Decentralization of the Ombudsman Institution in Romania: How Effective Is It?

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Abstract: The effectiveness of Ombudsman’s activity has been the subject of various evaluations from reports of international organizations to books and articles written by practitioners and academia. All these emphasized the difficulty of designing an assessment fit-all model. Bearing this in mind, the aim of this article is to offer a critical evaluation of the effectiveness of Ombudsman’s local offices on two components: accessibility, which relates to individuals, and cooperation, which concerns public administration authorities.

Keywords: Ombudsman local offices, local public administration, effectiveness assessment

1. Introduction

The effectiveness of Ombudsman type institutions has been the subject of debate and evaluation by international organizations practitioners and academics. On the one hand, international organizations evaluated Ombudsman type institutions such as National Human Rights Institutions [henceforth NHRI] or complaint handling organizations and emphasized the difficulty of developing a consistent and effectiveness-fit-all model of assessment. Furthermore, the Paris Principles, considered standards of effectiveness for National Human Rights Institutions are, in the opinion of the authors, sine qua non conditions for the functioning of Ombudsman institutions but do not ensure effectiveness, being determinants rather than criteria of effectiveness. On the other hand, the academic

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3 Adopted by the United Nations General Assembly resolution of 20 December 1993 no. 48/134.
literature has assessed Ombudsmen in certain countries - Finnish Ombudsman⁴, New Zealand Ombudsman⁵, British Parliamentary Commissioner⁶, Dutch Ombudsman⁷, etc. - or has provided only guidelines for future research in this field⁸. However, there are two papers⁹ which systematically address this issue and provide comprehensive, but still debatable frameworks, of evaluation. Thus, adopting the rational model for assessing effectiveness from the theory of organization, Brenda Danet developed an evaluation framework by defining the objectives of the Ombudsman and drafting a set of three assessment indicators. Later on, Victor Ayeni discussed the weaknesses of Danet’s theory, namely excessive focus on objectives and proposed a new evaluation framework, combining Danet’s rational model with the natural one, though not explicitly. Still, the two models are complementary, being able both to assess the institution’s effectiveness and to provide reasons for a greater or lesser effectiveness.

In this context the present article aims at evaluating the effectiveness of the Romanian Ombudsman local offices in solving individuals’ complaints between 2007, when the last operational local office was set up, and 2012. The aim of the research is to offer a critical evaluation of the Ombudsman’s accessibility – means of filing a complaint, methods of raising awareness about its competences – as well as its cooperation with public administration authorities in conducting investigations – the object of investigation, their resolution, and the opinion of public administration authorities regarding their interaction with Ombudsman’s representatives during investigations. The present article is motivated by the lack of research in this field, most literature being rather descriptive and focusing on the rules that govern the organization and functioning of the Ombudsman, let alone the local offices.

The article will start by briefly presenting a few landmarks in the organization of the Romanian Ombudsman and the manner in which a petition is solved. The methodological sub-chapter will follow presenting the main sources of documentation as well as the methods employed by the researchers. Sub-chapter three will present the effectiveness of the 14 local offices on the accessibility and cooperation component. In the end, conclusions and future lines of research will be presented.

2. Romanian Ombudsman – Organization and Functioning

The Romanian Ombudsman (People’s Advocate), established by the Romanian Constitution of 1991 (Articles 55-57), which was later revised in 2003, was invested with

the mission of offering citizens an additional means of defending their rights and liberties from the arbitrary actions of central and local public administration. The organization and functioning of the Romanian Ombudsman was regulated by Law no. 35/1997, which was later amended in 1998, 2002, 2004 and 2010. Law no. 554/2004 on the judicial review of administrative acts had also a great impact on the activity of the People’s Advocate.

The Romanian Ombudsman is an independent public authority which ‘cannot be subjected to any imperative or representative mandate’. The institution is managed by a person appointed Ombudsman and assisted by four specialized deputies.

The institution has a central office in Bucharest and 14 territorial offices, established between 2003 and 2007, all fourteen of them located in the same cities as Courts of Appeal. The fifteenth office was established by the revision of Law no. 35/1997 in 2010 but it is not operational. Their headquarters are the responsibility of the Presidents of County Council and city halls. The institution has a number of 99 positions financed from the state budget (33 for the territorial offices (2 for each office with the exception of Alba Iulia).

