

INVOLVEMENT OF THE PEOPLE'S ADVOCATE IN THE CONSTITUTIONALITY REVIEW OF THE GOVERNMENT EMERGENCY ORDINANCES*

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Abstract

The Constitution attributes to the People's Advocate the possibility to notify the Constitutional Court of the unconstitutionality of the Government's Emergency Ordinances on the way of the exception of unconstitutionality. The study proposes an analysis of the legislative evolution in this field, highlighting some solutions regarding the conditions to be fulfilled by the People's Advocate on the occasion of the notification of the Constitutional Court with exceptions of unconstitutionality of some provisions of Government Emergency Ordinances, as they were stated in the Constitutional Court's case law. The mechanism, characterized by a number of peculiarities, proves its practical utility, given that in many cases the exceptions of unconstitutionality raised directly by the People's Advocate were admitted by the Constitutional Court. The exception of unconstitutionality of certain provisions of the Government Emergency Ordinances allows for the quick removal of the vices of unconstitutionality, avoiding the perpetuation of the unconstitutional state contrary to the fundamental rights and freedoms and the functioning of the rule of law.

Keywords: *exceptions of unconstitutionality, Government Emergency Ordinances, terms of referral, People's Advocate, Constitutional Court*

1. Introduction

The issue regarding the involvement of the People's Advocate in constitutional review of Government Emergency Ordinances, by the exception of unconstitutionality, presents a number of theoretical and practical peculiarities, having an impact on the current state life both for individuals and public authorities. The present study proposes an analysis of the constitutional and legal regulations relating to this matter from the historical perspective of the legislation evolution, while also explaining the legal nature of the Emergency Ordinances, as it was stated by the Constitutional Court in its jurisprudence. It also highlights the procedural rules for resolving the unconstitutionality exceptions raised directly by the People's Advocate before the Constitutional Court, by reporting certain aspects regarding the condition that the emergency ordinance, subject to the exception, to be in force, according with the Constitutional Court jurisprudence. Asked to decide in which cases People's Advocate may raise before the Constitutional Court the exception of unconstitutionality the Court has held that the People's Advocate, on the basis of independence and impartiality it is the only one able to decide on the appropriateness of the exercise of this task, irrespective of the regulatory field in which the emergency ordinances are adopted. Relevant aspects of the case-law of the Court are highlighted in this respect. The presentation of statistical data, the subject matters in which the People's Advocate initiated constitutional review and some examples from the case-law of the Court regarding the settlement of the exceptions of unconstitutionality raised directly by the People's

Advocate, aim to highlight the usefulness of exercising this power, which is able to clarify the state of constitutionality in case of the provisions contained in Government Emergency Ordinances, thus ensuring the Constitution supremacy and the rule of law. The study therefore proposes a novelty topic in the specialized literature, from the perspective of its practical valences, by highlighting the recent jurisprudential clarifications, necessary to be known by all those who notice the People's Advocate (individuals, representatives of political parties or public authorities etc.), demanding that some exceptions of unconstitutionality be raised directly before the Constitutional Court.

2. Content

Institution of constitutional democracy and rule of law, the People's Advocate has its own means of action to ensure the observance of the Constitution and its supremacy.

Besides the legal procedures specific to the activities of ombudsman institutions that consist in receiving and solving petitions, conducting inquiries and issuing recommendations to the public administration authorities, if it finds a violation of the rights and freedoms of individuals, the People's Advocate may refer the Constitutional Court with exceptions and objections of unconstitutionality and communicates, at its request, points of view on exceptions of unconstitutionality. An analysis of legal and constitutional regulations in this field shows that relations between the Ombudsman and the Constitutional Court was established in 2002 by Law no. 181/2002 for the modification and supplementing the Law no. 35/1191 on the

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organization and functioning of the People's Advocate¹, which, through the Single Article point 4, introduced in the Law no. 35/1997, a new article, art. 18¹, as follows: "In the case of a complaint concerning the unconstitutionality of laws and ordinances concerning the rights and freedoms of citizens, the Constitutional Court will also request the point of view of the People's Advocate Institution." The statement of reasons of Law no. 181/2002 stated that, considering the role of the Ombudsman, stipulated in Art. 55 of the Constitution of Romania² "it would be useful to have a point of view in the cases of exceptions of unconstitutionality of some normative acts".

