when in November, 2005, a mandate was expedited to the complainant in the sum of 1.503 RON, representing the difference recuperated between March and November of 2005.

### ***C. Protection of Disabled Persons (art. 50 of the Constitution)***

In accordance with art 50 of the Romanian Constitution, persons with disabilities can enjoy special protection. In our country, the state is obliged to insure the realization of some national policies regarding equal opportunities for disabled persons to participate effectively in the life of the community.

The institutions that fulfill the main attributes of overseeing the activities of special protection for disabled persons are the Ministry of Health, the Ministry of Labor, Social Solidarity and Family, and the National Authority for the Disabled.

In the area of protection of disabled persons, the Institution of the People's Advocate received complaints that referred mainly to problems regarding the framework for classifying different grades of disabilities, re-evaluating the grade of disability, the classification or failure to classify the plaintiff within a lower degree of disability than the previous one, the refusal of public administrative authorities to hire personal assistants for persons with grave disabilities which entitled them to social benefits, the delay in issuing certificates indicating the classification by grade of disability, exceeding the legal term limits for establishing accessibility platforms to disabled persons.

Thus regarding the alleged violations of the rights of disabled persons, the People's Advocate received **36 complaints**.

As a result of the involvement of public administration authorities predicated by measures undertaken by the People's Advocate, the institution attributed blame to the lack of funds in local budgets, primarily those budgets earmarked for special assistants to seriously disabled persons, despite the allocation of funds for these rights. There were, however, other deficiencies discovered by the Institution of the People's Advocate, following the respective inquiries, such as: the delay, sometimes intentionally by the agents responsible for solving the problem, or, even worse, the absence of objectivity by the personnel charged with conducting the social inquiries. Additionally, it was determined that through legal dispositions in force, it is necessary to enforce periodic changes (at the most once a year) of certificates concerning the classification of grades of disabilities, even though some persons might have a diagnosis without the possibility of amelioration.

Moreover, the National Authority for Disabled Persons was notified of the fact that, although the Law of the administrative procedure no. 29/1990 was abrogated by Law no. 554/2004, nevertheless, the certificates issued for classifying disabilities by grade, provided by direct ways of appeal, those provided by Law no. 29/1990.

The guarantee of normal conditions of protection for disabled persons is an obligatory request in a social state. The obligation to harmonize Romanian legislation with its European counterpart, must determine the Romanian Government to develop a program in the area of the protection of disabled persons, having as its basis the following: social integration, equity, accessibility, transparency, and quality of care.

### **CASE STUDY – Cases resolved by the intervention of the Institution of the People's Advocate**

**File no. 15211/2005.** Dorin, (pseudonym), submitted a complaint to the Institution of the People's Advocate, with regard to the fact that on many occasions the Local Administration of Drăganesti – Vlasca, did not pay the salaries of personal assistants.

Pursuant to the intervention of the Institution of the People's Advocate, the County Council of Teleorman informed us that through Decision no. 140 of November 22, 2005, the territorial administrative unit repartitioned the weight of deductions by V.A.T. for sustaining the system of protection of disabled persons. On the

basis of the decision above mentioned, the Local Administration of Draganesti – Vlasca, received funds to enable the payment of salaries of personal assistants.

**File no. 14498/2005** Maria (pseudonym), submitted a complaint to the Institution of the People's Advocate, with regard to the fact that she had addressed the Local House of Pension, Sector 3, asking to obtain survivor pension, because her grandson did not get a response. By way of the attached documents, the request addressed to the Institution of the People's Advocate reiterates the fact that the grandson, 43 years of age, has a serious congenital disability, while the petitioner is his legal guardian, since the death of his father. The Institution of the People's Advocate notified the Local Pension House, Sector 3. Because the public authority so notified failed to respond within the 30-days legal term limit, we decided to address the Pension House of the Municipality of Bucharest.

As a result of the measures undertaken by the Institution of the People's Advocate, the complaint was resolved with the decision rendered that reflected the calculation of survivor pension, as requested by the petitioner.

## **2.5. The area of army, justice, police and penitentiaries.**

In 2005, the Institution of the People's Advocate received a series of petitions referring to the area of army, justice, police and penitentiaries. In the aforementioned area, the following **six inquiries** were included: the public prosecutor office attached to the Court of first instance of Sector 2 Bucharest; the maximum security penitentiary, Bucharest-Rahova; the central military emergency clinic-hospital, "Carol Davila"; the Medical Direction of the Ministry of National Defence; the House of Health Care of the Army, Public Order, National Security and Justice (C.A.S.A.O.P.S.N.A.J); Ministry of Education and Research. At the same time, the Institution of the People's Advocate initiated the **ex officio** procedure based on art. 14 paragraph (1) of Law no. 35/1997, republished, following an article published in the press, referring to the attitudes of five policemen.

The Institution of the People's Advocate made **2 recommendations** to the Ministry of Education and Research.

### *A. The Army*

In 2005 persons who confronted difficulty in obtaining from the Military Unit 02405 Pitesti, certificates regarding military service, performed, further notified the Institution of the People's Advocate. Additionally, a part of the petitions addressed to the Institution of the People's Advocate in the area of the army, had as their basis; the establishment and recalculation of military pensions; obtaining information regarding the interpretation of legal provisions with respect to military staff; the framework of military staff, after transitioning to the reserves, as civil personnel.

Thus, the Institution of the People's Advocate received a complaint by a petitioner with regard to the provisions of Government Emergency Ordinance no. 90/2001, and to the provisions of the Government Emergency Ordinance no. 4/2004 for modification and completion of Law no. 80/2005 regarding the status of military staff. Appropriate to these legal provisions, the grade of "Rear-Admiral" was changed to the grade of "One Star FleetRear-Admiral", while the grade of vice admiral was changed to "Two Stars Fleet Rear-Admiral" which, by acceptance, would constitute a demotion as well as a prejudice to military honour. Conforming to the information received by the People's Advocate, from the State Major of the Naval Forces of Bucharest, and the Ministry of National Defence, between the grades of Rear-Admiral, regulated by the Decision of the former Ministry Council, no. 1177/1965 and Law no. 80/1995 and grade fleet one-star Rear-Admiral, regulated by Government Emergency Ordinance 90/2001, respective to Government Emergency Ordinance no. 4/2004, made no difference, in terms of neither insignia nor rights, therefore it could not bring dishonour to the petitioner.

Furthermore, the Institution of the People's Advocate, was addressed by a brigade general doctor(r) of the reserves, with reference to the difficulties he encountered with the commander of the Central Military Emergency Hospital, "Dr. Carol Davila" regarding his employment as a civilian doctor, specialized in emergency medicine. The claim was made because neither House of Army Health Insurance, Public Ordinance, National Security and Justice (H.A.H.I.P.O.N.S.J.) as financier, neither the Ministry of National Defence as official with power to authorize the credits from the budget, approved his employment.

Following the inquiries initiated by the Institution of the People's Advocate, to the medical direction of the Ministry of National Defence, the Central Military Emergency Hospital, "Dr. Carol Davila" and H.A.H.I.P.O.N.S.J. and the analysis of documents attached by the petitioner, it was determined that the commander of the hospital initially requested that the Ministry of National Defence and H.A.H.I.P.O.N.S.J. approve of unblocking a number of 10 civil functions, (for doctors who would be transitioned to the reserves), by the supplementary budget of 2005, under the heading of Budget Expenditures for Personnel.

Afterwards, the Central Military Emergency Hospital, "Dr. Carol Davila", even as it obtained the supplementary budget for personnel expenditures from H.A.H.I.P.O.N.S.J. it was felt that contests for filling vacancies of civilian medical personnel should not be organized, because the lack of emergency medical personnel did not exist. Accordingly, the Medical Supervision of the Ministry for National Defence, during the period of May-June, 2005, conforming to art. 35 of the Government Emergency Ordinance no. 115/2004, regarding salaries and other rights of contract personnel of the public sanitary units, in the sanitary areas, with modifications and subsequent completions, considered the legal ramifications of the order of official with power to authorize the credits from the budget would have in removing blocks to contests for jobs for doctors with specializations from the sanitation unit, on the basis of lack of. Subsequently, the organization of contests for fulfilling vacancies for civilian medical personnel was no longer possible, due to the application of the Government Emergency Ordinance no. 63/2005 for regulating the measures to reduce the budget for personnel in 2005, with subsequent modifications; according to those during the period of July 1 to December 31, 2005, contests for filling job vacancies beginning with June 30, 2005, in terms of the functions of public authorities and institutions, regardless of the method of financing them, as well as those which would become vacant after this date.

In view of the facts presented, and as art. 2 paragraph (2) letter e) of the Government Emergency Ordinance no. 63/2005 provides exceptions to the provisions of paragraph (1) regarding the suspension of contests for vacancies, in legal conditions, because the principle authorizers of credits may approve the organization of

contests the Institution of the People's Advocate asked the Ministry of National Defense to examine the situation as it had been created, through reports referring to the situation before and after the full application of the Government Emergency Ordinance no. 63/2005.

In conformity with the Secretary General of the Ministry of National Defense's response, the Medical Direction, together with the Central Military Emergency Hospital "Carol Davila", adopted the measures requested of normative acts in force, in preparation of organizing contests for filling vacancies. In addition, the Secretary General of the Ministry of National Defense mentioned that there is no financial possibility for civil functions, nor any real reason to invoke the exceptions provided for in art 35. of the Government Emergency Ordinance no. 115/2004 regarding the approval by orders of principle official with the power to authorize the credits from the budget, to organize contests for vacancies, in keeping with conditions framed by approved funds.

Therefore, because the Government Emergency Ordinances no. 115/2004 and no. 63/2005 is left to the discretion of the orders of principle credit authorizing the approval of contests for vacancies, the petitioner's complaint was not solved in his favor.

### **CASE STUDY – Case resolved by the intervention of the Institution of the People's Advocate**

**File no. 14123/2005** Nicolae (pseudonym) requested the intervention of the Institution of the People's Advocate, at the Military Unit 02405, Pitesti, because he had repeatedly requested the issuance of the records certifying his period of effective military service. The Military Unit had previously communicated the petitioner, that they do not have records for persons born in 1925, and requested of him additional proof of identification (his place of residence at the time he transitioned to the reserves, the name of the unit in which he completed his military service).

As a result of the measures undertaken by the Institution of the People's Advocate, UM 02405, Pitesti, notified us that the records requested by the petitioner were sent to him. In addition, it was specified that following the laws of a reparatory nature, (for example, Law no. 309/2002 regarding the recognition and granting of rights to persons who underwent military service under the

General Direction of the Labor Service during the period of 1950-1961, with modifications and subsequent completions), the Military Unit 02405, Pitesti, confronts a large number of requests, finding it impossible to respect the legal time limit for response, provided by the Government Emergency Ordinance no. 27/2002 regarding the activities for the resolution of complaints, approved by the Law no.233/2002.

**File no. 11418/2005.** Pavel (pseudonym) submitted a complaint to the Institution of the People's Advocate with regard to the events at the Military Unit (U.M.) 02405 Pitesti. Initially the petitioner requested the delivery of a certificate referring to his period of the performance of the military service, necessary for obtaining inducements and rights as established in the Law no. 309/2002, modified and completed. Subsequently the petitioner returned with a new request of the Military Unit 02405 Pitesti, asking for the delivery of a certificate that would contain changes of headings during the time of military service. Referring to the request, the Military Unit (U.M.) 02405 Pitesti, specified that the military unit in which he served (U.M 03852, Ploiesti) does not factor into evidence as work detachments under the General Direction of the Labor Service. (G.O.L.S.) and this information is not held in archives of work detachments within D.G.S.M. In order to clarify the requests of the petitioner, the Institution of the People's Advocate contacted Military Unit (U.M.) 02405 Pitesti, who sent the petitioner his record of military service in the Military Unit (U.M.) 03582 Ploiesti during the period of March 1, 1953- February 16, 1956 which does not factor in the table of evidence for detachments in the work units within the General Direction of Labor Service, and it does not hold the archives of detachments and work units in this direction. Additionally, we were sent a copy of the petitioner's record, which was expedited to the petitioner as well.

**File no. 13935/2005** Dan (a pseudonym), a major in the reserves (r) submitted a complaint to the Institution of the People's Advocate with regard to his having repeatedly requested a recalculation of his pension, by the Military Pension Section and Social Rights of the Ministry of National Defence since 2004. He received no reply. As a result of the intervention of the People's Advocate, the Direction of Finance and Accounting of the Ministry of National Defence communicated us that the pension rights of the

petitioner were revised according to the seniority in the service, and recalculated, according to the provisions of art. 79 of Law no. 164/2001, regarding state military pensions, republished. Additionally, the Ministry of National Defence informed us that due to the diversity and large number of work (with reference to the establishment of rights to pension for work, disabilities and survivorship, the recalculation of military state pensions), in rapport with the possibilities that indicate as much, the Military Section of Pensions and Social Rights were not able to resolve his complaint within the legal term limits provided by laws concerning pensioners' requests, therefore these were schedule for resolution within one year, according the registration of the same.

### ***B. Justice***

In the enforcement of the provisions of art. 21 of Romanian Constitution referring to the free access to justice, in 2005, the Institution of People's Advocate registered **938 complaints** mainly on the delays in resolving of the criminal cases and overdue providing with requested information on the cases pending; the activity of prosecution authorities; the judgements pronounced by the courts of law enforced by the public administration authorities; People's Advocate have been requested to bring a lawsuit before the administrative courts as well as to bring up the objections of unconstitutionality of laws and ordinances. Over this period, the People's Advocate submitted **two recommendations**.

Meanwhile, the Institution of People's Advocate has been notified with complaints regarding issues that are not within its jurisdiction, e.g.: legal advices; contesting the judgements pronounced by the courts of law; contesting some magistrates' activity; the solutions decided by public prosecutors; recess of execution of judgements or the refusal of some enforcers to execute the final judgements.

#### **a. complaints concerning delays in resolving of a criminal cases and overdue providing with requested information on the cases pending**

#### **CASE STUDY – Case resolved by the intervention of the Institution of the People's Advocate**

**File no. 10319/2005.** Avram (a pseudonym) submitted a complaint to the Institution of the People's Advocate with reference



to the fact that both the inquiry and prosecution authorities were delaying the resolving of a criminal cases. The case issue was a car accident caused by Mircea (a pseudonym), where the petitioner was the injured party. Compliant to the petitioner's statement, the Public Prosecutor Office nearby Constanța Court of Appeal initially informed him that, Mircea was investigated by Mangalia Municipal Police, and then subsequently notified him that the filed case related to Mircea had been returned to Mangalia Municipal Police. As a result of the measures undertaken by the Institution of the People's Advocate, the Investigation Office of Mangalia Municipal Police reported that the case had been lodged with the Public Prosecutor' Office nearby Mangalia first instance court and thus referred for judgement. Complying with the information submitted by the Public Prosecutor' Office nearby Mangalia first instance court, the indictment act issued meant taking legal action against Mircea, the accused person and bringing him to trial, for the infringement stipulated and sentenced by art. 78, paragraph (1) of Emergency Government Ordinance no. 195/2002 and its adjusted and modified form regarding the traffic on public roads. At present, this case is pending with Mangalia court of first instance.

**File no. 9852/2005.** Nicolae (a pseudonym), as the victim of a car crash, filed a complaint to the People's Advocate against the Public Prosecutor' Office nearby Constanța court of first instance that kept delaying the sentence in a criminal case brought to trial in 2004 as a follow up of the complaint against the author of that car crash. Following the procedures undertaken by the People's Advocate, against the section of Constanța District Court provided the People's Advocate with a copy of the sentence given by the prosecutor in that criminal case. Complying with this official copy, there was acknowledged police investigators' conclusion that there was no ground for prosecution against Costin (a pseudonym) for being guilty of grievous bodily harm as stipulated by art. 184 paragraph (1) and paragraph (3) of the Criminal Code. Meanwhile, the case was brought to be resolved by Constanta Court of first instance, as charged for injuries or some other violent behavior and abuses (stipulated by art. 184 paragraph (2) and art. 205 of the Criminal Code).

## **b. complaints of the activity of prosecution authorities**

### **CASE STUDY – Case resolved by the intervention of the Institution of the People's Advocate**

**File no. 9040/2005.** Tudor and George (pseudonyms), both foreign citizens, submitted a complaint to the People's Advocate with reference with their abusive detaining by the border police officers of Siret Custom Point, while they were not noticed in any way of the detaining grounds and, later, of their arrest. Moreover, the complainants stated that starting with the moment of their detainment they repeatedly asked the police officers and the prosecutors for both being assisted by a translator and for being let to know the reasons of their detainment and their arrest. They complained that their requests were completely denied and thus they proceeded to hunger strike as a way of protesting. Meanwhile, the complainants also mentioned that at the moment of their preventive arrest extension, when a lawyer assisted them, they could insure their right to have a translator in the courtroom. The complainants also stated that, because of the hunger strike they underwent, the foreign citizens were taken to a hearing with the First Prosecutor of the Public Prosecutor' Office nearby Cluj District Court and they were kindly "advised" to give up that type of protest, as their request for a new prosecutor in their case was under processing.

As a follow up of the presented case and based on art. 18 of Law no. 35/1997 regarding the organization and functioning of the People's Advocate, republished, the Institution of the People's Advocate further submitted the complainants' petition to the Public Prosecutor' Office nearby the Hight Court of Cassation and Justice, that afterwards informed us that the mentioned complaint was brought to Public Prosecutor' Office nearby the Cluj Court of Appeal, where the material and territorial competence was with.