As regards competences, according to Article 13 of the Law no. 35/1997, People’s Advocate: (1) receives and coordinates the complaints which were made by persons who were aggrieved by a breach of their rights or freedoms by the public administration authorities, and decides upon these requests; (2) supervises the legal settlement of the received complaints and asks the authorities or the public servants to stop the abuse and to remedy the damages; (3) can draft opinions, at the request of the Constitutional Court; (4) can directly challenge a law before the Constitutional Court before its promulgation; and (5) can refer to the Constitutional Court with the exception of unconstitutionality of laws and ordinances. In addition to these competences, according to Article 60 of the Romanian Constitution, People’s Advocate presents reports, to the two Chambers of the Parliament, annually or upon request.

Services offered by the Ombudsman are available to ‘any individual, irrespective of nationality, age, sex, political affiliation or religious beliefs’. Ombudsman can act upon receipt of petitions from individuals (sent by post, made directly to the institution’s headquarters or regional offices, formulated during audience, or via telephone or e-mail) or can also exercise its functions ex officio.

Complaints must be formulated in writing and submitted within a year’s time since the violation occurred or the petitioner found out about it. They must also indicate the name and address of the petitioner as well as the public administration authority or civil servant who is presumed to have committed a breach. It is the responsibility of the petitioner to prove the breach. After receiving a complaint which fulfils all the admissibility requirements, the People’s Advocate will analyse whether the complaint is well-founded and if so it will contact the public authority which is responsible for the rights violations and ask it to reword or revoke that administrative document as well as to restore the damages caused and the

11 Law no.35/1997 on the organization and functioning of the Romanian Ombudsman, Article 2.
12 ibid., art. 29, Regulation on the organization and functioning of the Romanian Ombudsman, Article 93.
13 Law no. 35/1997 on the organization and functioning of the Romanian Ombudsman, Article 14 (2).
14 ibid., art. 14 (1).
15 ibid., art. 15.
state before the person was injured. If the public authority in question, within a period of 30 days since they were summoned, does not proceed in solving the matter, the People’s Advocate addresses higher authorities, being able to reach the Government and even the Parliament\textsuperscript{16}.

People’s Advocate can also make investigations to gather additional information necessary to solve petitions. During investigations, public authorities are obliged to make available any information the Ombudsman requires\textsuperscript{17}. If, at the end of the investigation, the People’s Advocate discovers important human rights breaches it also has the right to make recommendations to the public authority in question. These recommendations cannot be submitted to parliamentary or judicial control. The file will be closed if the public authority acknowledges the breach; otherwise People’s Advocate will notify higher authorities\textsuperscript{18}. All the measures undertaken and the responses of the authorities are communicated to the complainant\textsuperscript{19}.

3. Methodology

‘[O]rganizational effectiveness assessments are never purely descriptive and objective and the search for the right empirical methods for assessment is similar with following an illusion\textsuperscript{20}. However, a clear definition of the concept of effectiveness, assessment standards and indicators is likely to ensure the objectivity of research and provide a valid analysis. Thus, this article will differentiate between efficiency, defined as ‘technical ability of an organization to reduce costs associated with transforming inputs into acceptable outputs’ and effectiveness understood as an ‘organization’s ability to increase revenue by any means’\textsuperscript{21}.

In assessing the effectiveness of the Romanian Ombudsman the rational model will be used, according to which organizations are driven by rational managers pursuing a specific set of objectives and effectiveness is measured based on their achievement\textsuperscript{22}. The goal of the institution which underlies the assessment is the one established by law, to ‘defend individuals’ rights and freedoms in relations to public authorities\textsuperscript{23}.

The analysis regarding effectiveness of the Romanian Ombudsman local offices will focus on two components: accessibility – the degree to which Ombudsman’s services are made available to individuals, and the cooperation with public administration bodies in solving complaints. On the accessibility component, the starting point of the research will

\textsuperscript{16} ibid., art. 23 – 25.
\textsuperscript{17} ibid., art. 22.
\textsuperscript{18} ibid., art. 21- 22.
\textsuperscript{19} ibid, art. 223.
\textsuperscript{23} Law no.35/1997 on the organization and functioning of the Romanian Ombudsman, art.1.
be that in order for the Ombudsman to really be of service, individuals must be fully aware of the existence of the institution, of means to address it as well as of its competences. A lack of knowledge in this matter may generate a lot of petitions that the Ombudsman does not have the power to solve; hence individuals will be disappointed with the result and will lose confidence in the institution. On the cooperation component, the relationship between People’s Advocate and public administration is bilateral and represents the responsibility of both parties. Moreover, the Ombudsman’s good cooperation with public administration authorities is likely to positively influence complaints solving by reducing the time in which the problem is solved hence improve the image citizens have about the office. Furthermore, it will also positively affect the functioning of the Ombudsman’s office since less time, money and effort will be spent with consistent interaction between the two parties in trying to solve the complaint.

