

Parliament of Romania



Committee on Foreign Affairs

No. XXIV/211/22.06.2021

Dear Mr. President,

I am writing to you in connection with the Parliamentary Decision no.36/16.06.2021 on the abusive dismissal of the Ombudsperson (“Avocatul Poporului”), represented by Ms. Renate Weber, after she, in the exercise of her office, challenged several Government Decisions and Emergency Ordinances that violated the provisions of the Constitution and restricted fundamental rights and freedoms of citizens, in the context of the COVID-19 pandemic. The revocation of the Ombudsperson was carried out through an accelerated procedure, with many procedural irregularities, by the current majority Coalition in power. It should be noted that most of these complaints made in the last year by the Ombudsperson were admitted, often unanimously, by the constitutional judges, which attests to the validity of her efforts to protect citizens' rights. We mention that 11 out of the 13 complaints of unconstitutionality formulated in 2020 by the Ombudsperson were admitted by the Romanian Constitutional Court. For the most part, the restrictions on rights challenged by the Ombudsperson were imposed by emergency ordinances of the Government or by secondary normative acts, violating the express provisions of the Constitution and the Constitutional Court Decisions that consecrates the rule that any restriction of fundamental rights and freedoms must have a temporary character and be regulated exclusively by law, adopted by the Romanian Parliament.

Furthermore, the untimely dismissal of Ms. Renate Weber took place in the context in which the Government prepared an emergency ordinance on the introduction of co-payment for public health services, a decision that has a significant economic and budgetary content and impact. and which has generated serious controversy in society. Relevant for the present case is that this emergency ordinance draft has a similar content to another emergency ordinance previously issued by the Government, in February 2020, which was unanimously abolished by constitutional judges following an appeal filed by the Ombudsperson.

To H.E. Mr. Gianni Buquicchio

President of The European Commission for Democracy through Law (Venice Commission)

CC: To Ms. Simona Granata-Menghini

Secretary General of European Commission for Democracy through Law (Venice Commission)

In these conditions, it is obvious that Ms. Renate Weber, represented an obstacle for the Governing Coalition in realizing its political intentions, very often through emergency ordinances of the Government, that can be challenge, according to the Romanian legislation, only by the Ombudsperson. (source: https://www.ccr.ro/wp-content/uploads/2020/07/Decizie_229_2020.pdf) This is a clear explanation for the dismissal, for political reasons, of the independent Ombudsperson by the current Government.

Moreover, the objections raised by the parliamentarians in power to justify the act of revocation only further strengthen the purely political and discretionary nature of this approach. Ms. Renate Weber is accused of certain issues that fall within the competence of other institutions, such as the accusation that she did not fight the crimes of domestic violence or sexual assault against children, although the competence in the criminal field belongs to specialized police or prosecutor's offices. Also, aspects that represented at most rights or possible courses of action for the Ombudsperson and not legal obligations that she would not have respected were presented as violations of the Constitution. For example, she was accused of failing to make certain recommendations in a case of crimes against minors or of initiating a national mechanism for the prevention of torture in health facilities treating COVID-19 patients, "without concrete grounds, consisting in the existence of notifications that would create reasonable suspicions regarding the existence of acts or deeds that can be assimilated to torture".

Or, according to art. 9, para. (2) of Law 35/1997, republished, on the organization and functioning of the Ombudsman institution, its revocation by the Parliament can take place only "**as a result of violation of the Constitution and laws in force**" and not based on subjective and imprecise assessments of members of Parliament. In principle, the Court which is competent to find a violation of the Constitution is only the Constitutional Court, and the violation of the laws in force is established only by the Courts. However, none of these Courts issued decisions or judgments against the Ombudsperson, which was the basis of the revocation Decision adopted by the Parliament.

In this regard, we must mention the constant position of the European Commission for Democracy through Law of the Council of Europe (Venice Commission), expressed also in the case of Romania, by Opinion no. 685/2012, paragraph 80, according to which "**in order to be effective in the protection of human rights, the Ombudsman must be independent, including from the Parliament, which elects the incumbent. Given this need for independence, special safeguards are needed against unjustified dismissal**, as well as references to the principle of symmetry. Applying the same appointment and removal criteria a simple majority is inappropriate".

Moreover, the Venice Commission stated in the "Venice Principles" adopted at its 118th plenary session on 15-16 March 2019 that: "**The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law**. These shall relate solely to the essential criteria of "incapacity" or "inability to perform the functions of office", "misbehavior" or "misconduct", which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament - shall be equal to,

and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law.”

Thus, the legal provisions in Romania obviously restrict the reasons for “misconduct” or “violation” strictly to violations of the Constitution and the laws in force - facts that can only be ascertained competently based on a decision of the Constitutional Court, respectively of a decision pronounced by the courts and not after a subjective and discretionary assessment of a parliamentary majority, obviously disturbed by the actions of the Ombudsperson to protect the civil rights and freedoms.

In addition to the issues above mentioned, it should be noted that Ms. Renate Weber was not granted to with defense against the Parliament's Decision, as the only possibility to challenge Parliament's Decisions can be materialized by a referral to the Constitutional Court, prerogative lost with the revocation Decision. What's worse is that Mrs. Renate Weber was not even given the opportunity to defend herself in front of the members of the parliamentary committee who analyzed her activity report, beyond the fact that the rejection (for political reasons) of the Ombudsperson's annual report itself cannot constitute the legal basis for her dismissal. The only approach in defending the Ombudsperson was taken by the MPs of the Social Democratic Party who refused to vote for a deeply unconstitutional procedure and submitted to the Constitutional Court a notification of unconstitutionality against the Parliament Decision no. 36/16.062021 for the revocation of the Ombudsperson.

In conclusion, I point out that in Romania there is an obvious process of concentration of political power at the level of the current Coalition of Government, which has control at the legislative and executive level, including at the presidential level. Members of the Government and the leaders of the governing Coalition parties have already materialized or initiated concrete actions against the independence of magistrates (the bill for the abolition of the Section for the Investigation of Criminal Offenses within the judiciary - a completely independent structure designed to protect magistrates from abuses), but also against the media by the political appointment of the management of Public Television (TVR) and the Public Radio and by the marginalization of some journalists from these media institutions who have expressed criticism of power. In fact, recently the Constitutional Court of Romania decided the unconstitutionality of the appointment of the new TVR management and of the Public Radio, respectively, by the current majority in the Parliament, after the untimely revocations of the former management. (source: <https://romania.europalibera.org/a/numiri-tvr-neconstitutionale/31312783.html>)

Among the few independent institutional levers that can combat this major imbalance between state powers were the Constitutional Court and the Ombudsperson. These two institutions have been subject in the last year of permanent attacks from the Government, expressed both by aggressive political statements from the representatives of the legislative and executive branches, but also by concrete actions such as the decision to revoke the Ombudsperson, to which we referred in this letter.

We call on the European Commission for Democracy through Law and the Parliamentary Assembly of the Council of Europe to intervene by expressing clear positions, according to European democratic standards, for the defense and observance of the fundamental principles of democracy in Romania.

Sincerely yours,

Titus CORLĂTEAN

*Member of Romanian Parliamentary Delegation to the
Parliamentary Assembly of the Council of Europe*

*Chairman of the Committee on Foreign Affairs
The Romanian Senate*