## **c. complaints regarding the enforcement of the decisions of the courts of law by the public administration authorities**

### **CASE STUDY – Case resolved by the intervention of the institution of the People's Advocate**

**File no. 10203/2005.** Maria (pseudonym) submitted a complaint to the People's Advocate with regard to the fact that Mayor's House

of Pogoanele, Buzău County, had not enforced the civil court order stating “the absolute partial nullity of some land deeds“ as concerning the location of several plots of land for which the right of property had been rrestored according to the Law no. 18/1991 on the land fund, republished, amended and completed. The Mayor’s House of Pogoanele afterwards notified the People’s Advocate that the complainant has been compensated with a 2.66 ha of land, while the remaining plot of 1.23 ha was to be placed into her possession after the harvesting and cleaning the land of vegetal debris.

**File no. 12454/2005.** Iulian (a pseudonym) filed a complaint to the People’s Advocate with regard to the non-enforcement of a commercial judgement pronounced by Bucharest District Court – the 6th Section for Trade Issues. As final and conclusive, this decision was to be enforced under executory clause. Through this decision, Ilfov County Council was compelled to pay the amount of 1,242,851, 511 RON, the overdue debt toward Iulian. In the meantime, the complainant specified that he complained to Ilfov County Council and registered there his petition where he mainly requested the Chairman of Ilfov County Council, as an authorizer for payment, to take the necessary steps in order to insure the financial cover within the budget of this institution, so to be able to pay the amount setup by the commercial judgement, according to the Government Ordinance no. 22/2002, art. 2.

Following the procedures undertaken by the People’s Advocate, Ilfov County Council informed us that the amounts to be paid had been approved by the budget of Ilfov County Council as miscellaneous expenses and then transferred in the debtor’s account, thus proceeding to the legal steps.

#### **d. complaints regarding the People’s Advocate request to bring a lawswit before the administrative courts as well as to raise objections of unconstitutionality of laws and ordinances**

According to art. 1 paragraph (2) of Law no. 554/2004 on the administrative litigation, the People’s Advocate was requested to appeal to the entitled courts for resolving administrative disputes, if after the survey effected in compliance with its organic law, the People’s Advocate concluded that the illegality of the act and the excess of power of the administrative authorities could not be removed in any other way but trial. De facto, the claimant asserted

that the court had declared nulle the deed of sale contracted with Bucharest Municipal Town Hall because of the decision issued by the Committee in charge with certification of the anti-communist resistance activity. The complainant stated that the judgement was favorable to the adverse party he was at trial. Meanwhile, out of his petition examination came out that, in compliance with paragraph (1) of Law no. 554/2004, the claimant requested the Court of Appeal Bucharest to overrule the decision of the Committee in charge with certification of the anti-communist resistance activity. His request was denied as being “of no interest”. The complainant filed a protest against the judgement in civil matters.

Regarding his complaint and conforming art. 1 paragraph (3) of Law no. 554/2004, we informed the complainant that the People’s Advocate intervention (as subject to seizing) was not opportune and, as stipulated by art. 15 paragraph (4) of Law no. 35/1997, republished, his request did not come within the People’s Advocate jurisdiction related to the acts of the judicial authorities. The complainant was further informed on some specific matters as following:

- the People’s Advocate can notify the administrative court qualified, while the petitioner’s status is fully acknowledged as the complainant, therefore, he is to be summoned accordingly. The petitioner was already acknowledged as complainant, because he had filed his case with the qualified administrative court, he had requested the overruling of the Committee decision of in charge with certification of the anti-communist resistance activity and he had also appealed against the judgement in civil matters of the Court of Appeal. On these grounds, if the People’s Advocate had notified the qualified Administrative Court, the only result in the petitioner’s favor would have been the acknowledgment of his status as a complainant, which he had already achieved.

- the provisions of the Law no. 554/2004 are completed by the stipulations of the Code of civil procedures which, at art. 163 specifies that no natural or legal person can be sued by more than one court for the same cause, for the same issue and registered with the same party status. Consequently if submitting a new case to the qualified court by the People’s Advocate, according to the Law no. 554/2004, there would be enforced the identity of cause, issue and parties.

At the same time, the People's Advocate was requested to raise an objection of unconstitutionality regarding art. 5, the last paragraph of the Law on administrative litigation no. 29/1990, which stipulates that, in all cases, filing the case with the court cannot be effected later than one year since the notification day of the administrative deed requested to be voided. The complainant stated that the provisions of art. 5, the last paragraph of the Law no. 29/1990 infringes the provisions of art. 21 from Romanian Constitution related to free access to justice, because it establishes a forfeiture deadline for filing the case with the court. Considering the mentioned request, the complainant was informed that notifying the Constitutional Court is not possible on the grounds on objection of unconstitutionality of the indicated legal provisions because

- in accordance with the provisions of art. 146 paragraph d) and 147 paragraph (1) of the Constitution, only the effective laws and ordinances can substantiate the issue of a constitutionality survey;

- the Law on administrative litigation no. 29/1990 was no longer effective as it was abolished on the enforcement of Law no. 554/2004.

### ***C. Police***

The institution of the People's Advocate was also notified in 2005 on some issues related to the police activity. The main matters submitted to the People's Advocate in this respect were the following: the activity of community public services for passport issuing and registration; the activity of community public services for people registration; the activity of traffic police; the activity of investigation police; the activity of issuing certificates by the National Archives within the Ministry of Administration and Internal Affairs.

#### **a. complaints regarding the activity of community public services for passport issuing and registration**

##### **CASE STUDY – Case resolved by the intervention of the Institution of the People's Advocate**

**File no. 9102/2005.** Clara (a pseudonym) complained that, on the grounds of lacking some the information filled in, Romanian Embassy of Tel Aviv, rejected some papers necessary for issuing

the passport – specifically the birth and the marriage certificate of the complainant –, in spite the fact that Public Community Service for Issuing and Registration of Regular Passports, Bucharest, confirmed those as legally presented. In this case, the citizens were guided to Bucharest Court of first instance, Sector 1, there to correct an error that they had not caused, but on their time and money expenses. The People’s Advocate notified the General Directorate of Consular Affairs within the Ministry of Foreign Affairs, which informed us that the complainant’s petition had been submitted to the qualified institution to be inquired and enclosed the reply given by the General Directorate of Passports Issue to the petitioner. Out of this reply came out that the General Directorate of Passports Issue notified the General Directorate of Consular Affairs within the Ministry of Foreign Affairs to inform the Romanian Embassy in Tel Aviv that requests for issuing regular passports can be admitted even if their holders have birth or marriage certificates registered by the Romanian authorities even without being specified the column “parents’ last name”.

**File no. 623/2005.** Mihai (a pseudonym) submitted a complaint to the People’s Advocate related to the fact that, in April 2004, after signing a contract of employment in Germany, he started the necessary steps for getting a passport and the resident status visa from the German Embassy. The Embassy denied the petitioner’s visa request because another person, with Mihai’s same personal data as, had committed a felony in Italy. At the same time, the complainant specified that, in order to attest his innocence, he placed himself at the disposal of Police Inspectorate of Dâmbovița County for being finger-marked and having his pictures taken, but he was later informed that his evidence had been lost. The People’s Advocate notified the Police Inspectorate of Dâmbovița County which reported us that Romanian Embassy in Italy had informed the complainant that he was no longer in the SIS database (Schengen Information System) and that he was eligible to obtain the visa necessary for his employment abroad. As a result of resolving this case, the complainant was summoned to the Public Community Service for Issuing and Registration of Regular Passports Dâmbovița and there he was provided with the necessary documentation and the results of Romanian Embassy in Italy.

## **b. complaints regarding the activity of the Community Public Services for People Registration**

### **CASE STUDY – Case resolved by the intervention of the Institution of the People’s Advocate**

**File no. 13439/2005.** Ana (a pseudonym) submitted a complaint to the People’s Advocate with regard to the fact that the Real Estate Administration denied her request of renewing the lease contract for the dwelling she was living in. This situation also meant that the complainant could not obtain any new identity card. Following the procedures undertaken by the People’s Advocate, the Real Estate Administration renewed the complainant’s lease contract by 2009 and, conforming to the complainant’s report, the Police Section no. 14, Bucharest, issued a new identity card for her.

**File no. 9235/2005.** Viorel (a pseudonym) submitted a complaint to the People’s Advocate with regard to his pending request filed to the local Community Public Services for People’s Registration of Ploiesti Municipality, in order to get the issuing of his identity card. Pursuant to the intervention enforced by the Institution of the People’s Advocate, the local Community Public Services For People Registration of Ploiesti Municipality reported that, at the time of his leaving the country (in 1986), the complainant had not been registered by the personal number code, therefore this code was requested from the National Center for the Administration of Data Bases for People’s Registration, Bucharest. After concluding these steps, the file was submitted to Prahova Passport Agency for inquiries and, after receiving the results, the complainant provided with the identity card.

## **c. complaints regarding the activity of police as an investigation body**

### **CASE STUDY – Case resolved by the intervention of the institution of the People’s Advocate**

**File no. 13934/2005.** Cornel (a pseudonym) filed a complaint against the delay of resolving a pending penal contestation that was to be settled by the local investigation bodies. In this respect, the complainant stated that, in 2004, he had filed a penal contestation

with Ghimpati Commune Police and this contestation was then sent for qualified resolving by the County Police Inspectorate of Giurgiu.

Pursuant to the intervention enforced by the Institution of the People's Advocate, the County Police Inspectorate of Giurgiu reported us that the prosecution contestation made by the complainant was the issue of a criminal case where the preliminary documents had been issued, while the defendants were under investigation for committing actual body harm and domicile breach. At the same time, the notified inspectorate also reported that the investigation had been concluded and the file was submitted to the Public Prosecutor's Office nearby Giurgiu Court of first instance with a reference of concluding the criminal prosecution.

**File no. 14548/2005.** On August 16, 2005, in the periodical "Libertatea" an article was published under a breaking news title "Beaten to jelly by five police officers", informing the audience that Ion (a pseudonym) "was a victim of five furious and drunken police officers, Saturday, about 8 p.m.".

Pursuant to the intervention enforced by the Institution of the People's Advocate, the County Police Inspectorate of Mehedinti County informed us that some preliminary documents were worked out, while the file was submitted to the Public Prosecutor's Office nearby Mehedinti District Court, in order for the police department to investigate both the possible abusive behavior of the policemen and the possible outrage committed by the complainant.

Meanwhile, the Police Inspectorate of Mehedinti County notified the Forensic Medicine Service of Mehedinti to offer legal expertise on the injuries that the victim presented and the preliminary investigation proceedings were undertaken for the disciplinary survey of the five police officers. By a second notification sent to the People's Advocate, the County Police Inspectorate of Mehedinti reported that they concluded the preliminary investigation proceedings for the disciplinary survey of the five police officers suspected of aggression against the complainant, while the existing injuries, the way of inflicting them and link between these lesions and the policemen's actions were still under investigation of the prosecutor's office.

**File no. 9902/2005.** Catalin (pseudonym) submitted a complaint to the People's Advocate with regard to the delay of resolving the criminal case he was the injured part in. Pursuant to the intervention



enforced by the Institution of the People's Advocate, the County Police Inspectorate of Neamț County informed us that, back in 1999, complainant had been the victim of a car accident, while he was a passer-by. The car driver guilty for the accident left the crime scene. As a result of the investigations undertaken, the police staff reported us that the author of that car accident is Marcel (a pseudonym) and he had strongly denied as being the identified committer. After the evidentiary documentation admitted, Public Prosecutor' Office nearby Neamț District Court issued the indictment and proceeded to trial against the accused person. His case was filed with Bacau Court of Appeal, which judged the return of this case to the Public Prosecutor' Office nearby Neamț District Court in order to complete the prosecution.

At the same time, the County Police Inspectorate of Neamț County reported us that the investigations had been delayed because the complex activities undertaken in terms of managing the evidentiary and with regard to the fact that the author of that accident had been out of the country. In addition, as the conclusions of the three expertises contained contradictory elements, the acting prosecutor of the Public Prosecutor' Office nearby Neamț District Court ordered a trauma forensic expertise. The end of the notification specified that, according to the expertise conclusions and having in view the entire evidentiary, the criminal case was to be submitted by the Public Prosecutor' Office nearby Neamț District Court for judgement by the competent court.

**File no. 15234/2005.** Dorel (pseudonym) submitted a complaint to the People's Advocate with regard to the fact that he had filed a petition with Municipal Police of Câmpina regarding the stage of his complaint previously registered, but he received no answer. Pursuant to the intervention enforced by the Institution of the People's Advocate, the Municipal Police of Câmpina – Criminal Investigation Department reported us that the complainant received the official answer to his petition, after that being summoned to hearings related to the criminal case where he was the accuser. At the same time, we were informed that the complainant had already been present to the hearings and completed the file with some new documents requesting further investigations.

**d. complaints regarding the certificates issued by the National Archives within the Ministry of Administration and Internal Affairs**

**CASE STUDY – Case resolved by the intervention of the Institution of the People's Advocate**

**File no. 21139/2005, no. 4245/2005, no. 15008/2005.** Mihai, Alin and Alexe (pseudonyms) submitted a complaint to the People's Advocate, stating that they had addressed to the National Archives, for the issuance of a certificate referring to the military service performed, with a view to benefit of the capacity provided for by the Law no. 309/2002 amended and completed, on the recognition and granting of rights to persons having performed military service within the General Directorate of the Labor Service within 1950-1961. The National Archives granted their requests with no answer.

Following the People's Advocate intervention, the National Archives reported that the complainants were registered in the books of General Directorate of Labor and therefore their certificates requested were issued accordingly.

In addition, the National Archives specified that their staff had to deal with an excessive amount of request regarding the issuance of copies of various documents necessary both to natural and legal persons for being granted with some rights stipulated by the laws adopted since 2002 to present. This situation led to the impossibility of resolving some requests within 30 days.

***D. Penitentiaries***

In 2005, the complaints submitted to the People's Advocate by the persons serving convictions in penitentiaries mainly referred to: drafting and presenting medical documents to the convicts; failure of the penitentiaries staff to bring the convicts to court at the legal days established for trial; the right to information related so some special legal provisions concerning the detained persons; respecting the rights to petitions, to mail and to phone calls; the rights to have daily walks, the right to physical and psychic integrity; the right to a decent living standard.

In this respect, a provisory detained person in the Maximum Security Penitentiary in Timisoara requested from us information regarding the obligation of the provisory detained persons to wear

the clothes specific to the detention place, both within the penitentiary and outside the penitentiary (for instance on the occasion of bringing the escorted prisoners to the court of law). In addition, the complainant also stated that “another problem” unresolved by the penitentiary staff was concerning the compulsory cuffing of the provisory arrested persons, while these were transported outside the penitentiary or to the court of law.

With regard to the enforcement of the Law no 23/1969 related to the execution of punishments and the completions made to this law, the detained persons under prosecution or under trial would wear personal clothes. For additional information, the People’s Advocate made inquiries to the National Penitentiary Administration that informed us that, according to the specific international standards, the detained persons under not absolute conviction would wear personal clothes if these were appropriate and clean, even in the presence of judicial bodies. The administration of the detention place is liable to provide this criminal category with some other type of overalls that the convicted persons wear, if the provisory detained persons possess no personal clothes or if their cloths are not appropriate and clean. In order to enforce these specific internal and international standards, they were legally adjusted by decisions of the general manager of the National Penitentiary Administration and then submitted to the subordinated units.

As regarding the immobilization means, according to the National Penitentiary Administration, these are applied to prisoners from the transportation vehicle to the arrest room and from the arrest room to the stand set up in the session room (the hearing room). The immobilization means are taken away during the judgement session or during the hearings. The prisoners considered especially dangerous would be escorted to the judicial bodies while wearing immobilization means and the chairpersons of the authorities to judge would be previously informed. In case that the authority representative decides the removal of immobilization means, this would be accordingly enforced.

### **CASE STUDY – Cases resolved by the intervention of the Institution of the People’s Advocate**

**File no. 2136/2005.** Alexandru (a pseudonym), detained in the Maximum Security Penitentiary in Bucharest - Rahova submitted a complaint to the People’s Advocate, stating that his access at

personal medical documents is obstructed. The complainant mentioned that the penitentiary staff in charge replied to his request that they could not issue a copy of the medical file required, as they were not in its possession. After filing his petition to the National Penitentiary Administration, the prisoner was guided to request his medical file from the penitentiary he was detained in and where he had been previously denied.

Following the People's Advocate intervention, the Maximum Security Penitentiary in Bucharest - Rahova submitted a copy of the medical file and all annexes. The survey authorities noticed that the submitted medical file contained no registration number, no data or signatures of the penitentiary staff, therefore the People's Advocate notified the National Penitentiary Administration. The notified institution attested that the penitentiary medical file of that prisoner did not exist in its original form, so that it was decided the review of the complainant's health state, on the grounds of the existing documents, while the person responsible for the original medical file missing of the medical cabinet books was served an admonition note.

**File no. 11381/2005.** Alexandru (pseudonym) submitted a complaint to the People's Advocate with regard to the refusal of administration in charge at the Maximum Security Penitentiary in Bucharest - Rahova to take him to the court at the legal day established, even if the detained person had been served a subpoena for a case under trial at Prahova Court of Law.

Following the People's Advocate intervention at the Maximum Security Penitentiary in Bucharest - Rahova, we were reported that the complainant had been provisory detained on the grounds of two arresting warrants. Buftea Court of first instance issued one warrant for rape and the Prosecution office nearby of Prahova District Court for drugs traffic issued the second. According to a special disposition of the general manager of the National Penitentiary Administration, the prisoner was taken to Prahova District Court of Law on the days established by the court as his transfer between the court days established by Buftea Court of first instance was made possible. At the end of this notification, the Maximum Security Penitentiary in Bucharest - Rahova mentioned that, in the future, complying with the days established by the courts in the area of this penitentiary, the complainant would be taken to Prahova District Court, by a short-run transfer to the close-circuit penitentiary of Ploiești.