In terms of data collection, both quantitative and qualitative methods were employed. With regards to quantitative data – number of petitions, files, audiences, investigations, etc. – they were gathered from the People’s Advocate Annual Activity Reports for the period 2007 – 2012. In the absence of necessary information, additional data were obtained by submitting an official request to the 14 territorial offices. The qualitative data were collected from questioners sent, by post, with a letter of confirmation attached, to 60 central and local public authorities (ministries, decentralized services, administrative-territorial units, urban and rural municipalities, institutions for child protection, police units who interacted with the Ombudsman during the investigations conducted by the representatives of the institution within the period 2003-2011. Among this total number of 60 authorities there were 28 responses from public administration bodies and 12 from local authorities where the Ombudsman conducted an investigation during the period 2007-2011. The questioner referred to the cooperation between the two parties and comprised an assessment of the public authorities regarding the interaction with the Ombudsman during the investigation. Furthermore, an important source of documentation was obtained with the courtesy of Mrs. Erzsébet Dane, Deputy Ombudsman for human rights, equality between men and women, denominations and national minorities, who agreed to have an interview with the researchers.

4. The Effectiveness of Ombudsman’s Territorial Offices

4.1. Accessibility

Ombudsman’s accessibility is considered, by most authors, a sine qua non condition for its effectiveness and can be summed up as ‘the ease with which citizens have access to the services’\textsuperscript{24} as well as ‘skilled and knowledgeable staff’\textsuperscript{25}. Thus, in order for the Ombudsman to solve individual complaints there has to be free and easy access to its services, a variety of means for addressing a petition and a broad awareness of its competences. A snapshot of the number of petitions received within the period 2007-2012/per county/per territorial office offers an image of the workload of the territorial offices within the period under

\textsuperscript{24} C Brânzan, & M Oosting, ‘Rolul Ombudsmanului într-o societate democratică’, Revista Dreptul, no.5, 1997, p. 3.
investigation. It can easily be noticed that counties where local Ombudsman offices are located (marked with a star on the map below) receive a higher number of complaints. It is also true that, demographically, these counties have a higher number of population, but the high number of complaints could also be explained by the accessibility of the local offices since its location and most of the awareness raising campaigns take place in these particular counties.

Fig. 1 – The number of petitions received, between 2007-2012, from each county (41 counties plus the capital, Bucharest, where the Ombudsman Central Office is located) by each territorial offices (14 territorial offices - groups of counties of the same colour represent the responsibility of one Ombudsman Office).

Nevertheless, individuals are offered various means to contact the Ombudsman and the location of the offices should not be an obstacle for filing a complaint. Thus, petitions can be sent by post, or can be drafted during audiences, can be communicated via telephone (starting with 2002) or e-mail (starting with 2004). The institution also has its own website – www.avp.ro26 – which offers information regarding the organization and functioning of the institution but also the means to file a petition. Furthermore, the access to the Ombudsman is open to ‘any person, irrespective of nationality, age, sex, political affiliation or religious beliefs’27. In this context, however, audiences, which consist of direct interaction between

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27 Law no. 35/1997 on the organization and functioning of the Romanian Ombudsman, Article 14 (2).
the two parties, are considered most appropriate because they give the Ombudsman representatives the chance of offering competent advice to each individual addressing the office\textsuperscript{28}. Therefore, individuals are advised on how to draft a complaint or are directed towards the authorities responsible/capable of solving their problems if the issue exceeds the competences of the Ombudsman. In the words of the person holding the Ombudsman office, the benefits of the audiences are free and easy access to the services of the institution: ‘[…] we receive any complaint. The staff of the institution receive any citizen with any matter, giving everyone an explanation, a solution. Often people are satisfied that they are received, listened and counselled in a civilized manner\textsuperscript{29}.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart.png}
\caption{Number of audiences, phone calls and complaints received by the local offices (2007-2012).}
\end{figure}

In this context, the local offices were preoccupied with concluding various protocols of cooperation with different local public authorities – city halls and prefecture – in order to be able to organize audiences at the headquarters of the respective public authorities. However, this activity together with the legal provision according to which the prefectures are responsible for ensuring the location of the territorial offices, most of the times within the prefecture building raise the risk that Ombudsman offices are associated with local authorities and hence diminish the individuals’ trust in the institution. Individuals’ trust can also diminish if they do not receive the help they seek since not all the petitions received by the Ombudsman are within its competences.

