

SEVERAL COMPLAINTS OF ROMANIAN CITIZENS OF HUNGARIAN ETHNICITY, AS THEY WERE SOLVED BY THE BRAŞOV TERRITORIAL OFFICE OF THE PEOPLE'S ADVOCATE

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Abstract: *Tax evasion, complex social and economic phenomenon facing contemporary society, it is hard to quantify, but its direct and indirect effects on economic development are felt, for which the current tax laws more severe penalties are provided and some forms of evasion Tax crimes are defined as crimes. To what extent more drastic punishment of acts of tax evasion led to its decrease in the national economy, and the effect of excessive taxation policy and tax legislation permissive in terms of combating tax evasion we intend to explore this material, making a comparative law analysis on tax legislation in Romania and Moldova.*

Keywords: *right, Ombudsman, public authority.*

Within the general aim of solving the citizen's problems, the Braşov Territorial Office of the People's Advocate Institution contributes to the amicable settling of conflicts between individuals and public administration authorities, by means of mediation and dialogue. Considering that the competence of the Braşov Territorial Office of the People's Advocate Institution includes both Braşov and Covasna counties, but also that over the last period of time several persons residing in Covasna County have addressed our office with various judicial problems, during

2011 steps have been undertaken for a wider media exposure of this institution mostly in the rural areas of this county, including requesting the support of the local authorities.

Further, al county level a cooperation protocol is signed between the Covasna County Prefect's Institution and the Braşov Territorial Office of the People's Advocate Institution, aimed at achieving the joint mission of defending the interests, rights and freedoms of the citizens in their relations with local public authorities.

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Regarding the activity conducted so far in the year 2011, noteworthy is the increase of the number of Hungarian ethnics who address the office. They either request audiences in order to benefit from legal counselling offered by the experts of the Braşov Territorial Office of the People's Advocate Institution, or present their problem in writing, via regular post or electronic mail. Some of these petitions are written in the citizens' mother tongue, namely Hungarian.

In most petitions coming from Hungarian ethnics and registered with the Braşov Territorial Office article 52 of the Romanian Constitution, republished, is invoked, concerning the rights granted to a person who has suffered damage from a public authority in relation to local public administration authorities, like for example the Local Council of the town of Târgu Secuiesc, the Local Council of the town of Sfântu Gheorghe, or the Land-Related Real Estate Local Commission of the town of Gheorghieni. Other petitioners referred to article 31 of the Romanian Constitution, republished, regarding the right to information, but also to the infringement of the right to private property stipulated by article 44 of the Constitution or other constitutional rights and freedoms of citizens.

During 2010 the Braşov Territorial Office of the People's Advocate Institution has granted 1395 audiences and has recorded 289 petitions. Of these 44 petitions were authored by mostly ethnic Hungarians of counties Covasna and Harghita. A major contribution in this regard comes also to the weekly presence of experts from the Braşov Territorial Office in the town of Sfântu Gheorghe, Covasna County.

For a more eloquent presentation of the problems encountered by ethnic Hungarians from the counties of competence, we shall describe some of the

cases resolved by the Braşov Territorial Office upon communication with the local authorities or hierarchically superior authorities, namely the respective county prefect.

Margit (fictionalized name) has petitioned the Braşov Territorial Office of the People's Advocate Institution in relation to procrastination of the response to a request she had submitted to the Local Council of the town of Târgu Secuiesc, Covasna County.

The petitioner reported, that she was abroad when her neighbour from apartment 1 at the ground floor of her building, namely a certain B.J., has built a balcony endowed with forged iron bars fixed to the petitioners terrace floor, without either having thought her prior consent or having secured a building authorization. The petitioner further informs that a holding wall has been demolished and a doorway to the balcony has been opened, an entire wall inside the apartment having been torn down, also without authorization or her consent.

Once she had observed these works, she has notified the Territorial Building Inspectorate of Covasna County, which has forwarded her petition to the Local Council of the town of Târgu Secuiesc, who was supposed to communicate their response to the petitioner. As the Local Council has not communicated any answer to the petitioner, she has again approached the Territorial Building Inspectorate of Covasna County, who in their response informed her, that the Local Council of the town of Târgu Secuiesc had been instructed to initiate offense penalizing measures against Mr. B.J., the owner of the said constructions and to undertake steps for re-establishing legality.