**File no. 1054/2004 (concluded in 2005).** Flavius (a pseudonym), detained in the Maximum Security Penitentiary in Bucharest - Rahova, submitted a complaint to the People's Advocate with regard to the presumed violation of his rights to petition, mail, phone calls as well as to his rights to a decent living standard.

Following the complaint, the People's Advocate required information and proceeded to **an inquiry** within the Maximum Security Penitentiary in Bucharest - Rahova. Conclusions:

- within this penitentiary, there was no internal deed on the conditions of granting the rights of the prisoners to phone calls in terms of establishing the number of monthly calls, the call duration and the number of telephone cards that the prisoners could possess. The penitentiary administration established that each prisoner is granted four monthly calls and the possession of five telephone cards.

- the detained persons' petitions were not registered under entry numbers and there was no standardized register for internal correspondence, but only a regular notebook;

- the prisoner was accepted to a hearing with the board of the Maximum Security Penitentiary in Bucharest - Rahova.

The observations resulted of the measures enforced by the People's Advocate were presented to the National Penitentiary Administration and this institution committed to resolve this situation. Following this commitment, the National Penitentiary Administration informed us that, on the grounds of Order no. 4622/2003 and the Decision no. 4622/2003 issued by the general manager of the National Penitentiary Administration, the Maximum Security Penitentiary in Bucharest - Rahova set regulations for each detained person to be monthly granted with four telephone calls. This means that the Maximum Security Penitentiary in Bucharest - Rahova acted accordingly to the provision setting that a detained person is allowed to a certain calls number and to a certain number of telephone cards in the prisoners' possession.

Conforming to the National Penitentiary Administration and with regard to an operative resolving and an appropriate keeping of the records with complaints and petitions submitted by the detained persons to the decision-making factors of the penitentiary, the board issued an order for the petitions to be entered in a special numbered register that would be maintained at every section of detaining levels. The detained persons are entitled to a legal written answer.

These aspects would be in view along the process of working out the code of rules for the enforcement of the new law of punishments' execution.

On the hearing granted to the prisoner by the board of Maximum Security Penitentiary in Bucharest - Rahova, he was provided with Xerox copies of some documents registered with his detention file and he was also informed on the legal provisions regarding his right to telephone calls.

## **2.6. The area of property, labor, social security, duties and taxes**

### ***A. Property***

In 2005, the People's Advocate received **1159 complaints** referring to the observance by the public authorities of the right to private property, guaranteed by art 44 of the Constitution.

Delaying of the restore the rights of property, of repossession or issuance of property certificates are the aspects mainly referred to in the complaints filed in this field.

The petitions concerning this right mostly protested the manner of enforcing the Law no. 18/1991 of the land fund, republished, of the Law no 10/2001, republished, regarding the legal status of some real estates abusively taken over by the state within March 6<sup>th</sup> 1945 – December 22<sup>nd</sup> 1989, Law no. 9/1998 on the granting of compensations to Romanian citizens for the assets transferred to the property of the Bulgarian State following the enforcement of the Treaty between Romania and Bulgaria, signed in Craiova in 1940, September 7, republished, Law no. 247/2005 related to the reform in the field of property and justice as well as to some measurements related.

The infringement or delays in the enforcement of the Government Ordinance no. 85/2001 with regard to the organization and functioning of estate owners associations, passed with the consequent modifications and completions through Law no. 234/2002 as well as the Methodological Norms related to the organization and functioning of estate owners, passed by Decision no. 400/2003, with the consequent modifications and completions approved by the district town halls of Bucharest through the Offices for relations with the estate owners associations, were subjects to **inquiries and recommendations**, most of them followed by reenacting the rights claimed by the petitioners.

- Thus, with regard to the Law no. 18/1991, republished, the complainants have notified the People's Advocate of the local

public authorities' refusal to analyze or to work out the documentation necessary for restoring the rights of property, to issue the titles, to enforce the repossession, to enforce definitive and irrevocable judgments by which the cancellation or amendment of the titles issued with the violation of the legal provisions was requested. In this respect, the People's Advocate notified the local commissions responsible of enforcing the Law no. 18/1991, republished.

- With regard to the enforcement of the Law no 10/2001 the complainants notified the People's Advocate mainly of the public authorities' and institutions' failure to comply with the time limit set for the resolution of the applications submitted by the persons entitled.

In this respect, the People's Advocate requested information from the local public authorities following which it found that the notifications submitted under the Law no. 10/2001 were not settled within the legal time limit of 60 days. Consequently, the failure to settle the files submitted under the Law no. 10/2001 within the legal time limit is considered a delay in setting the indemnities to be awarded to the persons entitled, should the restitution in kind of the real estate not be possible.

At the same time, out of the local administrations' or prefectures' answers with regard to the exceeding of the legal term, it was concluded that:

- at the level of the public authorities and institutions, there are defective proceedings caused by the great volume of petitions submitted under the Law no. 10/2001 in terms of the cooperation between different departments and competent services to settle the notifications;
- the complainants often submit incomplete evidence with regard to their capacity of entitled person or to the property right;
- the complainants do not use legal action against the documents settling the applications, expressly requesting their administrative settlement as reasoned by the lack of financial resources to bear a lawsuit

Pursuant to the People's Advocate steps taken in these cases the petitioners were informed with regard to the documentation necessary to completing and resolving of the notifications made.

In addition, in order to meet the complainants' request while having no answers from the notified authorities, **3 inquiries** were

undertaken at the Municipal Town Hall of Bucharest that was involved in the process of enforcing the Law no. 10/2001. Following the inquiries, it came out that the settlement of the applications under the Law no. 10/2001 as well as of the applications requesting information with regard to the settlement status, was delayed. In such cases, the People's Advocate drafted **one recommendation**.

The Municipal Town Hall of Bucharest reported to the People's Advocate neither all the measures undertaken nor its official opinion so far.

In addition, during 2005, following one **inquiry** undertaken at Municipal Town Hall of Constanta, it came out the delay of enforcing the provisions of the Law no. 10/2001, as well as the infringement of the rights to petition settled by art. 51 of Romanian Constitution as referred to the right of property and the violation of Law no. 544/2001 regarding the free access to the information of public interest. Pursuant to this inquiry, the People's Advocate drafted **one recommendation**.

The **inquiry** undertaken to Town Hall of Sector 2, Bucharest, concluded the infringement or the delay of enforcing the Government Ordinance no. 85/2001 with regard to the organization and functioning of estate owners associations, passed with modifications and completions through Law no. 234/2002 and the Methodological Norms with regards to the organization and functioning of estate owners associations, passed through Decision no. 400/2003, with further modifications and completions. Pursuant to this inquiry, the People's Advocate drafted **one recommendation**.

The People's Advocate was also notified on the infringement of Law no. 50/1991 with regard to the authorization of building works, republished. This infringement of the law was concluded as consequent to an **inquiry** undertaken with Town Hall of Sector 4, Bucharest. Pursuant to this inquiry, the People's Advocate drafted **one recommendation**.

The complainants also notified some problems related to the disregard of court judgements as sentenced for the enforcement of Law no. 10/2001. In these cases, the public administration authorities refused or, on some occasions, abusively delayed the enforcement of the courts judgement.

We do consider such an attitude as not appropriate for the public authorities that, by the legal competence they are liable to, are implicitly obliged to ensure respecting of the law and of the right



order. We also state that some firm measures must be implemented in order to stop such phenomena.

- The complaints concerning the manner of enforcing the Law no. 9/1998 mainly regarded the delayed payment of compensations and the lack of transparency in terms of the activities of those commissions in charge with the enforcement of the law.

In 2005, a significant number of individuals informed the People's Advocate of the fact that their files submitted to the central commission for the enforcement of the Law no. 9/1998 were not solved. In addition, the complainants informed the People's Advocate of the fact that they submitted applications to the Central Commission for the enforcement of the Law no. 9/1998 and to the Ministry of Public Finance, whereby they requested to be informed of the status of their files, requests that received no answers within the legal time limit.

The People's Advocate informed the Central Commission for the enforcement of Law no. 9/1998 and requested the communication of the date and number of registration of the complainants' files with this authority and a report on their status. Information on the work modality of the Central Commission for the enforcement of the Law no. 9/1998 was also requested.

As the Commission had no reaction to the People's Advocate notifications, **four inquiries** were undertaken at the Central Commission for enforcing Law no. 9/1998.

Following the People's Advocate efforts, the Central Commission for the enforcement of the Law no. 9/1998 answered that the files were examined according to the order of their reception and registration with the Ministry of Public Finance, on a pro rata basis for each county. The validation/invalidation activity conducted by the Central commission for the enforcement of the Law no. 9/1998 was delayed due to the large number of files received from the county commissions, to the incomplete or mistaken documentation that attested the assets valuation and, therefore, caused the returning of the files in order to be completed or corrected, to the fact that Commission's members meet only once a month, as well as to the fact that most resolutions of the county commissions were invalidated by the Central Commission.

After dissolving the Department for the enforcement of Law no. 9/1998 within the Prime-Minister Office, the complainants were informed that, through Decision no. 261/2005, the National Authority for Repossession was founded. This body is charged to

notify the beneficiaries on the decisions made, to issue the documents for paying all the compensations granted by Law. no. 9/1998, republished, and the Law no.290/2003 as well as filling the compensations cases with the archives.

- Enforcing the Law no. 247/2005, respectively by the modifications and completions brought to Law no. 10/2001, Law no. 18/1991, Law no. 169/1997 for modification and completion of the Law no. 18/1991 and the Law no. 1/2000 for reenacting the right of property over the agricultural and forestry lands reclaimed under the Law no. 18/1991 and the Law no. 169/1997, caused the increase in number of complainants who presented for hearing or requested in writing information on the necessary applications or notifications in terms of matching the new settlements or of the application procedure of the documents, as well as on the conditions that a new reenactment of the property rights can be applied.

- Several petitioners of Roșia Montană commune notified the People's Advocate related to the administrative contestations and complaints addressed to the Mayor of Roșia Montană commune. These protests regarded the procedures of authorizing/approving of Project no. 4548/1/2004 – “Modification of the Zone Town-Planning for the Industrial Development Area Roșia Montană Gold Corporation S.A.” as well as the related regulations of the local town planning at the stage of requiring the citizens' approval.

Following the submitted complaints, **an inquiry** was undertaken at the Ministry of Transportation, Constructions and Tourism – General Directorate for Town-Planning and Territorial Improvement. On this occasion, at our disposal was placed Order no. 176/N/2000 of the former minister of public works and territorial improvement where it is stipulated that asking the citizens' approval is to be accomplished within an exhibit organized by the local council, where the local council representative would gather the citizens' suggestions, set them in order and then submit them to the local council for being analyzed. Filing the citizens' suggestions within the file documentation is done by the zone town-planning issuer after these proposals were previously debated and accepted by the local council.

In this case, the People's Advocate notified the Mayor of Roșia Montană commune who informed us that Project no. 4548/1/2004 had been already under development at that moment. As for noticing the citizens and asking for their opinions, in Roșia Montana commune were posted and published press inserts on the

presentation exhibits of the project, questionnaires were distributed to population, the citizens' options and opinions were collected and a public presentation of Project no. 4548/1/2004 was organized. Meanwhile, the Mayor of Roşia Montană commune specified that inserting or not inserting the citizens' notices on the mentioned project were to be approved within a special meeting of Local Council of Rosia Montana commune.

Conclusion: at the date of filling the petitions submitted by the local citizens of Rosia Montana commune, there was only one decision bill regarding the suggestions and opinions of the population as expressed during the working out of the Project no. 4548/1/2004 initiated by the Mayor of Roşia Montană commune. The citizens' suggestions and opinions as expressed on their participation at the territorial improvement and town planning had not been analyzed yet by the local council, which is actually the body enacted to determine by a decision on the admittance or non-admittance of the population's suggestions and opinions.

### **CASE STUDY – Cases resolved by the intervention of the Institution of the People's Advocate**

**File no. 11346/2005.** Serban (pseudonym) submitted a complaint to the People's Advocate with regard to the refusal of the Self Management National Company of Forestry to respect the provisions of a definitive and irrevocable court sentence. According to the court judgement, Self Management National Company of Forestry had been compelled to sell to the complainant the apartment where he was dwelling. The Self Management National Company of Forestry refused to enforce the court decision and therefore, by another court sentence, it was obliged to pay a civil fine of 500,000 ROL (Romanian Old Lei) per day of delay until the enforcement of the court sentence. Pursuant to the intervention enforced by the Institution of the People's Advocate at the Self Management National Company of Forestry, we were informed that in June 27, 2005, a note of enforcement was issued for the civil sentence no. 13956/1999. Through the same note, we were reported that the complainant signed this note as acknowledged and the preliminary measures had been fulfilled in order to conclude the transaction.

**File no. 5794/2004.** Peter (pseudonym) submitted a complaint to the the People's Advocate with regard to the refusal of the Municipality of Constanta to inform him about the stage of resolving the file under the Law no. 10/2001 related to the legal

status of some real estates abusively undertaken by state within March 6, 1945 and December 22, 1989. The People's Advocate enforced an **inquiry** with this public authority and concluded that the Municipality of Constanța had not respected the provisions of Law no. 544/2001 with regard to the free access to information of public interest, it delayed enforcing the stipulations of Law no. 10/2001, and it infringed the rights to petition as it is settled by art. 51 of Romanian Constitution regarding the right to petition. The People's Advocate issued the **Recommendation no. 1/January 31, 2005**, to the Municipality of Constanța. By this recommendation, the legal measures were officially required in terms of enforcing the stipulations of Law no. 10/2001 as well as providing an answer, in due time, to the petitions filed by the petitioners requesting information under the Law no. 544/2001.

**File no. 4810/2005.** Elena (pseudonym), the owner of an apartment within a condominium, submitted a complaint to the People's Advocate with regard to the fact that, because of some litigations between two owners associations over the payment and allotment of common expenses, she was put at the risk of losing her rights to the property of the mentioned apartment. The litigation between the two owners associations was taken for judgement to the Court of first instance Sector 2, where the resolving of this case was successively recessed on the grounds of lacking the technical expertise necessary for concluding that case. The People's Advocate decided to proceed to an **inquiry** with the Municipality of Sector 2 as having in view the examination of the submitted complaint aspects. In addition, the People's Advocate notified the Municipality of Sector 2 related to this case. Following the inquiry, the People's Advocate concluded that the Municipality of Sector 2 had not fulfilled its attributions settled by the laws, it had not actively guided the two owners associations and, consequently, it issued **Recommendation no. 2/May 31, 2005**. Through this recommendation, the People's Advocate required the public authority to take the legal measures in order that both administrators of the two condominiums observe the legal provisions with regard to the settlement and allotment of the expenses due to each owner, to play an active part in organizing and enforcing the financial and accounting survey of the two owners associations activities, to enhance an effective control over the manner in which the administrators, the board and their financial and accounting bodies perform their attributions as provided by the laws. In addition, the People's Advocate required the Office for

Relations with the Owners Associations within the structure of Local Council of Sector 2 to use the juridical means stipulated by the laws, thus for the administrators, the board and their financial and accounting bodies to perform their attributions as provided by the laws. As a result of both the issued recommendation and the steps undertaken at Court of first instance Sector 2, the complainant's request was resolved.

**File no. 5131/2005.** Dumitru (pseudonym) requested the People's Advocate to take legal measures in order to halt the building of a fuel station in Calea Vacaresti zone, because the establishment of such an enterprise would put at danger the rights of private property of the owners in the blocks-of-flats of the neighborhoods, the right to a healthy environment and the right to the health protection of all the citizens living in this area. The People's Advocate enhanced an **inquiry** at the Municipality of Sector 4. This inquiry noted the infringement of the provisions of Law no. 50/1991 with regard to the authorization of building works, republished, the **Recommendation no. 5/June 28, 2005** addressed to the Municipality of Sector 4, Bucharest being issued. In this respect, the People's Advocate required that, on the issuance of the building authorization and the town-planning certificate, a subsequent examination should be made in terms of material and territorial competence. The notified body enforced the **Recommendation** of the People's Advocate and the complainant's petition was resolved.

**File no. 8876/2005, File no. 9155/2005, File no. 13044/2005, File no. 13613/2005, File no. 12279/2005, File no. 12 571/2005, File no. 13039/2005, File no. 13301/2005, File no. 13553/2005.** Several complainants submitted complaints to the People's Advocate with reference to the delay of resolving their petitions filed with the Municipality of Bucharest, Juridical, Administrative and Legislation Directorate. The People's Advocate undertook an **inquiry** within this public authority and consequently concluded that the complainants had repeatedly required information on the stage of their cases resolving, while the Municipality produced no answer. The People's Advocate issued the **Recommendation no. 10/August 29, 2005** addressed to the General Mayor of Bucharest and thus requested the enforcement of legal procedures necessary for observing the provisions of the Law no. 35/1997 with regard to the organizing and functioning of the People's Advocate, republished, as well as the accelerating of the process of answering the petitions, in order for the citizens to be informed on the

resolving method of the submitted notifications. Regarding the issued recommendation, the General Mayor of Bucharest has not informed the People's Advocate on the adopted measures.

**File no. 13119/2005.** George (pseudonym) submitted a complaint to the People's Advocate with regard to his discontent caused by the fact that, even if he had filed several petitions with the Mayor's House of Țigănești, a commune in Teleorman County, he had not been granted the deed of property for a plot of land measuring 1,66 ha of which 6,000 sq.m. are crossed by a communal road. The People's Advocate proceeded to an **inquiry** within the Mayor's House of Țigănești, Teleorman, and consequently concluded that the complainant's petition was grounded. Out of the discussions with the vice-mayor as a follow-up of the notification submitted to the People's Advocate came out that, after harvesting the plot at issue, the complainant's property would be clearly separated by the neighboring properties and by the public road.

