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## **COMMISSION STAFF WORKING DOCUMENT**

### **2023 Rule of Law Report Country Chapter on the rule of law situation in Romania**

#### *Accompanying the document*

#### **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

#### **2023 Rule of Law Report**

#### **The rule of law situation in the European Union**

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## **ABSTRACT**

Until November 2022, reforms in Romania in the area of justice and anti-corruption were followed by the Commission under the Cooperation and Verification Mechanism (CVM) and the Rule of Law cycle. They are, since then, being solely monitored under the Rule of Law cycle. By a letter of 28 June 2023, the President of Romania informed the Commission about the measures taken by Romania to fulfil the last residual commitments that were listed in the conclusions of the 2022 CVM report, as well as further measures to continue upholding the rule of law.

The justice system underwent a comprehensive overhaul through the revised Justice Laws. These amendments constitute significant progress to reinforce judicial independence. There were also important steps taken to address remaining concerns about the investigation and prosecution of criminal offences in the judiciary. The new Justice Laws brought important changes regarding the career organisation and liability regimes for magistrates; the appointment, dismissal, and powers of high-ranking prosecutors; and the governance of the Judicial Inspectorate. A panel of high-level experts is analysing how to implement the recommendations from the Venice Commission. The efficiency of the justice system has improved overall, and the development of digital tools has progressed steadily. Despite continued efforts to improve the situation, the increasing shortage of magistrates is generating serious concerns, as it could impact the quality and efficiency of justice over time. Some cases have been reported of use of disciplinary sanctions in relation to certain magistrates, whilst the possibility to request judicial review continues to be ensured.

The implementation of the new Anti-Corruption Strategy is well on track. A positive track record continued to be maintained in combating corruption, including on high-level cases. Romania has made significant progress in addressing operational challenges of the DNA although recruitment remains to be further improved. The reform of the Codes of Criminal Law and Criminal Procedure has been adopted. A Government Emergency Ordinance was adopted to clarify the statute of limitation, whilst the delayed legislative response led to the closing of corruption cases and the annulment of convictions. Under the new system on investigating and prosecuting corruption offences within the judiciary, designated prosecutors are addressing the backlog of cases, with many unfounded cases being closed, without any procedural incidents being reported in the implementation process. There has been no new indictment so far. Continued attention to integrity of law enforcement led to positive results. Steps are being taken to update and codify the legal framework on integrity and progress has been made on digitalisation. However, the enforcement of the lobbying rules for Members of Government remains to be improved and rules on lobbying for Members of Parliament remain to be introduced. The National Integrity Agency was made the competent authority to receive whistleblower reports and its budget is expected to be increased accordingly.

No measures have been taken to enhance the independent governance and editorial independence of public service media. A new audiovisual law was adopted, and the National Audiovisual Council's budget needs to reflect its new tasks. The transparency of the financing of media, in particular of audiovisual media by political parties, has not improved significantly yet. The situation regarding threats, instances of harassment and violence against journalists remains an issue.

New instruments aim to improve the transparency and quality of decision-making and legislation. The Government has committed to improve the effectiveness of public consultations. No further steps were taken to obtain accreditation for the National Human Rights Institution. There have been improvements regarding the legal framework for civil

society organisations (CSOs), although they continue to face challenges related to access to public funding and to the lack of predictability in the implementation of the legal framework. Initiatives are ongoing to simplify procedures for recognising and funding associations carrying out activities of general interest.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2022 Rule of Law Report, Romania has made:

- Significant progress on ensuring that the revision of the Justice Laws reinforces safeguards for judicial independence, including to reform the disciplinary regime for magistrates, and some progress on taking measures to address remaining concerns about the investigation and prosecution of criminal offences in the judiciary, taking into account European standards and relevant Venice Commission opinions.
- No progress on introducing rules on lobbying for Members of Parliament.
- Significant progress on addressing the operational challenges of the National Anti-Corruption Directorate, including as regards recruitment of prosecutors, and some progress in closely monitoring the impact of the new system on investigating and prosecuting corruption offences in the judiciary.
- No progress on strengthening the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account the European standards on public service media.
- No progress on ensuring effective public consultation before the adoption of draft legislation.
- No progress on continuing efforts to establish a National Human Rights Institution taking into account the UN Paris Principles.

On this basis, and considering other developments that took place in the period of reference, and in addition to recalling the commitments made under the National Recovery and Resilience Plan relating to certain aspects of the justice system, the anti-corruption framework and the legislative process, it is recommended to Romania to:

- Complete the process initiated in view of taking into account the recommendations contained in the opinion of the Venice Commission on the Justice Laws, in particular by finalising the assessment being carried out by the panel of high-level experts.
- Take measures, in particular at an operational level, to address remaining concerns about the investigation and prosecution of criminal offences in the judiciary, including as regards corruption offences, taking into account European standards.
- Continue efforts to ensure adequate human resources for the justice system, including for the prosecution services, taking into account European standards on resources for the justice system.
- Introduce, without further delay, rules on lobbying for Members of Parliament.
- Step up efforts to strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account the European standards on public service media.
- Step up efforts to ensure effective public consultations before the adoption of legislation.
- Step up efforts to obtain the accreditation of a National Human Rights Institution taking into account the UN Paris Principles.