The constitutional establishment of the relationship between the People's Advocate and the Constitutional Court was made in 2003, during the revision of the Constitution by Law no. 429/2003 on the revision of the Romanian Constitution³, which, by Single Article, point 75¹ amended Art. 144 (a) regarding the role of the Constitutional Court in deciding on the constitutionality of the laws, before their promulgation, and by the Single Article point 75³, which amended Art. 144 (c) on the Court's power to rule on exceptions of unconstitutionality. Law on the revision of the Romanian Constitution no. 429/2003 was approved by the national referendum of 18-19 October 2003 and entered into force on 29 October 2003⁴. Following the renumbering of articles and the republishing of the Constitution⁵, Art. 144(a) became Art. 146 (a), and Art. 144(c) became Art. 146 (d) of the Constitution, republished, having the following content: "*The Constitutional Court has the following attributions:*

a) decides on the constitutionality of the laws, before the promulgation thereof, at the request of the President of Romania, of one of the presidents of the two Chambers, of the Government, of the High Court of Cassation and Justice, of the People's Advocate, of at least 50 deputies or at least 25 senators, as well as ex officio, on initiatives to revise the Constitution;

(...)

d) decides on exceptions of unconstitutionality with respect to laws and Government ordinances brought before courts of law or commercial arbitration; the exception of unconstitutionality can also be raised directly by the People's Advocate;".

Involving the People's Advocate in the constitutional review was therefore established at the

constitutional level, although by the grounds set out in the Decision no. 148 of April 16, 2003 on the constitutionality of the legislative proposal to revise the Constitution of Romania⁶, the Constitutional Court stated that : "With regard to the hypothesis contained in the same provision concerning the possibility of the People's Advocate to raise the exception of unconstitutionality, the Court finds that it does not contain a judicious solution (...), since the fact that the People's Advocate raises the exception of unconstitutionality for the benefit of a person cannot have the meaning of a genuine guarantee or a measure of protection of the citizen, as long as that person, having the capacity to act and being animated by a legitimate interest, has the possibility to exercise the procedural right to raise the exception before the court. In addition, the Constitutional Court notes that the People's Advocate can not invoke a procedural position that would legitimize his participation in a trial before the courts. As citizens are guaranteed with the right to free access to justice and the right to defense, they can defend themselves against the application of unconstitutional legal provisions in the judicial sphere. That is why the People's Advocate would have invested with an excessive, unconscionable role. In fact, the ombudsman institution at European level is conceived as a public authority whose attributions relate to the relationship of individuals with the public administration and not with the courts".

Subsequent to the specified constitutional norms, rules regarding the involvement of the People's Advocate in a priori and a posteriori constitutional review were established by Art. I point 10 of Law no. 233/2004 for amending and completing the Law no. 35/1997 regarding the organization and functioning of the People's Rights Institution⁷, and by Art. I, 12, 15, 16, 17, 24 and 28 of Law no. 232/2004 for amending and completing the Law no. 47/1992 on the organization and functioning of the Constitutional Court⁸.