**File no. 8859/2005.** Ioana and Maria (pseudonyms) submitted a complaint to the People's Advocate with regard to the fact that they had repeatedly requested to be informed on the stage of resolving their cases concerning the financial compensation due to them as stipulated by the Law no. 9/1998 related to the compensations granted to the Romanian citizens for the properties transferred to the Bulgarian State after the enforcement of the Treaty between Romania and Bulgaria. The Department for the Enforcement of Law no. 9/1998 within the Prime-Minister Chancellery had not given any answer to the notifications made by the People's Advocate in compliance with art. 59 paragraph (2) of Romanian Constitution and corroborated with art. 4 of the Law no. 35/1997 related to the organizing and functioning of the People's Advocate Institution, republished. The People's Advocate proceeded to an **inquiry** within the Department for the Enforcement of Law no. 9/1998 and, therefore, concluded that both the answers submitted to our institution and those meant to answer the petitioners' requests are sent after a visible delay, because of the staff shortage and the great amount of works appointed to each public servant of the Department. Regarding the complainants' request, we were informed that the file submitted under the Law no. 9/1998, republished, is still pending and an order is expected to be issued in the immediate future.

**File no. 6360/2005.** Ion (pseudonym) submitted a complaint to the People's Advocate with regard to the Department for the Enforcement of Law no. 9/1998 within the Prime-Minister

Chancellery that refused to inform him on the way of resolving his file related to the compensations granted to the Romanian citizens for the properties transferred to the Bulgarian State after the enforcement of the Treaty between Romania and Bulgaria. The Department for the Enforcement of Law no. 9/1998 within the Prime-Minister Chancellery had not given any answer to the notifications made by the People's Advocate, therefore, an **inquiry** was enforced and thus came out the fact that, in the registers of the Department for the Enforcement of Law no. 9/1998, the complainant was registered with the validation decision no. 94/2001. Regarding the fact that the complainant has been granted with a new validation decision issued by the Commission of Brasov County, we were informed that this case would be resolved when the commission is to examine the decisions issued in 2005, because at the moment of the mentioned inquiry, the staff was working at the files of 2001.

**File no. 14131/2005**, Marin (pseudonym), living in Jucu de Sus, a village of Jucu commune, Cluj County, complained about the delayed enforcement of repossessing a 9.30 ha plot of land. This case was to be resolved by the Mayor's House of Jucu commune. Pursuant to the intervention enforced by the Institution of the People's Advocate at the Mayor's House of Jucu commune, Cluj County, we were informed that placing the 9.30 ha plot of land into Mr. Marin (pseudonym) possession together with the other inheritors is under accomplishment. In addition, through the same address we were informed that, of the whole plot approved, the property deed issued was for 0.58 ha for the co-inheritors, while the overall plot allotted to the petitioner's co-inheritors was amounting to 8.14 ha. We were also reported that, within one week, the committee of the land fund would conclude the repossession by identifying the 0.50 ha plot of land left to be allotted as well as, when the certificate of acceptance would be finished, our institution would be noted. As a follow-up, we later received a notice from this public authority and thus we were informed that the complainant had been already placed in repossession of the last 0.58 ha plot previously unidentified.

**File no. 9146/2005**. Mihai (pseudonym) submitted a complaint to the People's Advocate against Municipality of Bucharest that was delaying the resolution of his file drafted under the Law no. 10/2001 related to the legal status of some real estates abusively undertaken by state within March 6, 1945 and December 22, 1989. Pursuant to the intervention of the People's Advocate at the



Municipality of Bucharest, we were informed that, in 2004, the file drafted by the complainant in order to regain the rightful possession of an estate in Bucharest had been submitted to the Commission for the Enforcement of Law no. 10/2001 that was in charge for examining and resolving such cases. Through the same notification, the Municipality of Bucharest reported to us that, in 2005, the General Mayor of Bucharest issued a decision in favor of the petitioner who was granted the repossession of the claimed estate.

**File no. 14305/2005.** Alexandru (pseudonym) submitted a complaint to the People's Advocate against the Commission of Braila County that was in charge to settle the rights of property on the lands because it had removed him from entry 38, Annex 39, where he had been registered by the local Commission of Cazașu. The reason stated for this removal was that the petitioner had not produced the proof of his right to property. Pursuant to the intervention of the People's Advocate at the Commission of Braila County empowered to settle the rights of property on the lands, we were informed that the complainant was asked to file a new request for the reenactment of his right of property, in compliance with the Law no. 247/2005 as well as to attach the property deed as proof. Through the same address we were also informed that, within the first meeting held, the County Committee would validate by a special decision the proposal of the Local Commission empowered to settle the rights of property on the lands with regard to the registering of the petitioner as the owner of a 2 ha plot of farmland out of the village.

**File no. 13553/2005.** George (pseudonym) submitted a complaint to the People's Advocate against Municipality of Bucharest that was delaying the resolution of his request for information on the stage of resolving his file drafted in compliance with Law no. 10/2001. Pursuant to the intervention of the People's Advocate, the petitioner was informed on the stage of his case and he was asked to add some more documents necessary to conclude his file with regard to financial compensation under the provisions of Law no. 10/2001.

**File no. 10594/2005.** Grigore (pseudonym) submitted a complaint to the People's Advocate with regard to the fact that he had required a decision from the Commission for Establishing the Qualifications of Fighters in the Anti-Communist Resistance, but his efforts were paid with no answer. Pursuant to the intervention of the People's Advocate at the Commission for Establishing the Qualifications of Fighters in the Anti-Communist Resistance, we were later informed that the Commission had admitted the



petitioner's request and, consequently, he had acquired the quality of fighter in the anti-communist resistance.

**File no. 13108/2005.** Ana (a pseudonym) submitted a complaint to the People's Advocate against the Mayor's House of Malnaș, Covasna County that was delaying the resolving of her claim for repossession as well as the issuance of her certificate of property. Pursuant to the intervention of the People's Advocate at the Mayor's House of Malnaș, Covasna County, we were informed that, through the issued Certificate of Property no. 17228/31530, the petitioner had regained possession on a 200 sq.m. plot of land placed in Malnaș Village. Through Civil Decision no. 306 of February 19, 2004, the Court of first instance of Sfântu Gheorghe admitted the file by which the petitioner claimed the cancellation of the first certificate of property above-mentioned. Therefore, the Commission of Covasna County was compelled to issue a new title of property for the 200 sq.m. plot of land placed in Malnaș Village. In addition, we were informed that the petitioner signed the repossession certificate of acceptance.

**File no. 14181/2005.** Gheorghe (pseudonym) submitted a complaint to the People's Advocate against the Prefect's Office, Prahova County that was delaying the resolving of his claim for repossession as well as the issuance of his certificate of property. Pursuant to the intervention of the People's Advocate to the Prefect's Office, Prahova County, we were informed that the complainant is on the list of hearings with Local Council of Bucov commune, in order to benefit from the repossession of a 5,75 ha, in compliance with Court Decision no. 1373/2003 and the civil Decision no. 480/2004.

**File no. 9107/2005.** Mariana (pseudonym) submitted a complaint to the People's Advocate against the Mayor's House of Ciorogârla, where she had filed a petition for obtaining a copy of the farmland register with neighborhoods (land survey) dated 1962. Previously, as an empowered person by notary proxy, the petitioner had requested from the Mayor's House of Ciorogârla a copy of the documents that, in 1962, registered the location and the neighbourhoods of an isolated plot of land. The Mayor's House of Ciorogârla informed the petitioner by a copy, that the farmland register contained only data regarding the name of the owner, the year of joining the collective farm, the surface and the legal status of the land that entered the collective farm.

Pursuant to the intervention of the People's Advocate, the Mayor's House of Ciorogârla informed us that, in their archives, there was no land survey of 1962. The only document existing since

that period, respectively 1959-1963, is the agricultural land survey where the neighbourhoods are registered in order of their entry. In addition, the excerpts of the land survey of 1990 were submitted to the People's Advocate as well as the location plan that afterwards were placed to the petitioner's disposal.

**File no. 204/2005.** Elisabeta (pseudonym) submitted a complaint to the territorial office of the People's Advocate in Alba Iulia with regard to the delay of solving her file drafted under the provisions of Law no. 10/2001 by the Town Hall of Sângeorz Băi. Pursuant to the intervention of the territorial office of the People's Advocate in Alba Iulia at the Town Hall of Sângeorz Băi, we were informed that the notification would be resolved through an order issued by the mayor regarding the repossession in kind of the estate claimed by the petitioner.

**File no. 247/2005.** Miruna (pseudonym) submitted a complaint to the territorial office of the People's Advocate in Alba Iulia with regard to the delay of solving her petitions registered in Ciugud with Local Commission in charge to settle the rights of property on the lands, the issue in view being a plot of land in the village area. Pursuant to the intervention of the territorial office of the People's Advocate in Alba Iulia at the Mayor's House of Ciugud, we were informed that the complainant agreed with the repossession of a plot of land. In this respect, a repossession certificate of acceptance was issued. In addition, we were informed that, through Decision 969/2005, the Commission of Alba County admitted the request of Ciugud Local Commission and ordered the transcription of the plot on the petitioner's certificate of property.

### ***B. Labor and social security***

In 2005, the People's Advocate received **142 petitions** referring to the failure of the public authorities to observe the right to labor and social security, stated in art. 41 of the Romanian Constitution.

Therefore, the People's Advocate was notified on the presumed employers' abuses related to employment, dismissal procedure, request of information regarding reintegration on the job or granting of payment rights.

Among the issues notified, some special ones could be noticed: the employers' refusal of concluding employment contracts as to the laws; delayed payments of the contributions due to the social insurances funds; difficult working conditions that some employees have to confront; overtime requested, but not paid in compliance with the labor legislation.

In addition, the People's Advocate was notified in numerous cases regarding the increase of teachers and professors' salaries as planned by the Romanian Government for 2005.

All the teaching staff was let to know that such complaints are not liable with the People's Advocate Institution and, under art. 6<sup>1</sup> of the Government Ordinance no. 27/2002 with regard to resolving the petitions and passed with modifications and completions through Law no. 233/2003, the complaints were further submitted for the competent resolving, to the Romanian Government.

### **CASE STUDY – Cases resolved by the intervention of the Institution of the People's Advocate**

**File no. 2722/2005.** Cristian (pseudonym) submitted a complaint to the People's Advocate Institution asking support for having solved his petition addressed to the Institute of Studies and Planning of Land Improvements. The petitioner requested the issuance of a certificate for length of his labour. Pursuant the intervention of the People's Advocate Institution, the Institute of Studies and Planning of Land Improvements issued the certificate that attested the labour activity performed in the Institute between 1992-1993.

**File no. 11464/2005.** Alin (pseudonym) submitted a complaint to the People's Advocate Institution with regard to the delay of resolving his petition, by the National Archives. The petitioner requested the issuance of a certificate to attest that, between 1956 and 1958 he had served in the army within the labour divisions in Reșița and Roman.

This certificate was necessary for him to benefit of the provisions of Law no. 309/2002 on the recognition and granting of rights to person having performed military service with the General Direction of Labor Services within 1950-1961.

Pursuant to the intervention of the People's Advocate to the National Archives, we were informed that the complainant was granted the issuance of certificate no. 29728/2005, on 17th of June 2005.

### ***C. Taxes and duties***

In 2005, the People's Advocate received complaints with regard to the failure of the public authorities to observe the right to a correct taxation, stated in art. 56, paragraph ( 2) of the Romanian Constitution.

The complainants informed the People's Advocate of the ungrounded refusal of registering and issuing some documents as well as the delay of delivering these documents, the defective modality of calculation of any kind of taxes due to both central and local public authorities, the delay in the issuance of taxation decisions and the inappropriate behaviour of some employees of these public services.

In order to support the complainants, the People's Advocate addressed to the local taxes directions and to the public finance administrations.

### **CASE STUDY – Cases resolved by the intervention of the Institution of the People's Advocate**

**File no. 12574/2005.** Nicolae (pseudonym) submitted a complaint to the People's Advocate with regard to the issuance of an executory title by the Town Hall of Scornicesti, under the provisions of the Code of fiscal procedures as well as the issuance of a certificate for withholding amounts of his pension because the registration of a wrong sum. Thus, within the debits under the executory title no. 3632/2004, those pertaining to the year 2004 were recorded, although the complainant was exempted from the tax payment for 2004. Pursuant to the intervention of the People's Advocate to the Town Hall of Scornicesti, we were informed that the Executory Title no. 3632 of April 21, 2004 had been voided by the address no. 8043 of September 30, 2005 and the new Executory Title no. 8043 of September 30, 2005 was issued, while all the amounts due to 2004 were discounted. In addition, a new address for enforcing the withholding amounts was issued under no. 8043 of September 30, 2005 for 1304 RON (Romanian Lei New).

**File no. 9768/2005.** Manole (pseudonym) submitted a complaint to the People's Advocate with regard to the fact that he had appealed to the Administration of the Public Finance, Sector 6, Bucharest, in order to obtain a certificate for income taxation between 1986 and 1990, but the staff in charge with the issuance provided a wrong answer. Pursuant to the intervention of the People's Advocate to the Administration of the Public Finance, Sector 6, Bucharest, the People's Advocate Institution was notified that, after resuming the examination of the documents filed by the petitioner, his request was considered grounded and the errors occurred were corrected. Therefore, the competent authorities sent to the petitioner the correct certificate of his income over 1986–1990.

## CHAPTER 3.

### THE ACTIVITY OF THE PEOPLE'S ADVOCATE. TERRITORIAL OFFICES

#### 3.1. Establishing the new territorial offices in Suceava, Cluj-Napoca and Târgu Mureş

During 2005, three new territorial offices of the People's Advocate were established in Suceava, Cluj-Napoca and Târgu Mureş, in addition to those already functional in Bacău, Alba-Iulia, Constanţa and Braşov.

#### 3.2. The activity of the People's Advocate territorial offices

The activity carried out by the People's Advocate territorial offices consists in the settlement of complaints through actions and interventions to the local public authorities, hearings, answering telephone calls and counseling.

In 2005, at the People's Advocate territorial offices (Alba Iulia, Bacău, Braşov, Constanţa, Cluj-Napoca, Suceava and Târgu Mureş) **639 complaints** were registered and **4194 hearings** were conducted. In the same period, **625 telephone calls** were received.

In 2005, the territorial offices carried out **77 information activities** consisting in broad mediation through mass media means of information with regard to the People's Advocate duties (Annex no. 5).

The records kept by each territorial office attest the following:

**Alba Iulia:** **137** complaints, **658** hearings, **130** phone calls, **18** information activities.

**Bacău:** **115** complaints, **1294** hearings, **123** phone calls, **20** information activities, **one** inquiry.

**Braşov:** **45** petitions, **797** hearings, **7** information activities, **one** inquiry.

**Constanţa:** **244** complaints, **1020** hearings, **205** phone calls, **19** information activities, **2** inquiries.

**Suceava** (established in July 2005): **24** petitions, **101** hearings, **16** phone calls, **one** inquiry, **4 ex officio** procedures initiated.

**Târgu Mureș** (established in July 2005): **61** petitions, **253** hearings, **23** phone calls, **13** information activities;

**Cluj-Napoca** (established in August 2005): **13** petitions, **71** hearings, **39** phone calls.

In addition, in 2005, together with the logistic actions to provide the equipment and institutional support, the training of coordinators and experts of the People's Advocate territorial offices was carried out.

## CHAPTER 4.

### THE ACTIVITY OF THE PEOPLE'S ADVOCATE AS SUPERVISORY AUTHORITY FOR PERSONAL DATA PROCESSING

#### 4.1. Administrative capacity

According to the provisions of Law no. 677/2001 the People's Advocate was appointed as **supervisory authority** in the field of personal data protection, thus being in charge with the survey of lawfulness of the personal data processing. Because enforcing the attributions stipulated by Law no. 677/2001 by an Ombudsman type institution was not following the traditional scope of this and could not be conforming to the personal data protection systems accustomed in the European Union states, in June 2004, the Ministry of Administration and Internal Affairs (coordinator ministry in charge with European joining issues for the Chapter 24 – Justice and Internal Affaires) issued a **bill** (favourable advised by the People's Advocate Institution) with the aim of establishing a special and separate supervisory authority. This bill meets the joining exigency of the institutions and structures in the European Union, thus also joining the efforts for achieving a compatibility of the national institutions with the similar ones in the Western-European countries.

In this respect, in May 12, 2005, Law no. 102 was enforced concerning establishing and functioning of National Authority for the Protection of Personal Data Processing. This law was published in the Official Gazette of Romania no. 391. Conforming to the law, the new authority should have undertaken the activity of protecting personal data from the People's Advocate Institution within 45 days from the moment of its enforcing. The Government was obliged to place at the disposal of the new authority the place and the equipment necessary to the good functioning of this institution. In compliance with Emergency Government Ordinance no. 131 of September 22, 2005, the deadline set for establishing and organizing the National Authority for the Protection Of Personal

Data Processing was prorogued and there was stipulated that the People's Advocate Institution would further carry out the attribution of protecting the individuals in terms of processing personal data; that state of matters would last till the newly-established institution became operational. In Senate session of September 22, 2005, they appointed the person to chair the National Authority for the Protection of Personal Data Processing. **As a result, the People's Advocate Institution effectively managed the activity of protecting the individuals in terms of personal data processing, between January 1, 2005 and October 31, 2005.**

Between January 1, 2005 and October 31, 2005, the People's Advocate continued to perform its duties as supervisory authority in the field of personal data protection, according to the provisions of Law no. 677/2001 on the individuals' protection regarding the personal data processing and the free movement of such data. In 2005, the number of posts planned for staffing the **Directorate for the protection of individuals with regard to personal data processing** increased by 37 (in comparison with the 20 posts needed in 2004).