Consequently the Local Council of the town of Târgu Secuiesc have informed the petitioner that Mr. B.J. has been fined with 2000 lei and re-establishing of legality has

been ordered by either requesting a building authorization and the neighbours' consent, till latest 30th September 2010, or demolishing the respective constructions. The petitioner however informs, that Mr. B.J. has not complied with the dispositions of the Local Council of the town of Târgu Secuiesc, as well as the fact that he has refused to sign the offense establishing protocol, ha has not paid the fine and has not demolished the constructions.

Under these circumstances the petitioner was unsatisfied with the situation having remained unchanged despite her claims and the established offense committed by Mr. B.J., as well as with the fact that the Local Council of the town of Târgu Secuiesc has neither proceeded to the forced execution of the protocol and corresponding penalizing, nor undertaken any other measures to remedy the arisen situation.

These aspects brought to our attention were analyzed within the context of a possible infringement of the rights granted to a person who has been caused damage by a public authority, as provided by article 52 of the Romanian Constitution, republished.

Information in relation to the resolving of the aspects claimed by the petitioner was requested from the Local Council of the town of Târgu Secuiesc, Covasna County.

The Local Council of the town of Târgu Secuiesc, Covasna County has informed us, that following the intervention of the Braşov Territorial Office of the People's Advocate Institution, they have file suit against B.J., based on the provisions of art. 32 of Law no. 50/1991, the suit being on the docket of the Târgu Secuiesc Court of Law, by which suit the court has been requested to order the respondent to demolish the illegal construction.

In another case Eva (fictionalized name) has informed the Braşov Territorial Office

of the People's Advocate Institution about her request of 2001 addressed to the Local Commission for the Application of Law no. 10/2001 of Sfântu Gheorghe, concerning the restoration of certain real estate as provided by *Law no. 10/2001 regarding the judicial situation of real estate taken abusively between March 6th 1945 and December 22nd 1989.*

By a note of June 4th 2009 the same commission required the petitioner to submit certain documents necessary for resolving her request and restoration of the real estate/land registered in the Real Estate Record, land that had been since developed by construction of the present school and nursery school of the Ciucului neighbourhood. The petitioner claims to have submitted the requested documents, but to date has not received any response from the Local Council of the town of Sfântu Gheorghe regarding a solution to her file.

These aspects brought to our attention were analyzed within the context of a possible infringement of the rights granted to a person who has been caused damage by a public authority and of the right to private property, as provided by article 52 and article 44 of the Romanian Constitution, republished.

Information was requested from the Local Council of Sfântu Gheorghe, Covasna County in relation to the solving of the issues claimed by the petitioner.

The Local Council of Sfântu Gheorghe has informed us, that following the intervention of the Braşov Territorial Office of the People's Advocate Institution the mayor of the town of Sfântu Gheorghe has issued dispositions no. 1XXX of July 9th 2010 and no. 2XXX of July 9th 2010, and the files were to be submitted to the National Authority for Property Restoration, unless the petitioner appeals these dispositions in court within 30 days from communication.

In another case Ioncsi (fictionalized name) has informed the Braşov Territorial Office of the People's Advocate Institution that together with S.R. and other heirs of their common author R.S.A. they have requested the restoration of the property right over 100 ha of grazing land, based on the provisions of Law no. 247/2005.

The Commission for the Application of the land-related Real Estate Law of the town of Gheorghieni, Harghita County has informed the petitioners that the plot of land of 100 ha has been proposed for validation, was indeed been validated by the decision no. 8/2006 of the Harghita County Commission.

Later, by a decision of the Harghita County Commission the item in Annex 37 of Decision no. 8/2006 of the Covasna County Commission was annulled, where the petitioner was recorded with another surface, this time of 412.8 ha woodland.

Opposed to the notification of the Commission for the Application of the land-related Real Estate Law of Gheorghieni, the petitioner claims that the dispositions of the Harghita County Commission regarding the validation of the proposal for restoration of the property right over 100 ha of grazing land have remained valid, so that he considers himself entitled to be repossessed for these 100 ha by the Local Commission of Gheorghieni.

In this regard he specifies that the mentioned plot is located within the administrative boundaries of the Gheorghieni administrative-territorial unit, and identifies several locations and plots, according to the Cadastre Registry of landowners of Gheorghieni where the repossession of the 100 ha grazing land would be possible.