Following the republishing of the normative acts regarding the organization and functioning of the two fundamental state institutions, provisions regarding the possibility of the People's Advocate to refer the Constitutional Court directly, with the exception of unconstitutionality of the Government's emergency ordinances, can be found in Art. 15 par. (1)(i) of Law no. 35/1997 regarding the organization and functioning of the People's Advocate Institution⁹, according to which the People's Advocate has the following

¹ published in the Official Gazette of Romania, Part I, no. 268 of April 22, 2002

² become Article 58 of the Constitution republished in 2003

³ published in the Official Gazette of Romania, Part I, no. 758 of October 29, 2003

⁴ the date of publication in the Official Gazette of Romania, Part I, no. 758 of 29 October 2003 of the Constitutional Court's Decision no. 3 of 22 October 2003 to confirm the outcome of the national referendum of 18-19 October 2003 on the Law on the revision of the Romanian Constitution

⁵ in the Official Gazette of Romania, Part I, no. 767 of 31 October 2003

⁶ published in the Official Gazette, Part I, no. 317 of 12 May 2003

⁷ published in the Official Gazette of Romania, Part I, no. 553 of 22 June 2004

⁸ published in the Official Gazette of Romania, Part I, no. 502 of 3 June 2004

⁹ republished in the Official Gazette of Romania, Part I, no. 181 of February 27, 2018

attributions: (i) may directly refer the Constitutional Court, with the exception of unconstitutionality of laws and ordinances; and in Art. 32 and Art. 33 of Law no. 47/1992 on the organization and functioning of the Constitutional Court¹⁰. Thus, Court Constitutional decide on the exceptions of unconstitutionality directly raised by the People's Advocate on the constitutionality of a law or ordinance or a provision of a law or ordinance in force.

In the Romanian legal system, the Government Emergency Ordinances are primary regulatory acts, equal in legal force with law, as it is highlighted by the jurisprudence of the Constitutional Court (e.g. Decision no. 5 of 16 January 2001¹¹). In terms of their legal nature, the two categories of normative acts- the law and the Government Emergency Ordinance- are not identical, having a different constitutional and legal regime. According to the jurisprudence of the Court, "the Government Ordinance approved by Parliament by law, in accordance with the provisions of Art. 115 par. (7) of the Constitution, ceases to be a stand-alone normative act and becomes, as a result of the approval by the legislative authority, a law, even if, for reasons of legal technique, together with the data of the approval law, preserves the identification elements assigned to their adoption by the Government. In other words, the Government ordinance loses the character of a mixed act (administrative act through the prism of the issuer / legislative act through its content) and becomes law." (see, to that effect, Decision no. 95 of 8 February 2006¹², Decision no. 1.039 of 9 July 2009¹³, or Decision no. 761 of December 17, 2014¹⁴, paragraph 27).

Regarding the condition that the norms forming the object of the exception be "in force", the Constitutional Court, by Decision no. 766 of 15 June 2011¹⁵, stated that "the phrase « in force » in the provisions of Art. 29 par. (1) and Art. 31 par. (1) of the Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished, is constitutional insofar as it is interpreted as subjecting to constitutional review, the laws or ordinances or the provisions of laws or ordinances whose legal effects continue to occur after the exit of their force".

In resolving the unconstitutionality exception raised directly by the People's Advocate, the provisions of Law no. 47/1992 on the settlement of the unconstitutionality exception raised before the courts or commercial arbitration apply accordingly. However, the Constitutional Court held that the phrase "in force" cannot be interpreted in the

same way as in the Decision no. 766 of June 15, 2011, as the settlement of the exception of unconstitutionality directly raised by the People's Advocate is done in the context of an abstract constitutional review, as long as the Constitutional Court cannot determine whether the legal provisions criticized still produce effects or their extent (this appreciation can be made only when it comes to an exception raised before a court of law or commercial arbitration). Therefore, the Court can only reject the exception of unconstitutionality directly raised by the People's Advocate on legal provisions that have been substantially amended or repealed after notification of the Constitutional Court (e.g. Decision no. 1167 of 15 September 2011¹⁶, Decision no. 549 of July 15, 2015¹⁷).