## **4.2. Fulfillment of duties as a supervisory authority**

A. In compliance with the laws in force, the steps taken by the supervisory authority were continued, in the respect of helping the personal data operators to acknowledge the attributions they were liable for. Tools directed to this purpose consisted in **information, advising and consulting** activities, and specific **control and investigation** activities performed at the offices of personal data operators.

a) With a view to improve the **information** level in respect of rights and obligations arising from the Law no. 677/2001, between January 1, 2005 and October 31, 2005, the People's Advocate organized **8 workshops** with the participation of personal data operators and NGOs in the relevant fields of activity, as follows:

- January 2005 – workshop “Protection of Personal Data in Education Field”;
- February 2005 – workshop “Protection of Personal Data in the Field of Health Services”;
- March 2005 – workshop “Mass-media and the Protection of Personal Data”;



- April 2005 – workshop “Unions and the Protection of Personal Data”;
- May 2005 – workshop “Protection of Personal Data within the Activities of Public Notaries”;
- June 2005 – workshop “Direct Marketing and the Protection of Personal Data”;
- September 2005 – workshop “Police and the Protection of Personal Data”;
- October 2005 – workshop “Protection of Personal Data within the Activities of Real Estate Agencies”.

Following the organization of the aforementioned workshops, notifications of personal data processing increased in number as submitted by various public authorities as well as by banking, insurances, transport companies, health units and public notaries’ offices. In addition, the current activity of these entities was improved, by introducing a better practice regarding the information of individuals whose personal data they process, according to the provisions of the Law no. 677/2001 and to the recommendations addressed by the People’s Advocate in his capacity of a supervisory authority.

Among the public authorities having notified personal data processing activities to a large extent, we have to mention mainly the prefect’s offices, the county councils and the mayor’s houses as well as the county police inspectorates, county inspectorates of the Border Police, land registers and real estate advertising offices. Represented as a substantiated social and professional category, the public notaries continued to submit notifications for the personal data processing in accordance with the activities performed under the Law no. 36/1995 of the notary publics and notary activities and Law no. 656/2002 on the prevention and sanctioning of money laundry. In this respect, we have to mention that the hospitals and the private medical units have also started to notify the personal data processing, as a result of the target-workshop organized in February 2005.

b) The personnel of the specialized directorate gave **577 recommendations** to personal data controllers, by telephone, in writing or at the People’s Advocate office, while targeting their compliance with the liabilities prescribed by the Law no. 677/2001 (Annex no. 1).

c) While performing its duties set forth by art. 23 and art. 27 of the Law no. 677/2001, between January 1, 2005 and October 31, 2005, the People's Advocate ordered in 2005 the performance of **4 investigations**, both to public and private controllers. Based on the conclusions rising of these activities, the People's Advocate recommended the observance of the rights of individuals whose personal data are subject to processing activities, amendment of notifications or submission of notifications to the People's Advocate, for all the personal data processing activities identified. Generally, the controllers complied with the recommendations.

**B.** Pursuant to the intensification of the efforts for the increase of public awareness with regard to the provisions of the Law no. 677/2001, the activity as supervisory authority in the field of personal data processing continued between January 1, 2005 and October 31, 2005 and has known significant progress reflected also by the statistics. Therefore, the overall number of controllers registered was **1317, 1222 notifications for personal data processing** being submitted (Annex no 1).

As compared to 2004, **85 notifications referring to transferal of personal data abroad** were recorded. For transferal notifications, between January 1, 2005 and October 31, 2005, **60 authorizations** were issued, of the total of **85**. Within the same period, one request of approval issue was submitted and resolved.

#### **4.3. Fulfillment of liabilities arising from the negotiation process of Romania joining the European Union**

The protection of individuals with regard to personal data processing is included in two EU negotiation chapters, respectively **Chapter 3 – Free movement of services** and **Chapter 24 – Justice and Internal Affairs**. In order to implement these standards, in 2005, the People's Advocate was asked to contribute. It sent to the institutions in charge of the integration of these chapters (the Ministry of Administration and Internal Affairs, the National Agency for Small and Medium-Sized Enterprises and Cooperation) as well as to the Ministry of European Integration, its contribution to the Annual Report on the progress relating to the preparation of EU accession, for July 2004 – October 2005. In the same context, this institution participated to all the reunions of inter-ministry Committee for European Integration.

In addition, a representative of the People's Advocate attended the reunion focusing on monitoring the commitments undertaken by Romania for joining the European Union, held in Brussels in March 2005 and having as topic the stage of preparing Chapter 3 – Free movement of services as well as Chapter 24 – Justice and Internal Affairs.

A special mention is of interest here – because some budget limitations, between May and October 2005, the People's Advocate Institution could not attend the invitations of participating to several international reunions concerning the protection of personal data.

#### **4.4. International relations**

Contacts with counterpart authorities in Italy, France and Great Britain have continued as aiming at exchanging information needed for the enforcement of the law on personal data protection and relating to the settlement of complaints.

At the end of January 2005, an exchange of experience with the Guarantors of personal data protection in Italy took place as planned with a view to training the personnel which carries out activities in the field of personal data protection, mainly with regard to the improvement of the investigation and control techniques. This exchange of experience became possible thanks to the support of the Technical Assistance and Information Exchange Bureau (TAIEX) of the European Commission and represents one of the measures stated in the Action Plan in the field of personal data protection, for June 2004 – December 2005. This plan, drafted by means of Romania's efforts to conclude negotiation of Chapter 3 - Free movement of services, aimed at strengthening the institutional capacity of the supervisory authority, improving the level of awareness related to the obligations of personal data controllers and to the rights of the persons concerned.

## CHAPTER 5.

### THE PEOPLE'S ADVOCATE ACTIVITY IN THE FIELD OF CONSTITUTIONALITY CONTROLOF LAWS AND ORDINANCES

The commitment of the People's Advocate Institution as a supervisory authority in terms of constitutionality control of laws and ordinances, enforced in Romania by the Constitutional Court was practically proven by drafting opinions with regard to unconstitutionality exceptions relating to laws and ordinances on human rights as well as by notifications sent to the contentious constitutional court with objections and exceptions of unconstitutionality.

#### 5.1. Opinions

In 2005, the People's Advocate drafted **1005 opinions** on the unconstitutionality exceptions, a progress in this field, as compared to **180** in 2002, **386** in 2003 and **621** in 2004.

The **1005** causes where the People's Advocate opinion was requested in 2005 referred mainly to alleged violations of: free access to justice, including the right to a fair trial (232), the principle of equality of rights (213), the rights of property (157), the right to life, to physical and psychic integrity (37), the right to defense (36), the principle of non-retroactivity of laws and the principle of more favorable criminal or administrative law (35), infringement of some rights or freedoms (33) (Annex no. 6)

It comes out that approx. **23 %** of the cases refered to the constitutional principle of free access to justice, the right to a fair trial and to resolving a cause in a reasonable period of time and by an independent court, impartial and instituted by the law.

The lowest percentage (below 1%) in the period of time studied, refered to opinions relating to art 25 of the Constitution (free movement), to art. 32 of the Constitution (the right to education), art. 26 of the Constitution (the right to intimate life, family and private life), art. 31 of the Constitution (the right to information), art. 50 of the Constitution (protection of disabled persons).

The results of examining the unconstitutionality exceptions for which the Constitutional Court requested the People's Advocate

opinion prove that they mainly referred to the so-called unconstitutionality of the legal provisions: Law no. 219/2005 on the passing of Emergency Governmental Ordinance no. 138/2000 with regard to the modification and completion of Civil Procedures Code, the Governmental Ordinance no. 102/2000, republished, regarding the status of refugees in Romania, Law no. 10/2001 with regard to the legal status of some estates abusively undertaken by the state between March 6, 1945 and December 22, 1989, the Emergency Governmental Ordinance no. 184/2002 for the modification and completion of Law no. 10/2001 with regard to the legal status of some estates abusively undertaken by the state between March 6, 1945 and December 22, 1989 as well as for establishing some special measures for accelerating the enforcement of this latest and of the Governmental Ordinance no. 94/2000 regarding the rightful repossession of some estates belonging to the religious communities in Romania, passed with modifications and completions by Law no. 501/2002, art. 278 and those to follow this article of the Criminal Procedures Code, art. 5 paragraph (1) of the Emergency Governmental Ordinance no. 214/1999 with regard to the granting the status of anticommunist fighter to the persons sentenced as committers of political crimes, to the persons subjects to abusive administrative sanctions on political basis as well as to the persons that participated to gun-fighting actions and to upsetting by force the communist regime installed in Romania.

In some unconstitutionality exceptions regarding the provisions of art. 5 paragraph (1) of the Emergency Governmental Ordinance no. 214/1999, the People's Advocate stated its points of view in terms of unconstitutional stipulations mentioned. In People's Advocate opinion, the provisions of art. 5 paragraph (1) of the Emergency Governmental Ordinance no. 214/1999 as worded were contradictory to the constitutional right of equality. In opposition to art. 16 paragraph (1) of the Constitution, the stipulations of art. 5 paragraph (1) of the Emergency Governmental Ordinance no. 214/1999, for those who require being granted the status of fighter in anticommunist resistance are bound by the obligation to file their request within a restricted period of time, which generates a discrimination situation for persons confronted to the same situation, while such a provision is not justified by any objective and reasonable reason. Because of this, on enforcing by the power of law a certain deadline led to some unjustified and different

manner of splitting the same category of people into persons that could obtain their rights stipulated by the law and persons that could no longer benefit from their lawful rights.

Moreover, enforcing the obligation of filing the request for being granted with the title of anticommunist fighter only up to a certain deadline is in contradiction with the stipulation of art. 1 paragraph (3) of the Romanian Constitution. The deadline established by the criticized legal provisions is unjust when considering the great number of applicants for being granted the title of anticommunist resistance fighter as well as taking into account that the petitioners are those who fought against dictatorial regime and to whom the current society is greatly owing to respect their dignity, their rights and freedoms, in keeping with the democratic spirit and tradition of Romanian people and conforming the ideals regained by the Revolution of December 1989.

Art. 5 paragraph (1) of the Emergency Governmental Ordinance no. 214/1999 contains some stipulations that are in contradiction with the constitutional provisions concerning the right to a decent living standard, as this notion specifies the obligation of the State to take measures for the economic development and social protection, so to ensure a decent living standard for its citizens. Therefore, the State cannot stand just as a simple observer, but as an active participant that must proceed to interventions in order to assure the protection of his citizens and the respecting of their rights and freedom. The Constitutional Court is expected to judge by a Decision on the exceptions mentioned.

## **5.2. Objections of unconstitutionality**

During 2005, the People's Advocate notified the Constitutional Court with regards to unconstitutional character of art. 2 paragraph (2), art. 17 paragraph (1) letter b), art. 17 paragraph (4) and art. 28 paragraph (1) of the Law on the free circulation of Romanian citizens travelling abroad which was passed by the Parliament and not promulgated by the President of Romania.

The People's Advocate concluded that those provisions regarding the Romanian citizens under age stipulated by art. 2 paragraph (2), art. 17 paragraph (1) letter b), art. 17 paragraph (4) and art. 28 paragraph (1) of the Law on the free circulation of Romanian citizens travelling abroad actually infringed the principle of equality of rights, the right to free circulation, the right to

personal choices, the principle of equality between husband and wife stated by the Romanian Constitution as these provisions had no view on the status of women married under legal age.

In this respect, the dispositions of art. 28 paragraph (1) and art. 36 of the protested law regarding the conditions imposed on the Romanian citizens over 18 years old to travel abroad were concluded as unconstitutional because the married woman under age was not included within the category of the natural persons with full acting capacity and thus was acknowledged as a person at legal age. The principle of equality was therefore violated as equal circumstances were judicially considered under different status. Equality of citizens in front of the law, under no special privileges and no discrimination is plainly stated as a fundamental right by the dispositions of art. 16 paragraph (1) of Romanian Constitution; however, regarding the married people status, the Romanian Constitution enforces a supplementary guarantee of equality by the dispositions of art. 48. paragraph (1). As taking into consideration these constitutional guarantees, any limitation of rights granted to the married woman under age was meant to generate an unequal juridical status in comparison with her husband; this unequal status was not objectively and rationally justified by the provisions of art. 53 of the Constitution that stipulated that the restriction of the exercise of rights or freedoms is imposed as “related to the defense of national security, order, health or public morality as well as to the protection citizens’ rights and freedoms, the development of juridical instruction, the prevention of the consequences of a catastrophe or of a critically grievous accident”.

Regarding the constitutional guarantee of the equal statute granted to both husband and wife, the same judicial status was enabled for the wife as compared to the husband’s in terms of the fundamental right to free circulation as well as that related to the right of any person to personal choices and not as derived from the enforcement of these rights within the status of under legal age persons.

By issuing the Decision No. 217/2005, the Constitutional Court stated that the provisions of art. 28 paragraph (1) and art. 36 of the Law on the free circulation of Romanian citizens travelling abroad are unconstitutional in terms of those stipulations on the married woman under legal age status.

### 5.3. Exceptions of unconstitutionality

In 2005, the People's Advocate directly brought to the Constitutional Court **2 exceptions of unconstitutionality**: the exception of unconstitutionality regarding the thesis of art. 29 paragraph (4) of the Law no. 47/1992 with regard to the organizing and functioning of the Constitutional Court, republished, and the exception of unconstitutionality regarding the provisions of art. 1 point 25 and point 29 of the Law no. 163/2005 with regard to the passing of the Emergency Governmental Ordinance no. 138/2004 for modification and completion of the Law no. 571/2003 with regard to the Fiscal Code, as in Law no. 571/2003 were inserted the stipulations of art. 77<sup>1</sup> and art. 77<sup>2</sup> and, respectively, some modifications were inserted to art. III of the Emergency Governmental Ordinance no. 138/2004.

As regarding the exception of unconstitutionality of art. 1 point 25 and point 29 of the Law no. 163/2005, the People's Advocate stated that the legal provisions mentioned are unconstitutional on the following grounds:

1. The provisions of art. 1 point 25 of the Law no. 163/2005, by inserting the stipulations of art. 77<sup>1</sup>–77<sup>3</sup> within the Law no. 571/2003 – that levy taxes on the income resulted of the property transfer on any plot of land, with no construction, if this was acquired after January 1, 1990 – deny the very principle of non-retroactivity of laws because, considering the wording of these provisions, they are to be enforced on some juridical structures that had been valid before the enforcement of Law no. 163/2005.

2. While opposing to art. 78 of Romanian Constitution but in compliance with art. 1 point 39 of Law no. 163/2005, art. 77<sup>1</sup>–77<sup>3</sup> are enforced starting with June 1, 2005, the day where this law was published in the Official Gazette of Romania, Part I, and not within 3 days since the day of publications, as to the constitutional provisions.

3. The provisions of art. 1 point 25 of Law no. 163/2005 enforced for public notaries who authenticate the transferable property deeds imposes the compulsory calculation, encashing and transfer of the amounts to the state budget, thus instating a forced labor performed, while in opposition with the constitutional stipulations of art. 41 and coping none of the situations mentioned by art. 42 paragraph (2) of the Romanian Constitution.



4. The provisions of art. I point 25 of the Law no. 163/2005, regarding the stipulations of art. 77<sup>1</sup>–77<sup>3</sup> institutes the levy of taxes payable within up to 3 years (inclusive) since the purchase day, on the charge of the owners who transfer the constructions of any kind and the plot of land attached as well as for the plots of land with no construction built on. These provisions contain norms against the constitutional provisions related to the right to a decent living standard – the notion also includes the right to a dwelling place, as these legal stipulations do not have in view the situation objectively different for some special categories of owners that do not sell their properties for speculative purposes, but in order to buy a more appropriate dwelling place for their family necessities.

By Decision no. 568/2005 published in the Official Gazette of Romania, Part I, no. 1060 of November 26, 2005, the Constitutional Court partly admitted the exception of unconstitutionality notified by the People's Advocate and came to the conclusion that the provisions of art. I point 39 of the Law no. 163/2005 regarding the stipulations of art. III paragraph (1) letter a) and b) of the Emergency Governmental Ordinance no. 138/2000 are unconstitutional because they are in contradiction with art. 78 of the Romanian Constitution with regard to the effects of enforcing the law.

Considering the provisions of art. I point 25 of the Law no. 163/2005 with regard to the pass of Emergency Governmental Ordinance no. 138/2004 meant to modify and complete Law no. 571/2003 with regard to the Fiscal Code and related to the stipulations of art. 77<sup>1</sup> and art. 77<sup>2</sup> of the Law no. 571/2003, the Constitutional Court decided that these are nor constitutional.

Regarding the exception of unconstitutionality of art. 29 paragraph (4) of Law no 47/1992, republished, the People's Advocate concluded that the legal provisions concerning the obligation of the Court of law to express opinions are in contradiction with the principle of uniqueness, equality and impartiality of justice as well as infringing the right of defense and the right to a fair trial. The Constitutional Court through Decision no. 353/2005 denied this exception.

## **CHAPTER 6.**

### **COOPERATION WITH SIMILAR INTERNATIONAL INSTITUTIONS AND AUTHORITIES**

#### **6.1. Cooperation with Ombudsmen and institutions of other countries**

In exercising its duties of autonomous and independent public authority, the People's Advocate has intensified and diversified its domestic actions intended to enhance the accomplishment of such a goal.

Meanwhile, the People's Advocate has intensified its activity abroad, both in terms of bilateral relations with counterpart institutions in Europe or in other countries and to its increasing involvement in multilateral issues.