\textsuperscript{28} People’s Advocate, Activity Report for 2006, Bucharest, 2007, pp. 1-3.
\textsuperscript{29} ibid.
Fig. 3 – Number of petitions and files (petitions that are within the competence of the Ombudsman offices) received by 12 territorial offices (there were two territorial offices which did not provide data regarding the number of files received).

The discrepancy between the number of petitions and the number of files could be explained by the name of the institution – People’s Advocate, which, according to the literature in the field, expressed competences greater that the ones envisaged by law. Its position being either associated with one of a lawyer or an Attorney General who can assist individual in court. The discrepancy is however lower for the territorial offices than it is for the central office in Bucharest. Nevertheless, the number of people who receive help from the institution, even though it is only partial help, equals the number of complaints because the Ombudsman offers guidance to any person who addresses it. Mrs. Erzsébet Dáné, Deputy Ombudsman for human rights, explains the situation: ‘In principle, we examine any petition we receive and no one leaves without receiving an explanation […] we either have to redirect the petition to the competent authority to solve the problem, or to explain to the person that this problem exceeds our competence but we provide complete guidance who should the person address, how he/she should proceed, etc.’ However, in order for the individuals to be more aware of the Ombudsman’s role and competences, the local offices have been constantly preoccupied with promoting them and interacting with various education institutions, non-governmental organizations in the field of human rights protection and media. Thus, territorial offices have concluded a significant number of protocols of cooperation with Faculties for ensuring internships within the institution, with NGOs for better cooperation in protecting human rights and have published extensively in the media articles promoting their activity.

Still, the Ombudsman can also exercise its functions ex officio and help people whose rights were breached even though no complaint was filed in this direction. In this way, the institution can help disadvantage individuals (institutionalized children, Roma people) who do not have knowledge about the institution or its functions and their situation was brought to the Ombudsman’s attention, generally through the media. Thus, under Article 14 (1) of

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Law no. 35/1997, republished, ‘the People’s Advocate shall exercise his powers *ex officio* or at the request of individuals, companies, associations or other legal entity’. The object of these proceedings, most commonly, refers to children’s rights violations, abuses committed by public officials or employees of police against citizens, rights of detainees, respect for consumers’ rights, etc. Unfortunately, the annual Activity reports of the institution do not present the ex officio proceedings separately for the central and territorial offices, thus no exact presentation of the territorial offices activity in this respect could be made.

![Fig. 4 – The ex officio proceeding of the Romanian Ombudsman (2007-2012)](image)

**4.2. Cooperation**

The Ombudsman institution was often compared with a mediator, meaning that one of its main goal is to solve complaints, irrespective of the party responsible for causing the problem, whether the individual or the public authority. In this context, investigations are the best possible means through which the Ombudsman can exercise its mediation function since it gives the chance of directly interacting with the public authority body and offers the possibility of strengthening the relation between the two parties, ensuring effective future cooperation. The Graph below presents the number of investigations carried out by the 14 territorial offices. Their number has varied across the years with a boost in 2012, most probably generated by the philosophy of the new management whose motto was ‘the Ombudsman to the people and not necessarily the people to the Ombudsman’, hence the new expression on the website of the institution ‘*vox populi, vox dei*’.

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As for the results of the investigations, in the end, the effectiveness of the institution in this respect does not necessarily mean solving the complaint in favour of the individual but bringing the two parties back together. This seems to be also the line of thought adopted by the institution since they do not clearly present the resolution of all investigations. Thus, in 42% of the cases, there is a lack of information regarding the result of the investigations and, in 18% of the cases, the expression associated with petition solving is ‘clarifying the aspects’. Nevertheless, in approximately one third of the cases, the issue brought by individuals was justified: in 9% of the cases aspects were confirmed meaning the authority did breach the respective rights, and in 22% of the cases the breach was so serious that recommendations were issued. Furthermore, special reports were issued in 2% of the cases with the intention of determining generalized results, bringing the resolution of more problems than the ones signalled by individuals who filed petitions.
Regarding the object of investigations carried out at local public authorities, the vast majority of them concerned the right to private property (25% of the cases). Furthermore, the right to private property could also be found in connection to the right of petitioning (4%) and the right of a person whose rights were breached by a public authority (8%).

**Fig. 7 – The rights presumed to have been breached by local public administration authorities and which were, at the same time, the subject of an investigation within the period 2007-2012.**

In an evaluation of the rights more often breached by public authorities carried out by the Ombudsman central office in Bucharest, the right to information, right to private property, the right to petition and access to justice were most frequently violated, which represents, according to the Ombudsman ‘a lack of respect for citizens on the part of public administration authorities’\(^34\). Further on, an significant number of the investigations (14%) regarded the protection of youth and children, in general, and the protection of people with handicap (13%), followed by the right to a decent level of living (9%) and free access to justice (5%).