These aspects brought to our attention were analyzed within the context of a possible infringement of the rights granted to a person who has been caused damage

by a public authority and of the right to private property, as provided by article 52 and article 44 of the Romanian Constitution, republished.

Information was requested from the Local Commission for Land-Related Real Estate Gheorghieni and the Harghita County Commission for Land-Related Real Estate, in relation to the solving of the issues claimed by the petitioner.

Consequently to the interventions of the Braşov Territorial Office of the People's Advocate Institution, the Local Commission for Land-Related Real Estate Gheorghieni and the Harghita County Commission for Land-Related Real Estate, respectively have replied that there exists the possibility of repossession of the surface validated in annex 22, item 115 and information were requested on the validity or possible cancellation of item 115 of annex 22, according to decision no. 8/2006 of the County Commission.

Further we were informed that annex 22, item 115, validated by decision no. 8/2006 had not been cancelled or modified, as resulting also from the verifications conducted by the Cadastre and Real Estate Publicity Office of Harghita.

Consequently the plot of land of 100 ha grazing land requested by the petitioner is to be identified, delimited and repossessed, the date assumed for delimitation by the Local Commission of Gheorghieni being September 6th 2011.

Other aspects taken into consideration concerned unclarities of Hungarian ethnics relating to the application of recently passed legislation. In this regard Ildiko (fictionalized name) has informed the Braşov Territorial Office of the People's Advocate Institution that the Public Finances Directorate of the Local Council of the town of Sfântu Gheorghe has conveyed to her the Taxation Disposition of November 8th 2010 via a notification of November 19th 2010.

According to this taxation disposition, based on the provisions of Law no. 571/2003 regarding the Fiscal code including its subsequent additions and modifications and the provisions of Decision no. 282/2009 of the Local Council, certain payments due to the local budget of the town of Sfântu Gheorghe – building tax - were established for the petitioner, taking into consideration that she is the owner of several buildings.

Under these circumstances the petitioner specifies, that although these buildings had been restored into her possession in kind based on Law no. 10/2001, she has benefitted from the provisions of this law in her quality of legal heir. For this reason the petitioner considers, that she is entitled to an answer to the question raised by her, namely whether she is exempt or not from the provisions of article I par. (1) of the *Emergency Ordinance no. 59/2010 of the Government (EOG) modifying Law no. 571/2003 regarding the Fiscal Code*, as she has acquired these buildings by the effect of legal inheritance.

These aspects brought to our attention were analyzed within the context of a possible infringement of the right to information and the rights granted to a person who has suffered damage by a public authority, as provided by article 31 and article 52 of the Romanian Constitution, republished.

Information was requested from the Public Finances Directorate of the Local Council of the town of Sfântu Gheorghe in relation to the solving of the issues claimed by the petitioner.

Consequently to the interventions of the Braşov Territorial Office of the People's Advocate Institution, the Public Finances Directorate of the Local Council of the

town of Sfântu Gheorghe has communicated us, that in accordance with article 252 par. 1 and 2 of the Fiscal Code, as modified by EOG no. 59/2010, individuals owning two or more buildings owe an increased building tax as follows: increased by 65% for the first building besides the one of residence; increased by 150% for the second building besides the one of residence; increased by 300% for the third and following buildings besides the one of residence.

On the other hand, the legal framework regulating legal inheritance (succession) is the Civil Code and not law no. 10/2001. Law no. 10/2001 represents a special law for the reparation of abuse suffered during the communist time, and consequently the petitioner's right of property was created based on the special law that cannot be equated to acquiring property right by legal succession.

Consequently, as the Fiscal Code does not provide excepting from increased tax for the buildings restored into property based on law no. 10/2001 – as is the petitioner's case – she cannot be exempt from paying this increased tax provided by EOG no. 59/2010.

In relation to the above aspects the addressed authority has communicated the answer requested by the petitioner concerning the judicial situation applicable to the taxation of the buildings owned by her.

In view of the cases of the Braşov Territorial Office of the People's Advocate Institution regarding the petitions received from Hungarian ethnics, the conclusion is yielded, that the notified aspects relate mostly to local authorities procrastinating the solving of requests submitted to them.

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