In 2005, its external activity mainly targeted a better acknowledgement of the counterpart institutions in other countries, as well as of the regional and international authorities in the field, with regard to the Romanian People's Advocate organization and functioning, its constitutional competences and actual procedures to perform its duties as a supervisory authority in charge to observe citizens' rights.

In this context, a special significance was meant by the actions related to the explanation of the new constitutional regulations, of the substantial meaning and impact that these brought over in terms of increasing the People's Advocate role and reputation, as a fully enhanced institution of a state governed by the rule of law.

During the visits to Romania of the Ombudsmen delegations from various countries, as well as with the occasion of the People's Advocate representatives' participation to conferences, symposia, workshops, etc., the ones entitled acted in the respect of achieving a proper presentation of the relations between the People's Advocate and the Romanian Parliament, other state institutions, civil society, while stressing on the efforts undertaken for a better information of citizens regarding the issues pertaining to the People's Advocate competence.

In this respect, we have to add:

- the official visit to Romania of the representative of the National Ombudsman in Netherlands (Stephan Sjouke, senior counselor, Jos de Bruijn, deputy director, Sandra Loois, communication expert, Elleke Meijer, expert and Marcel Haddink, expert) within the MATRA program, in February, April and October;
- the visit to Romania of the National Ombudsman of Netherlands, Mr. Roel Fernhout;
- the visit of the delegation of the Petition Committee submitted to the Parliament of the Socialist Republic of Vietnam and lead by Mr. Le Qunhg Binh, the President of the Petition Committee;
- the meeting with the European Committee against Racism and Intolerance (ECRI) on debating the issues of tolerance and non-discrimination; at the request of Foreign Affairs Ministry's, this meeting took place at the headquarters of the People's Advocate;
- the meeting with Mrs. Claire Brisset, the Advocate of Children's Rights in France; at the request of UNICEF representative agency in Romania, this meeting took place at the headquarters of the People's Advocate;
- the workshop with the Petition Committee of Bavarian Land Parliament, presided by Mr. Alexander König; this workshop took place at the headquarters of the People's Advocate. In the infogram reporting the conclusions of the Petition Committee of Bavarian Land Parliament, the members of this delegation congratulated the Romanian Institution of the People's Advocate for the special hospitality they enjoyed here and for the lucrative opinions exchange between the representatives;
- the meeting with SIGMA experts designated by the European Committee to grant technical assistance to the public institutions of Romania and to work up the Rating Report of Romania;
- the workshop with the Consultative Committee of the Standard Convention on protecting the national minorities;
- the visit of Petition Committee submitted to the Czech Republic Chamber of Deputies, lead by Mr. Vaclav Najemnik, vice-president of the mentioned committee;

- the meeting with Mrs. Debra Lo, second secretary with the USA Embassy; the debated was the status of respecting the human rights in Romania, in regard of working out the 2005 report concerning this issue;
- the visit of the representatives of Slovenia Constitutional Court;
- the workshop with the Consultative Committee of the Standard Convention on protecting the national minorities;
- the visit of the Constitutional Courts from Bosnia and Hertzegovina, presided by Mr. Mato Tadic, chairman;
- in June 2005, the visit of Mrs. Maria Grazia Vacchina, chairman of Association of French-speaking Ombudsmen and Mediators – a very important step for consolidating the collaboration between the Association of French-speaking Ombudsmen and Mediators and the People's Advocate institution;
- the visit of the Mrs. Elmira Suleymanova, the Commissioner for Human Rights in Azerbaijan.

The significance awarded by the People's Advocate to such visits was also emphasized by the intensive program of contacts with the Chamber of Deputies, High Court of Casation and Justice the Constitutional Court and the Penitentiary of Codlea.

Certainly, the largest part of the program was reserved to the working meetings with the People's Advocate representatives as well as with its experts and counselors of the territorial offices in Brasov and Constanta. The exchange of opinions focused on joint-interest problems, the Romanian party being interested mainly in real action methods to lead to the increase of efficiency of the People's Advocate activity, in the context of the new challenges that the institution faces in the perspective of the EU accession.

The guests had the opportunity to visit significant cultural and historical objectives in Bucharest and across the country.

During 2005, Matra Program "Strengthening the administrative and institutional capacity of the People's Advocate" was being carried further.

The main program activities are: preparatory study, choosing a public image and increase of public awareness, analysis of the opportunity to use an efficient informal procedure for the settlement

of complaints, improving professional experience for hearings, assessment and improvement of the People's Advocate inquiries and special reports, improvement of the complaint registration system.

In October 2005, the first meeting within the third activity of the program "Matra" was carried out: "Examination of the possibilities to use a more efficient procedures of resolving the petitions". The scope of this meeting was examining the possibilities offered to the People's Advocate Institution in terms of developing the contacts with the public administration authorities. By open discussions and opinions exchange, the Romanian experts and the Netherlander team established a plan of the meeting to be. The main concept of this plan is enhancing the work methods used by the People's Advocate Institution in order to stress upon its relation with the public administration authorities. The achievement of this goal would also contribute to the improvement and efficiency of this institution activity. The plan will be extended and completed on the next reunion in 2006.

At the same time, with regard to debating the progress made by Matra Program, during the two years of development, the National Ombudsman of Netherlands, Mr. Alex Brenninkmeijer invited the People's Advocate to pay a visit to Netherlands. The meeting is planned for the spring of 2006.

## **6.2. Participation of the People's Advocate representatives to meetings, conferences, symposia and international reunions on human rights**

The year 2005 meant an increase of the participation of the People's Advocate representatives to international reunions and this activity comprised meetings about improving the relations with similar institutions of the European countries as well as establishing new connections in terms of collaborating with some other Ombudsman-type institutions.

Here we mention some:

- General Assembly of the European Ombudsman, in Innsbruck, January 2005 (attended: Simina Popescu and Claudia Sora, counselors);
- The Opening of Judicial Year of European Court for Human Rights, in Strasbourg, January 2005 (attended: Ioan MURARU, the People's Advocate);

- The 50th anniversary of the Danish Ombudsman institution and the 9th Round Table of European Ombudsmen, in Copenhagen, April 2005 (attended: Vasile Burtea, deputy of the People's Advocate, Simina Popescu, counselor and Raluca Mitrache, expert);
- The International Conference organized by the European Ombudsman Institute in cooperation with the Ombudsman of Tatarstan Republic, in Kazan, June 2005 (attended: Ileana Frimu, expert);
- The workshop "Mediators and Enforcement of the Communitarian Rights" organized by the National Ombudsman of Netherlands in collaboration with the European Ombudsman, in the Hague, September 2005 (attended: Simina Popescu, counselor and Ileana Frimu, expert);
- General Assembly of the European Ombudsman Institute, in Vilnius, September 2005 (attended: Cornelia Cor and Camelia Goleanu, experts);
- The International Conference "The Ombudsman and the Multiethnic Societies", in Novi Sad, October 2005 (attended: Carmen Iliescu, counselor and Andreea Abrudan, expert);
- The Statutory Congress of the Association of French-speaking Ombudsmen and Mediators, Paris, November 2005 (attended: Simina Popescu, counselor);
- Workshop "European Standards for Human Rights Enforced by the National Institutions for Protection of the Human Rights", in Baku, December 2005 (attended: Nicoleta Rusu and Ioana Saramet, experts).

During these meetings, the People's Advocate representatives actively participated to the debates by presenting some specialized works and underlined the Romanian People's Advocate activities for the protection of citizens' rights and freedoms. The experience exchanges accomplished in the fields specific to the Ombudsman activities were remarkably efficient.

In 2005, the People's Advocate institution continued its collaboration with the European Ombudsman Institution. In this respect, we mention the contribution of the People's Advocate as published in the European Ombudsman Informative Bulletin: "The Implication of the People's Advocate for Granting the Patrimony Rights of the Persons Displaced from Bulgaria to Romania", "The

People's Advocate Intervention for Defending the Patrimony Rights of the Persons Sentenced to Forced Labor between 1950 and 1961" as well as "The People's Advocate of Romania and the Control of Laws Constitutionality".

A lucrative collaboration was meant with the European Ombudsman Institution in terms of resolving the petitions filed. Therefore, in **8 cases**, the petitioners who had submitted complaints to European Ombudsman institute regarding some public authorities of Romania were guided to directly appeal to the People's Advocate in Romania.

One of the cases mentioned was already solved by the issuance of a recommendation made by the People's Advocate to Ministry of Culture and Religious Communities concerning the violation of equality of rights and the right to work.

## **CHAPTER 7.**

### **FINANCIAL ISSUES**

According to the Law no. 35/1997 regarding the organization and functioning of the People's Advocate, republished, the People's Advocate is endowed with its own budget, which is an integral part of the state budget. The budget draft is approved by the People's Advocate with the consultative advice of the Ministry of Public Finance and then it is submitted to the Government to be separately included in the state budget project to be legislated.

Thus, through the Law no. 507/2003 of the state budget for 2004, the People's Advocate budget was approved and mainly covered the material needs of this institution. Some improvements were enabled on the new headquarters and computing equipment and furniture were purchased for the new head office and territorial offices.

The People's Advocate field of activity has been extended, therefore its organizational structures have diversified and, implicitly, its budget now is enhanced to substantiate the major changes that these structures have developed.

The data and information herein were revised by:

Vasile Burtea, Deputy People's Advocate; Simina Popescu, Eugen Dinu, Cristian Virgil Cristea and Andreea Abrudan, counselors; Nicolae Lapa, Secretary General, Laura Chiscop and Cornelia Cor, experts, Roxana Margaritescu, referent.



## GENERAL VOLUME OF ACTIVITY

No.	Indicator	Overall works
1.	Complaints submitted to the People's Advocate referring to the violation of the citizens' rights and freedoms	5465
2.	Hearings at the People's Advocate head office and territorial offices	8529
3.	Telephone calls received at the dispatch of the People's Advocate headquarter and territorial offices	3475
4.	Inquiries conducted by the People's Advocate	52
5.	Recommendations issued by the People's Advocate	11
6.	Opinions on exceptions of unconstitutionality of laws and ordinances referring to citizens' rights and freedoms, issued on the Constitutional Court's request	1005
7.	Objections of Unconstitutionality issued by the People's Advocate	1
8.	Exceptions of unconstitutionality brought up directly by the People's Advocate	2
9*.	Registration of natural and legal persons as personal data operators	1317
10*.	Notifications on personal data processing	1222
11*.	Recommendations to personal data operators	577

*\* Topic 9, 10, 11 in the table concern the activity of the People's Advocate in the field of persons' protection, with regards to personal data processing, between 1<sup>st</sup> of January and 31<sup>st</sup> of October 2005.*

**STATISTICS OF THE COMPLAINTS REGISTERED  
WITH THE PEOPLE'S ADVOCATE,  
PER INFRINGED RIGHTS**

<b>No.</b>	<b>Rights provided by the Constitution</b>	<b>Number of Complaints</b>
1	Equality of rights (Article 16)	41
2	Aliens and stateless persons (Article 18)	1
3	Right to asylum, extradition and expulsion (Article 19)	-
4	Free access to justice (Article 21)	938
5	Right to life, to physical and mental integrity (Article 22)	15
6	Individual freedom (Article 23)	2
7	Right to defense (Article 24)	6
8	Right to freedom of movement (Article 25)	16
9	Right to intimate, family and private life (Article 26)	34
10	Inviolability of domicile (Article 27)	4
11	Secrecy of correspondence (Article 28)	1
12	Freedom of conscience (Article 29)	2
13	Freedom of expression (Article 30)	1
14	Right to information (Article 31)	704
15	Right to education (Article 32)	9
16	Access to culture (Article 33)	2
17	Right to protection of health (Article 34)	402
18	Right to a healthy environment (Article 35)	111
19	Right to vote (Article 36)	1
20	Right to be elected (Article 37)	1
21	Right to be elected in the European Parliament (Article 38)	-
22	Freedom of meetings (Article 39)	-
23	Right to association (Article 40)	3
24	Right to labor and social protection of labor (Article 41)	142
25	Right to strike (Article 43)	-
26	Right to private property (Article 44)	1159
27	Right to economic freedom (Article 45)	3
28	Right to inheritance (Article 46)	32
29	Right to a decent living standard (Article 47)	995
30	Family and the right to marriage (Article 48)	3
31	Protection of children and young people (Article 49)	46

32	Protection of the disabled persons (Article 50)	36
33	Right of petition (Article 51)	700
34	Right of a person aggrieved by a public authority (Article 52)	269
35	Restriction of certain rights or freedoms (Article 53)	-
36	Other rights	41
37	Complaints not referring to rights or freedoms	105
	<b>TOTAL</b>	<b>5465</b>

## STATISTICS ON COMPLAINTS PER COUNTY

No.	1.1. County	Number of complaints
1	Alba	199
2	Arad	59
3	Argeş	127
4	Bacău	201
5	Bihor	49
6	Bistriţa-Năsăud	22
7	Botoşani	79
8	Brăila	69
9	Braşov	190
10	Bucureşti	1614
11	Buzău	92
12	Caraş-Severin	37
12	Călăraşi	55
14	Cluj	91
15	Constanţa	348
16	Covasna	18
17	Dâmboviţa	74
18	Dolj	91
19	Galaţi	87
20	Giurgiu	48
21	Gorj	53
22	Harghita	40
23	Hunedoara	98
24	Ialomiţa	53
25	Iaşi	119
26	Ilfov	105
27	Maramureş	57
28	Mehedinţi	69
29	Mureş	84
30	Neamţ	75
31	Olt	50

32	Prahova	159
33	Sălaj	16
34	Satu Mare	23
35	Sibiu	66
36	Suceava	112
37	Teleorman	67
38	Timiș	74
39	Tulcea	45
40	Vaslui	66
41	Vâlcea	76
42	Vrancea	49
<b>Total</b>		<b>5106</b>

**ANNEX No. 4**

**STATISTICS OF COMPLAINTS RECEIVED FROM ABROAD**

<b>No.</b>	<b>Country</b>	<b>No. of complaints</b>
1.	GERMANY	12
2.	CANADA	6
3.	SWITZERLAND	3
4.	UNITED STATES	2
5.	SWEDEN	2
6.	FRANCE	1
7.	IRLAND	1
8.	ISRAEL	1
9.	IRAN	1
10.	MOLDAVIA	1
<b>1.1. TOTAL</b> *		<b>30</b>

*\* to this number of petitions addressed to the People's Advocate from abroad, we can add 8 petitions sent by European Ombudsman*

*Remark: to the total of petitions sent to the People's Advocate from country and abroad, we added 321 petitions sent by e-mail*

**THE ACTIVITY OF THE PEOPLE’S ADVOCATE  
TERRITORIAL OFFICES**

<b>No.</b>	<b>Territorial office</b>	<b>Complaints registered</b>	<b>Hearings</b>	<b>Telephone calls</b>	<b>Information activities</b>
1.	Alba-Iulia	137	658	130	-1 press article ; -17 actions in cooperation with NGOs and other authorities
2.	Bacău	115	1294	123	-8 radio-TV shows; - 11 press articles; -1 action in cooperation with NGOs and other authorities
3.	Braşov	45	797	89	- 3 radio-TV shows; - 4 press articles
4.	Cluj	13	71	39	-
5.	Constanţa	244	1020	205	19 press articles
6.	Suceava	24	101	16	-
7.	Tg. Mures	61	253	23	- 6 radio shows; - 7 press articles;
	<b>TOTAL</b>	<b>639</b>	<b>4194</b>	<b>625</b>	<b>77</b>

**STATISTICS OF THE OPINIONS ISSUED  
BY THE PEOPLE'S ADVOCATE ON THE EXCEPTIONS  
OF UNCONSTITUTIONALITY**

<b>No.</b>	<b>Field</b>	<b>No. of opinions</b>
1.	State governed by the rule of law (art 1)	13
2.	Principle of non-retroactivity of law; more favourable criminal or administrative law (Article 15 paragraph. 2)	35
3.	Principle of equality of rights (Article 4)	213
4.	Aliens and stateless persons (Article 18)	13
5.	Priority of international regulations (Articles 11, 20)	11
6.	Free access to justice and a fair trial (Article 21)	232
7.	Right to life, to physical and mental integrity (Article 22)	37
8.	Right to individual freedom (Article 23)	16
9.	Right to defence (Article 24)	36
10.	Right to freedom of movement (Article 25)	2
11.	Right to intimate, family and private life (Article 26)	1
12.	Right to freedom of opinion (art 29, 30, 39, 40)	12
13.	Right to information (Article 31)	1
14.	Right to education (Article 32)	2
15.	Right to vote and to be elected (Article36-Article37); Right to elect and to be elected in the European Parliament (Article 38)	8
16.	Right to labor and social protection of labor and prohibition of forced labor (Article 41); Right to strike (Article 43)	24
17.	Right to property (Article 44, 136)	157
18.	Right to inheritance (Article46)	3
19.	Right to a decent living standard (Article 47)	9
20.	Family (Article 48)	4
21.	Protection of children and youth (Article 49)	7
22.	Protection of disabled people (Article50)	1
23.	Right to petition (Article 51)	3
24.	Right of a person aggrieved by a public authority (Article 52)	4
25.	Restriction of certain rights or freedoms (Article 53)	33
26.	Public authorities (Article 61-Article 72)	2
27.	Categories of laws (Article 73); Enforcing the law (Article 78)	16
28.	Acts of the Government (Article 108)	2
29.	Legislative delegation (Article115)	21