Continuing its reasoning, by Decision no. 64 of February 9, 2017¹⁸, the Court, by a majority of votes (with separate opinion signed by two judges of the Constitutional Court) held that "the People's Advocate raises an exception of unconstitutionality distinct from any judicial procedure, therefore, without any dispute, not having to defend a subjective right. Moreover, the Court held that, in the context of this abstract constitutional review, it cannot be determined whether the repealed normative act still produces legal effects on concrete legal relationships, which can be assessed only when the exception is raised before a court or commercial arbitration (see Decision no. 1.167 of 15 September 2011 or Decision no. 549 of July 15, 2015, paragraph 16), which demonstrates the inapplicability of the Decision no. 766 of 15 June 2011.

Therefore, in the latter hypothesis, the Court stated that the constitutionality review under Art. 146 (d) the second sentence of the Constitution can be performed, if the primary legal act criticized by the People's Advocate is part of the active fund of legislation, implicitly, of the legislative solution contained therein; only if the legislative solution was maintained, at the date of the Court's pronouncement, it can be analyzed on the merits under the conditions of the constitutional provision previously mentioned.

In the present case, at the time the unconstitutionality exception was raised, the emergency ordinance criticized by the People's Advocate was partially in force [Art. II and Art. III par. (2) - (4)], in other words, it was part of the positive law, and partially was to enter into force on 11 February 2017 (art. I and Art. III par. (1)). Even if the People's Advocate raised the exception of unconstitutionality of the entire emergency ordinance,

¹⁰ republished in Official Gazette of Romania, Part I, no. 807 of 3 December 2010

¹¹ published in the Official Gazette of Romania, Part I, no. 94 of February 23, 2001

¹² published in the Official Gazette of Romania, Part I, no. 177 of 23 February 2006

¹³ published in the Official Gazette of Romania, Part I, no. 582 of 21 August 2009

¹⁴ published in the Official Gazette of Romania, Part I, no. 582 of 21 August 2009

¹⁵ published in the Official Gazette of Romania, Part I, no. 549 of August 3, 2011

¹⁶ published in the Official Gazette of Romania, Part I, no. 808 of 16 November 2011

¹⁷ published in the Official Gazette of Romania, Part I, no. 718 of 24 September 15, 2015

¹⁸ published in the Official Gazette, Part I, no. 145 of February 27, 2017

which, at the time of the referral [3 February 2017], was not yet in force as a whole, the Court noted that in its case-law it recognized the possibility of raising an exception of unconstitutionality on emergency ordinances which, although published in the Official Gazette of Romania, Part I, are not yet in force due to the fact that they themselves provide for a later date of entry into force (see, in this respect, Decision no. 447 of 29 October 2013¹⁹). However, at the time of judging the exception of unconstitutionality, the essential constitutional requirement is that the normative act, containing the criticized legislative solution, be in force, or be part of the active fund of legislation [see also Decision no. 447 of 29 October 2013, decision by which the Court accepted the exception of unconstitutionality at a date after the enactment of the contested normative act, even if it was not yet in force at the time of Constitutional Court notification]; so, naturally, the Court has jurisdiction to consider the constitutionality of the emergency ordinance, on the grounds of Art. 146 (d) the second sentence of the Constitution, only insofar as it is in force, thus maintaining the criticized legislative solution at the time of the decision. In the present case, the Court finds that the urgency ordinance criticized was no longer in force, being expressly repealed.

Accordingly, the Court held that the condition for the admissibility of the exception of unconstitutionality regarding character "into force" of the normative act subject to constitutional review was not accomplished. Accordingly, since the date of Court pronouncement was later than the date of repealing the criticized emergency ordinance, namely February 5, 2017, the Court rejected the exception of unconstitutionality as inadmissible.

The rules for solving the exception of unconstitutionality of an Emergency Government Ordinance are as follows: The Constitutional Court decides on the exceptions on the unconstitutionality of a Government ordinance or a provision of an ordinance in force. The provisions found to be unconstitutional by an earlier decision of the Constitutional Court cannot be subject of the exceptions on the unconstitutionality. Receiving the exception, the President of the Constitutional Court shall designate the Judge-Rapporteur and forward the judgment act by which the Court has been notified to the Presidents of both Houses of Parliament and Government, indicating the date by which they can submit their opinions. Obviously, if the People's Advocate is the one who notify the Constitutional Court, by way of an exception of unconstitutionality, is not asked for its point of view on its own exception.