Investigations are, generally, triggered by a lack of sufficient information either after receiving a petition or after the presentation of alleged human rights violations in the media. Thus, the number of investigations depends on the facts of everyday life (e.g. the number of cases presented in the media, the number of petitions which do not provide sufficient information for their resolution) but the interest of the territorial offices in conducting investigations, thus not settling with what the petitioner or the public authority declares,

reveals the commitment of the Ombudsman in solving human rights breaches and bringing the two parties together. In this context, the opinion of public authorities regarding their cooperation with the People’s Advocate during investigation is very important. The responses of public administration bodies to the questioner drafted by the researchers were rather positive regarding the cooperation between the two parties. Thus, six authorities considered they had a ‘very good’ relation with the Ombudsman and five of them ‘good’ while only one of them choose ‘satisfactory’. Authorities were also surveyed regarding the measures taken following the Ombudsman’s investigation and the vast majority, 9 of them, concluded that ‘no action was necessary’. Still, a rural city hall considered the measures taken as being ‘extensive’ and two other authorities, as being ‘minor’.

Of the total number of authorities who provided a response there were two who had a person appointed by the Director of the institution in order to deal with the requests of the People’s Advocate, and the remaining ten authorities appoint such a person when necessary. The questioned authorities were also influenced in their future activity by the investigation of the Ombudsman. Thus, even though there were authorities that had previously mentioned that the results of the investigation did not require the adoption of extensive measures, they still believed that they were ‘very much’ influenced in their future activity.

Furthermore, the public administration authorities were also asked to rank the overall activity of the institution on five features: confidentiality, impartiality, credibility, transparency, and promptness on a scale from 1 (‘very good’) to 5 (‘unsatisfactory’). These five elements are generally found in the literature as connected with the effectiveness of the Ombudsman institution and they were selected in order to assess the manner in which the public administration authorities evaluate the cooperation with the People’s Advocate. The graphic on the left side presents an average of the five elements for each public authority and groups them into four default categories and the graph on the right presents the sum for each of the five elements one by one.

![Graph](image)

**Fig. 8 -** Overall assessment (confidentiality, impartiality, credibility, transparency, promptness) of public authorities regarding the People’s Advocate.
Fig. 9 - **Individual criteria assessment (confidentiality, impartiality, credibility, transparency, promptness)** of public authorities at the People’s Advocate.

Regarding the individual criteria assessment, it can be observed that the highest score is granted to impartiality, followed closely by transparency, confidentiality and promptness, the maximum possible score being 60 points (12 authorities * 5). This information reveals the degree of satisfaction that public administration authorities have regarding the interaction with the People’s Advocate. Further on, the public administration authorities are also open for further cooperation with the Ombudsman. Thus, most of the authorities questioned on their willingness to conclude protocols of cooperation considered it as being ‘appropriate’ (9 authorities), while two of them considered it ‘inappropriate’. There was one authority that already has a protocol of cooperation with the public Ombudsman. These protocols have the advantage of speeding up the complaint solving process through the existence of a person specifically appointed for that purpose by the public administration authority who deals with the requests of the Ombudsman by submitting the Ombudsman request to the person/department competent to solve the complaint within the public administration body. Mrs. Dáné acknowledges the benefits brought by the existence of a person specifically appointed to deal with the requests of the Ombudsman in the sense of speeding up the complaint solving.

5. **Conclusions**

The study focused on the effectiveness of the Ombudsman’s local offices in what concerns their accessibility and the cooperation with local public administration bodies. On the accessibility component, the above-mentioned data clearly indicate a good physical accessibility of the institution and its readiness to support individuals. However, it seems that the role of the institution is not fully understood by most individuals who addressed it. The main criticism brought to the Ombudsman institution in general is the lack of full understanding or confusion as to its role; the number of people who know how to contact the institution and to file a complaint is relatively limited, inaccessibility being the main reason why particularly disadvantaged individuals do not use its services. On the other hand, visibility is closely related to its rather reactive attitude, pending the submission of
complaints in exchange for ex officio proceedings. On the cooperation side, the analysis revealed a good satisfaction as concerns the interaction with the Ombudsman and most authorities, approximately 90% (11 authorities out of 12), have positively appreciated the cooperation with the institution arising from investigations. These conclusions certify, once again, the benefits brought by conducting investigations, by the direct interaction between the People’s Advocate representatives and government authorities, the main beneficiaries of this relationship being the petitioners.

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