30.	Local public administration (Article 120-Article123)	4
31.	Judges' statute ( Article 125)	2
32.	Courts of law (Article126- Article127)	21
33.	Use of appeal (Article 129)	6
34.	Statute of Public Prosecutors (Article 131-Article 132)	7
35.	Superior Council of Magistracy (Article 133, Article134)	1
36.	Economic freedom (Article 45)	14
37.	Economy (Article 135)	6
38.	Financial contributions (Article 56); Taxes, duties and other contributions (Article 139)	8
39.	Attributions of the Constitutional Court (Article 146)	2
40.	Exceptions invoking the non-compliance with the laws, not with the Constitution	1
41.	Exceptions where the infringed constitutional text was not specified	15
	<b>TOTAL</b>	<b>1005</b>

\* 649 opinions concern several areas, and only the significant areas were taken into consideration for drafting these statistics



## INQUIRIES

No.	Object of the inquiry	Number of inquiries	Public administration authority where the inquiry was conducted	Results of the inquiry
1.	Observance of the right to protection of children and youth and the right to a decent living standard	23	-Labor Inspection Bucharest; -School with teaching in Romanian Ghimes, Bacau County; -Special School Voluntari, Ilfov County; -Child Placement Centre no. 6, Ilfov County; -The Office for the Migration of the Workforce; -The Pension House of Bucharest; -City Hall of Sector 1, Bucharest; -City Hall of Sector 3, Bucharest ; -The Pension House of sectors 2, 3 and 6, Bucharest; - The Mayor of Râfov Commune, Prahova County; - Maximum Security Penitentiary Bucharest – Rahova; - Directorate for the Social Security and Child Protection within the City Hall of sector 2, Bucharest; -Pension House of Prahova County; -City Hall of Sector 4, Bucharest; - Military Unit 02405 Pitești; - Child Placement Centre „Sf. Nicolae”, Trușești Commune, Botoșani county	Settlement of complaints, issuance of recommendations

2.	Observance of the right to private property	10	<ul style="list-style-type: none"> <li>- City Hall of Bucharest;</li> <li>- The Mayor of Tomsani Commune, Prahova County;</li> <li>-City Hall of Sector 2, Bucharest;</li> <li>- Chancellery of the Prime Minister, Department for the Enforcement of the Law no. 9/1998;</li> <li>-The Mayor of Tiganesti Commune, Teleorman County;</li> <li>- The Mayor of Corbu Commune, Constanta County</li> <li>-City Hall of Constanta;</li> <li>-General Directorate for Urbanism and Territorial Planning within the Ministry of Transport, Constructions and Tourism</li> </ul>	Settlement of complaints, issuance of recommendations
3	Observance of the right information, the right to petition	7	<ul style="list-style-type: none"> <li>- The National House of Pensions and other Social Security Rights;</li> <li>- Chancellery of the Prime Minister, Department for the Enforcement of the Law no. 9/1998;</li> <li>-Romanian National History Museum;</li> <li>-City Hall of Arad;</li> <li>-The Mayor of Soars Commune, Brasov County</li> </ul>	Settlement of complaints
4	Observance of the right to work and social protection of labor	5	<ul style="list-style-type: none"> <li>-The Directorate for the protection of rights of Romanian citizens working abroad, within the Ministry of Labor, Social Solidarity and Family;</li> <li>-Medical Direction within the Ministry of National Defence;</li> <li>-Clinical Central Hospital of Emergency „Carol Davila”;</li> <li>-Health Insurance House Of the Army, Public Order,</li> </ul>	Settlement of complaints

			<b>National Security and Judicial Authority</b>	
<b>5</b>	<b>Observance of the right of the person aggrieved by a public authority</b>	<b>4</b>	<b>- Ministry of Education and Research;</b> <b>-Public Prosecutor Office nearby the Court of First Instance of sector 2 Bucharest;</b> <b>- National Agency for Cadastre and Real Estate Publicity;</b> <b>- The Mayor of Snagov Commune, Ilfov County</b>	Settlement of complaints and issuance of recommendations
<b>6</b>	<b>Observance of the right to life, to physical and mental integrity</b>	<b>1</b>	<b>Child Placement Centre „Sf. Spiridon”, Botoşani County</b>	Settlement of complaints
<b>7</b>	<b>Observance of the right to protection of health and the right to a healthy environment</b>	<b>2</b>	<b>- City Hall of Sector 4, Bucharest</b>	Settlement of complaints, issuance of recommendations
	<b>TOTAL</b>	<b>52</b>		

# **DRAFT RECOMMENDATIONS ISSUED BY THE PEOPLE'S ADVOCATE**

No.	No. and date of drafting. Object of the recommendation	Public authority to which the recommendation was made	Short content of the recommendation
1.	1/January 31 <sup>st</sup> 2005 Violation of the right to private property, provided by the article 44 of the Constitution, in the case of the settlement of the applications formed under Law no. 10/2001 on the legal status of some real estates abusively taken over by the state within March 6 <sup>th</sup> 1945 - December 22 <sup>nd</sup> 1989, republished.	- The Municipality of Constanta	<p>- examining the situation caused by the failure to settle the applications submitted under Law no. 10/2001, in the legal time limit;</p> <p>- taking the legal measures required for:</p> <p>*observance of the provisions of the Law no. 10/2001 and instating an adequate, organized framework for eliminating any delays in this respect;</p> <p>*observance of the legal provisions concerning the settlement, in the legal time limit, of the applications for access to information, under Law no. 544/2001 on the free access to public interest information.</p>
2.	2/May 31 <sup>st</sup> 2005 Violation of the right to private property and the right of the person aggrieved by a public authority, provided by articles 44 and 52 of the Constitution, in the case of settlement of the applications concerning	-The Municipality of Sector 2, Bucharest	<p>-examining the situation created by the failure of the Service for Relations with the Owners Associations within the Directorate for Community Relations, which is an internal structure of the Local Council of sector 2, Bucharest, to exercise the competences provided by law, for settlement litigations, disagreements between the Owners Associations, litigations related to the administration of the properties of</p>

the enforcement of the Government Ordinance no. 85/2001 on organizing and functioning of the Owners Associations, approved with amendments and completions by Law no. 234/2002 and of Methodological Norms concerning the organization and functioning of the Owners Associations and completed Decision no. 400/2003, as subsequently amended and completed.	<p>condominiums by the administrators of two Owners Associations;</p> <p>- taking the legal measures required for:</p> <p>*the Service for Relations with the Owners Associations within the Directorate for Community Relations, which is an internal structure of the Local Council of sector 2, to take all the required measures to ensure that the administrators of the condominiums comply with the legal provisions concerning the settlement and the allocation of the expenses for each owner;</p> <p>*Service for Relations with the Owners Associations to have an active role in exercising the financial, accounting and administrative control of the Owners Associations, as well as in exercising a factual control of the way the administrators and the management bodies and the financial and accounting control bodies of the condominiums exercise their attributions, according to the law;</p> <p>*compliance of the Service for Relations with the Owners Associations with its obligation to use the legal means provided by the Government Ordinance no. 85/2001 on organizing and functioning of the Owners Associations, approved with amendments and completions by Law no. 234/2002 and of Methodological Norms concerning the organization and functioning of the Owners Associations approved through Decision no. 400/2003, as subsequently amended and completed, including the ones settled through</p>
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			the decisions of the Local Council of sector 2, Bucharest, that provide measures on good administration and functioning of the Owners Associations, for the litigations in which those are involved.
<b>3.</b>	3/June 21 <sup>st</sup> 2005 Violation of the right to information, provided by the Article 31 of the Constitution, in the case of settlement of applications referring to enforcement provisions of article 39 of the Methodological Norms for the enforcement of Law no. 50/1991 on authorizing the construction works, republished.	-The Municipality of Arad	<p>- examining the situation created by the failure of the Service for Constructions and Urbanism within the City Hall of Arad to comply with the legal provisions when drafting the lists for urbanism certificates;</p> <p>- taking the legal measures required for:</p> <p>* compliance with the provisions of article 39, paragraph 2 of the Methodological Norms for the enforcement of Law no. 50/1991, republished, when setting out the headings of the table that contains the list of urbanism certificates;</p> <p>* mentioning the addresses of the buildings or mentioning any other way of identifying them, according to provisions of article 39, paragraph 2 of the Methodological Norms for the enforcement of Law no. 50/1991, republished;</p> <p>*examining the fact that it is necessary that the Service for Constructions and Urbanism drafts a documentation in collaboration with Service for Informatics, documentation that would be the base for the IT software used for drafting the lists with the urbanism certificates.</p> <p>- examining the situation created by the failure to comply with the provisions of Emergency Government Ordinance no. 102/1999 on special protection and employment of disabled persons, approved with amendments and completions,</p>
<b>4.</b>	4/ June 22 <sup>nd</sup> 2005 Violation of the right for protection of the disabled persons, provided by article 50 of	The Mayor of Jitia Commune, Vrancea County	

	the Constitution, in the case of settlement of applications under Emergency Government Ordinance no. 102/1999 on special protection and employment of disabled persons, approved with amendments and completions through Law no. 519/2002.		<p>when granting the requital provided by article 19, paragraph 1, lit. c).</p> <p>- taking the legal measures required for:</p> <ul style="list-style-type: none"> <li>*compliance with the legal provisions concerning granting of the requital provided by 19, paragraph 1, lit. c) of the Emergency Government Ordinance no. 102/1999;</li> <li>*eliminating the illegitimate situations observed when enforcing the provisions of article 19, lit. c) of the Emergency Government Ordinance no. 102/1999 on the special protection and employment of disabled persons, approved with amendments and completions, repairing the damages and eliminating the causes that have generated or facilitated the violation of rights of the aggrieved person.</li> <li>- examining the situation created by the failure of the Mayor of Sector 4, to comply with the provisions of Law no. 50/1991 when issuing and prolonging the building authorization;</li> <li>- taking the legal measures required for: <ul style="list-style-type: none"> <li>*compliance with the legal provisions on prolonging the building authorization; the prolonging cannot be made unless the investor submits a request 15 days prior to the availability term of the authorization expires, in the justified case when the construction works cannot be started or finished within the settled term, under article 7, paragraph 7 of Law no. 50/1991;</li> <li>*compliance with the legal competence for issuing the building authorizations, as</li> </ul> </li> </ul>
5.	5/ June 28 <sup>th</sup> 2005 Violation of the right to the protection of health, the right to information and the right to a healthy environment, provided by articles 34, 31 and 35 of the Constitution, referring to the right to private property, provided by article 44 of the Constitution, in the case of settlement of the applications concerning the enforcement of Law no. 50/1991 on the authorizing the	-The Municipality of Sector 4, Bucharest	

	construction works, republished.		provided under article 4, paragraph 3, lit. c), corroborated with article 6, paragraph 2 of Law no. 50/1991, republished, with further amendments and completions; *taking the required measures for ensuring that, when issuing the building authorizations and the urbanism certificates, the material and territorial competence is verified ex officio and the request that are not under its competence are transmitted to the competent authority.
6.	6/July 14 <sup>th</sup> 2005 Violation of the right to a decent living standard, provided by article 47 of the Constitution, in the case of settlement of the applications under Law no. 416/2001 on the minimum guaranteed income, with further amendments and completions.	- The Mayor of Comanesti, Bacau County	- examining the situation created by the failure to comply with provisions of Law no. 416/2001 on the guaranteed minimum income, with further amendments and completions, when granting the right to social welfare to the entitled persons;  - taking the required measures for: *observance of the legal provisions on granting the social welfare, under article 12 of Law no. 416/2001 on the guaranteed minimum income, with further amendments and completions; *eliminating the illegal situations that have been observed when enforcing Law no. 416/2001 on the guaranteed minimum income, with further amendments and completions, repairing the damages and eliminating the causes that have generated or facilitated the violation of rights of the aggrieved person.
7.	7/August 11 <sup>th</sup> 2005 Violation of the right to a decent living standard, provided by article 47 of the Constitution, in the	- The Pension House of Gorj County	-examining the situation created by the failure to comply with the provisions of Law no. 19/2000 on the public pensions system and other social insurance rights, when setting out and paying the pension right to the entitled

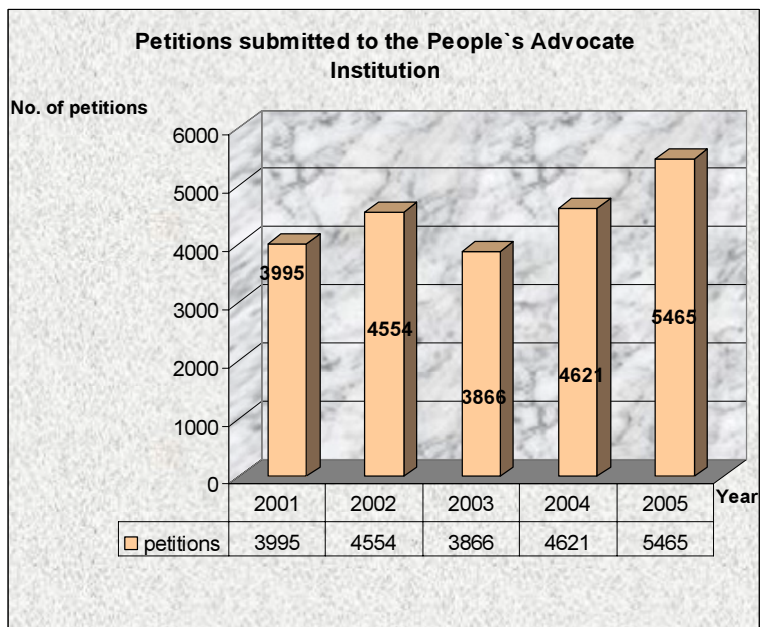


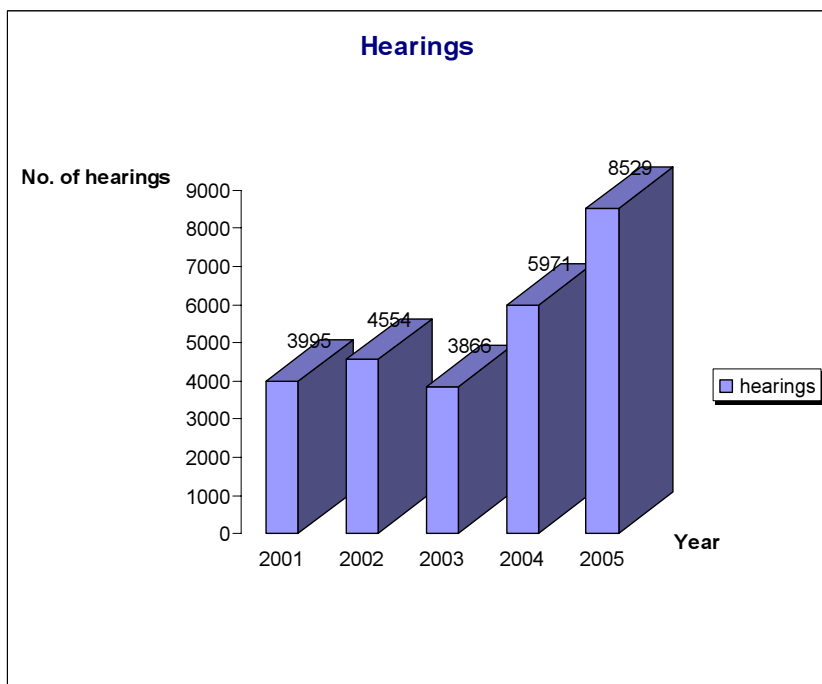
<p>case of settlement the applications under Law no. 19/2000 on the public pensions system and other social insurance rights, with further amendments and completions.</p>	<p>8/August 18<sup>th</sup> 2005 Violation of provisions of article 5 of the Labor Code and article 61, paragraph 6 of Law no. 128/1997 on the Statute of the Teaching Staff with further amendments and completions, in the case of interruption of the legal procedures of appointing somebody as a university professor.</p>	<p>persons; - taking the measures required for: *observance with the legal provisions of articles 49, 89 and 160, paragraph 3 of Law no. 19/2000 on public pensions system and other social insurance rights, with further amendments and completions, when setting out and paying the pension right to the entitled persons; *eliminating the illegitimate situations observed in the enforcement of articles 49, 89 and 160, paragraph 3 of Law no. 19/2000 on public pensions system and other social insurance rights, repairing the damages and eliminating the causes that have generated or facilitated the violation of rights of the aggrieved person.  -examining the situation created by the failure to correctly interpret the provisions of Article 61, paragraph 6 of Law no. 128/1997 on the Statute of the Teaching Staff, with further amendments and completions and of the provisions of article 5 of the Labor Code;  - taking the required measures for: *observance of the provisions of articles 61, paragraph 6 of Law no. 128/1997 on the Statute of the Teaching Staff, with further amendments and completions and with the provisions of article 5 of the Labor Code; *eliminating the illegitimate situations observed in enforcement of article 61, paragraph 6 of Law no. 128/1997 on the Statute of the Teaching Staff, with further</p>
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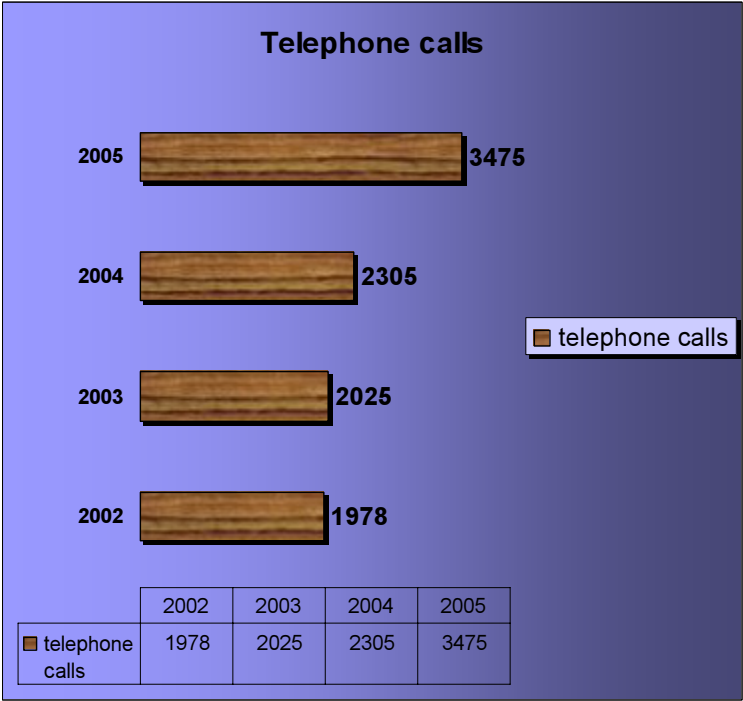
9.	<p>9/ August 19<sup>th</sup> 2005</p> <p>Violation of provisions of article 5 of the Labor Code and article 61, paragraph 6 of Law no. 128/1997 on the Statute of the Teaching Staff, with further amendments and completions, in the case of interruption of the legal procedures of appointing somebody as a university lecturer.</p>	<p>- Ministry of Education and Research</p>	<p>amendments and completions and with the provisions of article 5 of the Labor Code, repairing the damages and eliminating the causes that have generated or facilitated the violation of rights of the aggrieved person.</p> <p>- examining the situation created by the failure to correctly interpret the provisions of article 61, paragraph 6 of Law no. 128/1997 on the Statute of the Teaching Staff, with further amendments and completions and the provisions of article 5 of the Labor Code;</p> <p>- taking the required measures for:</p> <p>*compliance with the provisions of article 61, paragraph 6 of Law no. 128/1997 on the Statute of the Teaching Staff, with further amendments and completions and with the provisions of article 5 paragraph of the Labor Code;</p> <p>*eliminating the illegitimate situations observed in enforcement of article 61, paragraph 6 of Law no. 128/1997 on the Statute of the Teaching Staff with further amendments and completions and of article 5 of the Labor Code; repairing the damages and eliminating the causes that have generated or facilitated the violation of rights of the aggrieved person.</p>
10.	<p>10/August 29<sup>th</sup> 2005</p> <p>Violation of the right to private property, provided by article 44 of the Constitution, in the case of settlement, in the applications under Law</p>	<p>-The General Mayor of Bucharest</p>	<p>- examining the situation created by the failure to communicate, in the legal time limit, answers to the petitions in which the interested persons requested information on the modality of settlement of notifications drafted under Law no. 10/2001;</p> <p>-taking the required measures for:</p>