Judge - Rapporteur is required to take the necessary measures to administer the evidence at the time of the trial. Judgment takes place on the basis of the documents contained in the file, with the notification of the parties and of the Public

Ministry. The prosecutor's participation in the trial is mandatory.

The decision to declare the unconstitutionality of an Emergency Government Ordinance or a provision of an ordinance in force is final and binding. If the exception is admitted, the Court will also rule on the constitutionality of other provisions of the contested act, of which the provisions referred to in the referral can not necessarily be dissociated.

As a result of the decision of the Constitutional Court, provisions of the ordinances in force found to be unconstitutional shall cease their legal effects 45 days after the publication of the Constitutional Court's decision if within this interval the Parliament or the Government, as the case may be, does not harmonize the provisions unconstitutional with the provisions of the Constitution, as established by Art. 147 par. (4) of the Constitution. Also, for a period of 45 days, the provisions found to be unconstitutional are *de iure* suspended.

Regarding the provisions of Art. 147 par. (1) of the Constitution, the Court, by Decision no. 415 of April 14, 2010²⁰, stated that they establish a difference in the obligation to harmonize the unconstitutional provisions with the provisions of the Constitution - between the competence of the Parliament for the provisions of the laws, on the one hand, and of the Government, for the provisions of ordinances, on the other hand.

Decisions by which the Court finds the unconstitutionality of an ordinance or a provision of an ordinance is communicated to the two Chambers of Parliament, the Government and the People's Advocate.

Regarding the legal provisions which may constitute the object of the unconstitutionality exceptions raised directly by People's Advocate it is important to stress upon an issue judicially established by the Constitutional Court on the occasion of solving the unconstitutionality exception of the provisions of Art. 13 par. (1) (f) of Law no. 35/1997 regarding the organization and functioning of the People's Advocate Institution, which state that: "(1) *The People's Advocate has the following duties: [...]*

f) may refer the Constitutional Court directly, unconstitutionality exception of laws and ordinances."

Thus, in support of the criticism of unconstitutionality of the provisions of Art. 13 par. (1)(f) of Law no. 35/1997, the People's Advocate, as the author of the exception of unconstitutionality, showed that the legal provisions criticized violate Art. 58 of the Constitution "in so far as they are interpreted as meaning that the People's Advocate may refer to the Constitutional Court objections or exceptions of unconstitutionality also in other cases than those concerning the rights and freedoms of individuals". The People's Advocate argued

¹⁹ published in the Official Gazette of Romania, Part I, no. 674 of November 1, 2013

²⁰ published in the Official Gazette of Romania, Part I, no. 294 of May 5, 2010

that " Article 58 paragraph (1) of the Constitution enshrines the functional specialization of the People's Advocate, limiting its competence to the field of defense the individuals rights and freedoms. The notification of the Constitutional Court by an objection or exception to unconstitutionality is a way of fulfilling its constitutional role. The People's Advocate therefore considered that the objection or exception of unconstitutionality, in addition to the procedural conditions determining the lawfulness of the referral, must be circumscribed to the role and attributions and respect People's Advocate status ".

Consequently, " if the criticized legal text would be interpreted in the sense of recognizing its competence to raise objections and exceptions of unconstitutionality in all cases, this would be a violation of Art. 58 and 59 of the Constitution".

Finally, the People's Advocate argue that "the Constitutional Court jurisprudence is various in dealing with the role of the Ombudsman as a defender of the rights and freedoms of individuals, invoking in this respect the Decision No. 1.133 of 27 November 2007, on the one hand, for the recognition of its competence to raise exceptions of unconstitutionality in all cases, and of the Decisions no. 1.631 of 20 December 2011 and no. 45 of 20 January 2011, on the other hand, to the contrary ."

Consequently, the People's Advocate considered that "the criticized legal provisions are unconstitutional insofar as they are interpreted as meaning that the Ombudsman may raise the exception of unconstitutionality also in cases that do not concern the rights and freedoms of individuals. "

At the request of the Constitutional Court, the Government communicated its point of view on the exception of unconstitutionality of Art. 13 par. (1)(f) of Law no. 35/1997 , according to which the exception "could be admitted insofar as it is interpreted that the Ombudsman may raise exceptions of unconstitutionality in any case, even if the legal text whose constitutionality is being considered does not affect the rights or freedoms of some individuals " .In this sense, The Government mentioned that "systematic interpretation of the constitutional provisions of Art. 58 and Art. 146 (d) leads to the conclusion that the constitutional rank attribution that allows the People's Advocate to raise ex officio exceptions of unconstitutionality should be circumscribed to the role of the People's Advocate, otherwise it would lead to a distortion of its role in the Romanian constitutional and institutional system . "

The People's Advocate also informed the Constitutional Court, notified with the exception of the unconstitutionality of some legal provisions regarding the modification and completion of the Law no. 370/2004 for the election of the President of

Romania , that, "in virtue of the institutional and functional independence it enjoys", "it does not express his opinion on the legal provisions criticized." He argued that "the People's Advocate exercises his powers within the constitutional and legal limits established for the fulfillment of his role as a defender of the rights and freedoms of individuals, without substituting other public authorities who, in their turn, have to fulfill their own attributions, as they are covered by the legislation in force. The issues raised concern mainly the relations between the public authorities, aspects of the functioning of constitutional democracy, which imply an analysis and a policy approach, which would oblige the People's Advocate to overcome his position of neutrality and objectivity and to engage in partisan controversy". Or, the People's Advocate must be impartial and objective, without engaging himself as an arbiter in politically nuanced disputes between state institutions, his fundamental role being [...] to defend the rights and freedoms of individuals in their relations with the authorities of the public administration." (see Decision No. 460 of 16 September 2014²¹).

The legal issue regarding the cases when the Ombudsman may refer the Constitutional Court the exception of unconstitutionality was examined by the Constitutional Court which by Decision. 336 of 24 September 2013²², rejected as inadmissible the exception of unconstitutionality of Art. 13 par. (1)(f) of Law no. 35/1997 regarding the organization and functioning of the People's Advocate Institution, exception directly raised by the People's Advocate. Such a solution was based on the following reasoning: " The power of the People's Advocate to raise exceptions of unconstitutionality was established by the Law on the Revision of the Romanian Constitution no. 429/2003²³.

Article 13 (1)(f) of Law no. 35/1997 restates at infra-institutional level the provisions of Art. 146 (d) the second sentence of the Constitution , according to which "the exception of unconstitutionality can be raised directly by the People's Advocate".

By Decision no. 1.133 of November 27, 2007²⁴, the Constitutional Court established that Art. 146 of the Constitution does not set condition, in the manner shown by the Government, on the cases in which the Ombudsman is empowered to address to the Constitutional Court notices or exceptions of unconstitutionality.

The Government, in its opinion submitted and retained in the aforementioned decision, considered that from the systematic interpretation of the legal texts regulating the role and attributions of the People's Advocate, as well as of the constitutional provisions regulating the sphere of the legal subjects that may refer the Constitutional Court to an exception to unconstitutionality is that the People's Advocate has the

²¹ published in the Official Gazette of Romania, Part I, no. 738 of October 9, 2014

²² published in the Official Gazette of Romania, Part I, no. 738 of October 9, 2014

²³ published in the Official Gazette of Romania, Part I, no. 758 of October 29, 2003

²⁴ published in the Official Gazette of Romania, Part I, no. 851 of December 12, 2007

power to initiate constitutional control by referring the Constitutional Court only in respect of the defense of the rights and freedoms of individuals.