11.	no. 10/2001 on the legal status of some real estates abusively taken over by the state within March 6 <sup>th</sup> 1945-December 22 <sup>nd</sup> 1989, and under Law no. 247/2005 on reform in the fields of property and justice, as well as other adjacent measures.	- Ministry of Culture and Cults	<p>*compliance with the legal provisions concerning achieving the constitutional and legal purpose of the People's Advocate Institution, so as the civil servants employed by the Service for In Kind Restitutions – Law no. 10/2001 welcome and cooperate with the personnel of the People's Advocate Institution, in view of provisions of article 59 of the Constitution of Romania and the provisions of article 22 of Law no. 35/1997, republished;</p> <p>*acceleration of formulating the answers to the petitioners, giving priority to the ones have not been informed at all or have not been informed for a long time on the stage of resolving their files.</p>
	11/ September 1 <sup>st</sup> 2005 Violation of the right to work, social protection of work and violating the principle of equal rights, provided by the articles 41 and 16 of the Constitution, with regards to the procedure of organizing of the contests, provided by the Annex no. 12 to the Government Decision no. 281/1993.		<p>- examining the situation created by the failure to comply with the right to work and to social protection of work and with the principle of equal rights, provided by the articles 41 and 16 of the Constitution, with regards to the procedure of organizing of the contests for the vacant position of Deputy Director with the Directorate for Cultural Programs within Ministry of Culture and Religious Affairs;</p> <p>- taking the required measures for:</p> <p>*observance with the legal provisions concerning the procedure of organizing the contests, provided by the Annex no. 12 to the Government Decision no. 281/1993.</p>

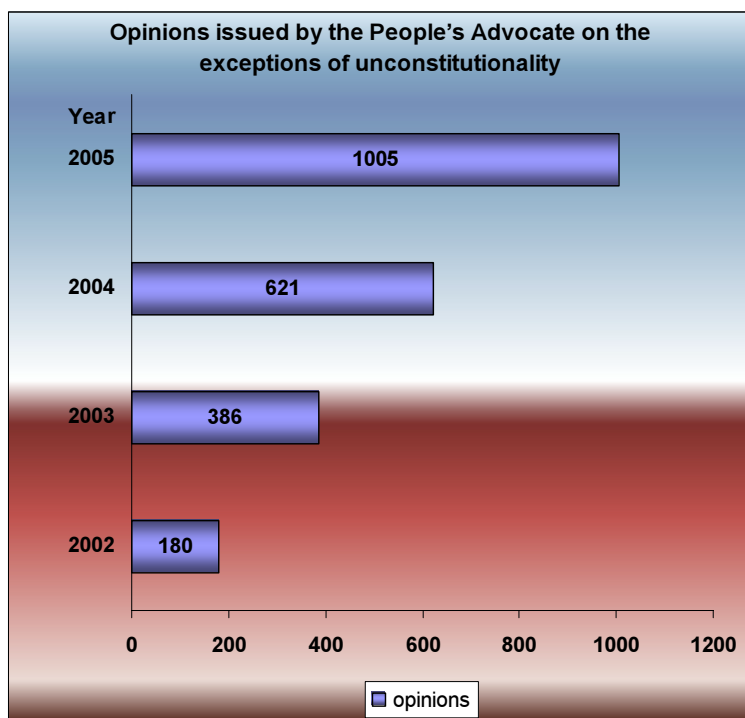
### Charts regarding the indicators of People's Advocate Activity



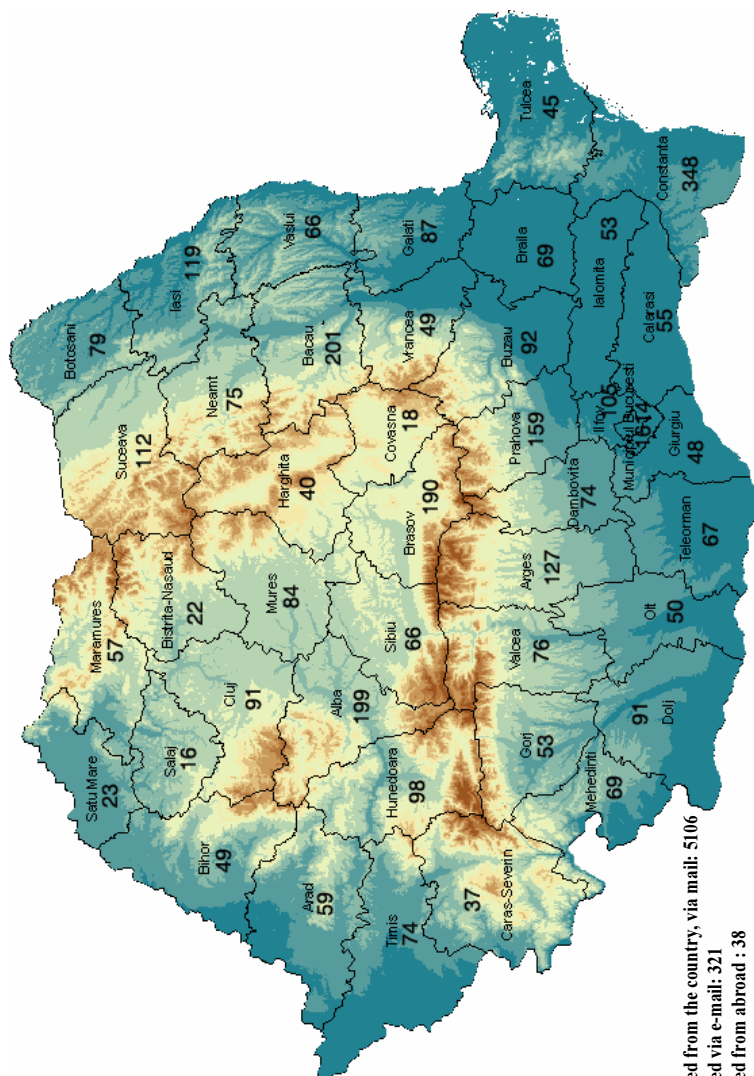




**Opinion issued by the People's Advocate  
on the exceptions of unconstitutionality**



## STATISTICS ON COMPLAINTS BY COUNTY



Complaints received from the country, via mail: 5106

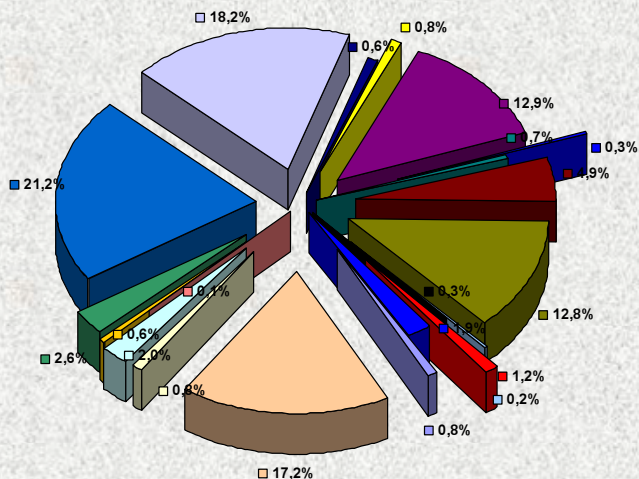
Complaints received via e-mail: 321

Complaints received from abroad : 38

Total of complaints received: 5465



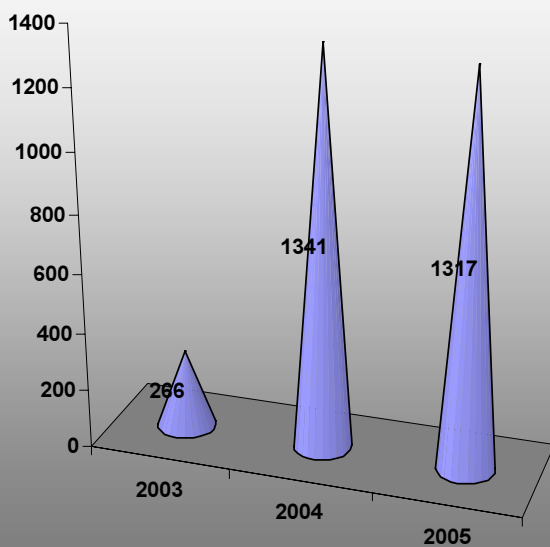
# STATISTICS COMPLAINTS REGISTERED WITH THE PEOPLE'S ADVOCATE, PER INFRINGED RIGHTS



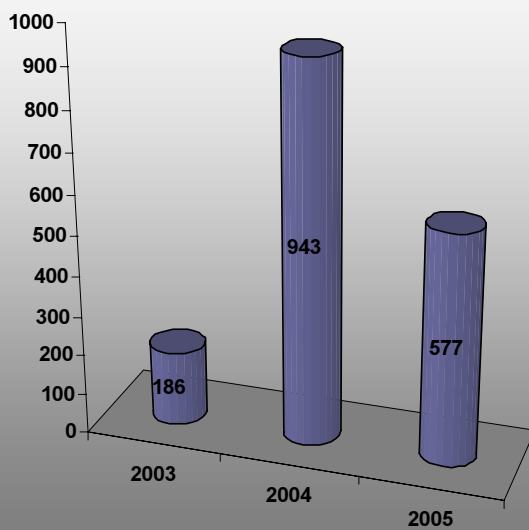
Equality of rights	Free access to justice
Right to protection of health	Right to a healthy environment
Right to defence	Right to intimate, family and private life
Right to labor and social protection of labor	Right to private property
Right to a decent living standard	Right to inherit
Protection of children and youth	Right to information
Right to life, to physical and mental integrity	Protection of the disabled persons
Right of a person aggrieved by a public authority	Right to petition
Right to education	Freedom of movement
Other rights	Complaints not referring to rights or freedoms

**NOTE:** *Other rights section* comprises petition referring to a certain right or freedom, tht were less than 5.

### Registration of natural and legal persons as personal data operators

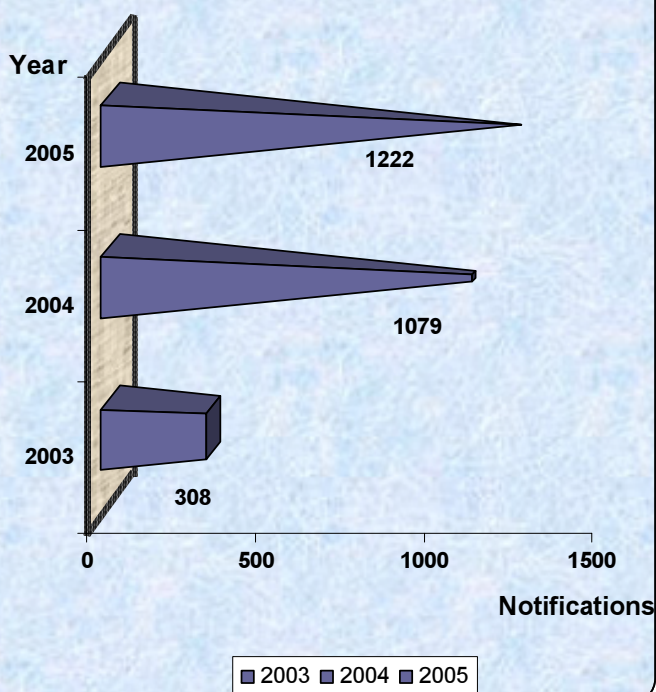


### Recommendations to personal data operators



■ recommendations to personal data operators

### Notifications on personal data processing



## SUMMARY

<i>The People's Advocate foreword, Professor Ioan Muraru, Ph. D.....</i>	3
<b>Chapter 1. <i>The Achievement of the People's Advocate's Institution Constitutional and Legal Objectives</i> .....</b>	<b>11</b>
1.1 The legal and functional organization of the Institution of the People's Advocate .....	11
1.2 The territorial offices of the Institution of the People's Advocate	13
1.3 The organizational structure and personnel charts of the Institution of People's Advocate.....	14
1.4 Promotion and training of personnel.....	14
1.5 Work conditions .....	16
<b>Chapter 2. <i>Activities of the People's Advocate According to Areas of Specialization</i> .....</b>	<b>17</b>
2.1 The general volume of activity .....	17
2.2 The People's Advocate procedures and specific means of action	20
2.3 The area of human rights, equality of rights between men and women, religious cults and national minorities.....	24
A. Equality of rights.....	24
B. The right to life, physical and mental integrity .....	25
C. The right to free movement.....	30
D. The right to intimate life, familial and private.....	31
E. The right to information .....	31
F. The right to the protection of health.....	33
G. The right to a healthy environment .....	35
H. The right of petition .....	36
I. The right of the person aggrieved by a public authority.....	43

2.4. The area of the rights of children, family, youth, retired persons and disabled persons.....	45
A. Protection of children and youth .....	45
B. The right to a decent living standard .....	49
C. Protection of disabled persons .....	57
2.5. The area of Army, justice, police and penitentiaries .....	59
A. Army .....	60
B. Justice .....	64
C. Police.....	69
D. Penitentiaries .....	74
2.6. The area of property, labor, social security, duties and taxes	78
A. Property.....	78
B. Labor and social security.....	90
C. Duties and taxes.....	91
 Chapter 3. <i>The Activity of the People's Advocate Territorial Offices</i>	93
3.1. Establishing the new territorial offices in Suceava, Cluj-Napoca and Târgu Mureș.....	93
3.2. The activity of the People's Advocate territorial offices.....	93
 Chapter 4. <i>The Activity of the People's Advocate as Supervisory Authority for Personal Data Processing.....</i>	95
4.1. Administrative capacity .....	95
4.2. Fulfillment of duties as a supervisory authority .....	96
4.3. Fulfillment of liabilities arising from the negotiations process of Romania's joining the European Union.....	98
4.4. International relations.....	99
 Chapter 5. <i>The People's Advocate Activity in the Field of Constitutionality Control of Laws and Ordinances.....</i>	100
5.1. Opinions .....	100
5.2. Objections of unconstitutionality .....	102
5.3. Exceptions of unconstitutionality .....	104

<b>Chapter 6. <i>Cooperation with Similar International Institutions and Authorities</i></b> .....	<b>106</b>
<b>6.1. Cooperation with Ombudsmen and institutions of other countries</b> .....	<b>106</b>
<b>6.2. Participation of the People's Advocate representatives to meetings, conferences, symposia and international reunions on human rights</b> .....	<b>109</b>
<b>Chapter 7. <i>Financial Issues</i></b> .....	<b>112</b>
<b>Annexes</b>	
<i>Annex no. 1 General volume of activity</i> .....	<b>113</b>
<i>Annex no. 2 Statistics of the complaints registered with the People's Advocate per infringed rights</i> .....	<b>114</b>
<i>Annex no. 3 Statistics of complaints per county</i> .....	<b>116</b>
<i>Annex no. 4 Statistics of complaints received from abroad</i> .....	<b>117</b>
<i>Annex no. 5 The activity of the People's Advocate territorial offices</i> .....	<b>118</b>
<i>Annex no. 6 Statistics of the opinions issued by the People's Advocate on the exceptions of unconstitutionality</i> .....	<b>119</b>
<i>Annex no. 7 Inquiries</i> .....	<b>121</b>
<i>Annex no. 8 Draft recommendations issued by the People's Advocate</i>	<b>124</b>
<i>Annex no. 9 Charts regarding the indicators of People's Advocate activity</i> .....	<b>132</b>

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