According to the settled case law of the Constitutional Court, the People's Advocate may initiate the constitutional review on the basis of the exception of unconstitutionality irrespective of the issues covered by it, but the direct raising of the exception of unconstitutionality is and remains at the exclusive appreciation of the People's Advocate, that cannot be obliged or blocked by any public authority to raise such an exception.

As a consequence, the Court found that the Ombudsman had its marge in his decision to raise an exception of unconstitutionality, part of the institutional and functional independence he enjoys, so that there is no interest of the People's Advocate in promoting such an exception of unconstitutionality, since, by its very mode of action, it can conform to the constitutional meaning of the text.

In these circumstances, the Court held that, in fact, the Ombudsman wanted to be declared as unconstitutional the interpretation resulting indirectly from an earlier decision of the Constitutional Court (Decision no. 1133 of November 27, 2007, precited); whereas the criticized legal norm is similar to the constitutional text of Art. 146 (d) the second sentence, the text of which the Constitutional Court has already established its meaning, it is inadmissible to find the unconstitutionality of an interpretation given to the constitutional norm by the Constitutional Court.

In fact, accepting the point of view of the People's Advocate would mean that the exceptions of unconstitutionality raised after year 2003, which did not concern the individuals fundamental rights and freedoms, had been formulated in violation of the Constitution, and the Constitutional Court, given that it analyzed them in substance, had violated the Constitution itself.

The Court also held that Article 146 (d) the second sentence of the Constitution was interpreted in the case law of the Constitutional Court in the sense that the People's Advocate is not limited to referring the Constitutional Court exceptionally only to matters concerning fundamental rights and freedoms; consequently, since the constitutional text has not been revised, such an interpretation of the Constitutional Court can no longer be called into question."

Summarizing, we observe that the constitutional and legal provisions in the field and the jurisprudence of the Constitutional Court recognize the People's Advocate the right to notify the Constitutional Court with exceptions of unconstitutionality of some provisions of Government Emergency Ordinances, regardless of their subject matter, and that the appreciation to exercise of such a power rests solely with the Ombudsman, by virtue of his independence.

By exercising the constitutional review on the Parliament's Decision of dismissal the People's Advocate, by Decision No. 732 of July 10, 2012²⁵, the Constitutional Court held that "the People's Advocate is only responding to Parliament and its activity is subject to parliamentary control. As a result, the Parliament is the only authority able to assess whether the work of the People's Advocate as a leader of the institution has been achieved within the limits of the Constitution and law".

The emergency ordinances which were subjects of the unconstitutionality exceptions raised directly Ombudsman focused on issues concerning the organization and functioning of institutions or state authorities, rights and freedoms or problems inherent in the functioning rule of law, such as : organizing and the functioning of the Court of Audit, ministerial responsibility, public road traffic, the establishment of measures for the remuneration of education staff in the year 2008, the National Anticorruption Directorate, the public pensions system, state and service pensions, some measures in the field of public finances, ensuring the continuity of the activity of some structures within the Government's working apparatus, amending the Civil Procedure Code, paying certain amounts provided in executive titles for granting salary rights to the budgetary sector personnel, organizing the work of practitioners in insolvency, local public finances, as well as the establishment of financial measures, political convictions and administrative measures assimilated to them, pronounced between 6 March 1945-22 December 1989, strengthening the administrative capacity of the Romanian Office for Copyright Application, fees for crossing the national road network in Romania, establishing financial measures health insurance and public finance, measures in the cultural field, measures to reorganize the Official Gazette of Romania, Romania participation to the proceedings before the European Court of Human Rights and the Committee of Ministers of the Council of Europe and the exercise of the right of the state to resolve amicable settlements and decisions, insolvency and insolvency prevention procedures, the obligation of economic operators to use electronic fiscal cash registers, disposition of immovable seized property, annuity agricultural payment and holding of the referendum, amendment of Criminal Code, amending some legislative acts regarding education, research, training and health, holidays and benefits of health insurance.

By analyzing the jurisprudence of the Constitutional Court in the field, it follows that, since 2006, when the People's Advocate raised the first exception to the unconstitutionality of provisions contained in an emergency governmental ordinance (see, in this respect, Decision no. 544 of June 28, 2006²⁶, regarding the unconstitutionality of the

²⁵ published in the Official Gazette of Romania, Part I, no. 480 of July 12, 2012

²⁶ published in the Official Gazette of Romania, Part I, No. 568 of 30 June 2006

Government Emergency Ordinance No. 43/2006 on the organization and functioning of the Court of Audit) until March 15th, 2019, the People's Advocate notified the Constitutional Court with 27 exceptions of unconstitutionality of some provisions of Government Emergency Ordinances. Of these, 24 were settled by the Constitutional Court and three of them are pending. Following the settlement of exceptions, it appears that, in 14 cases, the Constitutional Court upheld the constitutional criticisms made, while in 10 cases dismissed as unfounded or inadmissible the exceptions of unconstitutionality.

These statistics data prove the usefulness of the role of the Ombudsman in the constitutional review, especially since in the case of Government Emergency Ordinances the exception of unconstitutionality raised by the Ombudsman directly to the Constitutional Court, in the absence of a case before a court of law is the only constitutional and legal way to verify their constitutionality in order to remove the vices of unconstitutionality and restore the Constitution supremacy.

Although there are certain examples in this respect, we can summarize here the Decision no. 1354 of 21 October 2010²⁷, by which the Constitutional Court upheld the exception of unconstitutionality directly raised by the People's Advocate. The Court held the the reasoning of the People's Advocate, according to which the establishment of a distinct legal treatment between the persons entitled to compensation for political convictions, depending on the moment when the court pronounced the final judgment did not have an objective and reasonable justification and therefore the legal provisions criticized were contrary to Art. 16 of the Constitution regarding the equality of rights.

Also, during nowadays reality, may occur situations requiring prompt reaction for the verification of the constitutionality of Government Emergency Ordinances in order to eliminate or to reduce the negative consequences arising from a possible state of unconstitutionality. In such cases, the possibility of the People's Advocate to refer the Constitutional Court directly, by the exception of unconstitutionality, is a quick and adequate remedy capable of ensuring respect for the supremacy of the Constitution and the rule of law, enshrined in Art. 1 par. (5) of the Constitution.

3. Conclusions

The constitutional and legal regulations on the involvement of the People's Advocate in the constitutional review of Government Emergency Ordinance's Constitution support the aim of extending constitutional and institutional guarantees of fundamental rights and freedoms in line with those conferring similar attributions to Ombudsman institutions in the Member States of the European Union. Moreover, a comparative analysis of the power and duties of Ombudsman institutions is a subject to a separate future study with the purpose to analyze the possibility of involving the Ombudsman in other areas of constitutional review. Being at the sole appreciation of the People's Advocate, but subject to the requirements established by law, whose knowledge is extremely important for people who require the Ombudsman to raise directly the exception of unconstitutionality before the Constitutional Court, exercising this power proves practical its utility by clarifying the uncertainty on the constitutionality of some primary regulatory provisions.

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²⁷ published in the Official Gazette of Romania, Part I, no. 761 of November 15, 2010

- Decision no. 148 of 16 April 2003 on the constitutionality of the legislative proposal for the revision of the Romanian Constitution, published in the Official Gazette of Romania, Part I, no. 317 of 12 May 2003,
- Decision no. 95 of 8 February 2006 , published in the Official Gazette of Romania, Part I, no. 177 of 23 February 2006
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- Decision no. 1.133 of November 27, 2007, published in the Official Gazette of Romania, Part I, no. 851 of December 12, 2007
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