## **I. JUSTICE SYSTEM**

The Romanian justice system is structured in four instances, both civil and military: the first instance county courts, the ordinary and specialised tribunals, the courts of appeal<sup>1</sup> and the High Court of Cassation and Justice. The High Court of Cassation and Justice judges first instance and appeal criminal cases for certain categories of persons<sup>2</sup>, as well as appeal cases for certain civil and administrative cases. A fundamental role of this Court is to ensure the uniform interpretation and application of the law by the other courts. The Superior Council of Magistracy (SCM), tasked with guaranteeing judicial independence, is divided into two sections, the section for judges and the section for prosecutors. Each section has exclusive competence for the recruitment and management of the career of judges and prosecutors respectively, and acts as a disciplinary court. The prosecution service is headed by the Prosecutor General of the Public Prosecutor's Office attached to the High Court of Cassation and Justice (HCCJ). The Public Prosecutor's Office includes specialised structures with special jurisdiction and organisation, the National Anti-Corruption Directorate (DNA) and the Directorate for Investigation and Combating Organised Crime and Terrorism (DIICOT), led by chief prosecutors<sup>3</sup>. There are also military prosecutorial offices. The Prosecutor General and the Chief Prosecutors of the specialised structures, DNA and DIICOT, are appointed by the President of the Republic, upon a proposal of the Minister of Justice and after having received a non-binding opinion of the Superior Council of Magistracy. Romania participates in the European Public Prosecutor's Office (EPPO). The Romanian National Union of Bar Associations is a legal entity of public interest, comprising all 41 bars in Romania.

### **Independence**

**The level of perceived judicial independence in Romania continues to be average among both the general public and companies.** Overall, 51% of the general population and 56% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023<sup>4</sup>. According to data in the 2023 EU Justice Scoreboard, no clear trend can be identified in the evolution of the perceived level of independence among the general public since 2016. The perceived judicial independence among the general public has increased in comparison with 2022 (48%) and remains at the same level as in 2016. The perceived judicial independence among companies has increased in comparison with 2022 (49%), but it is lower than in 2016 (63%).

**Significant progress was made on reinforcing safeguards for judicial independence in a comprehensive revision of the Justice Laws.** The 2022 Rule of Law Report recommended to Romania to "[e]nsure that the revision of the Justice Laws reinforces safeguards for judicial

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<sup>1</sup> Courts of appeal judge at both first instance (more complex cases) and second instance, in appeals against decisions handed down by the lower courts.

<sup>2</sup> The Criminal Section of the High Court of Cassation and Justice hears, as a court of first instance, cases involving offences committed by senators, deputies, and Romanian members of the European Parliament, by members of the Government, by judges of the Constitutional Court, by members of the Superior Council of Magistracy, by judges of the High Court of Cassation and Justice, and by prosecutors of the Prosecutor's Office attached to the High Court of Cassation and Justice.

<sup>3</sup> Prosecutors' offices attached to the courts of appeal are headed by general prosecutors, and the ones attached to the tribunals and county courts are led by first prosecutors.

<sup>4</sup> Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

independence, including to reform the disciplinary regime for magistrates, [...] taking into account European standards and relevant Venice Commission opinions”<sup>5</sup>. As mentioned in previous Rule of Law Reports<sup>6</sup>, the three justice laws<sup>7</sup>, which define the status of magistrates and organise the judicial system as well as the Superior Council of Magistracy (SCM), are central for the independence of magistrates and the good functioning of the judiciary. Romania committed to amend its justice laws by 30 June 2023 in its Recovery and Resilience Plan (RRP), as part of the reform aimed at ensuring the independence of the judiciary, enhancing its quality and efficiency<sup>8</sup>. Following a public consultation, the draft laws were submitted to Parliament through an accelerated procedure<sup>9</sup> and adopted on 17 October 2022. The amended laws address several long-standing concerns and bring about positive changes to reinforce the efficiency and independence of the judiciary. For example, they provide for more safeguards as regards the civil and disciplinary liability of magistrates and the appointment and dismissal procedures for high-ranking prosecutors and judges. Provisions were added to make the SCM more transparent and accountable<sup>10</sup>, as well as to make the Judicial Inspectorate more accountable and prevent concentration of power in the hands of the Chief Inspector<sup>11</sup>. The laws also make several important changes as regards the admission to the magistracy and the promotion of magistrates, including to managerial positions<sup>12</sup>. The Venice Commission

<sup>5</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 2.

<sup>6</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 4.

<sup>7</sup> Law No. 303/2022 on the status of judges and prosecutors; Law No. 304/2022 on judicial organisation; and Law No. 305/2022 on the Superior Council of Magistracy. See 2020, 2021 and 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Romania, p. 3, pp. 3-4 and pp. 4-5 respectively.

<sup>8</sup> On proposal from the Commission, the Council adopted its Implementing Decision 12319/21, of 26 October 2021, on the approval of the assessment of the recovery and resilience plan for Romania, under which milestone 423, to be achieved by 30 June 2023, refers to the ‘Entry into force of the ‘Justice laws’ (laws on the status of magistrates, judicial organisation, Superior Council of Magistracy). See Annex to Council Implementing Decision 12319/21, p. 499.

<sup>9</sup> In its urgent Opinion of 18 November 2022 on the Justice laws (CDL-AD(2022)045), endorsed at its 133rd Plenary Session (16-17 December 2022), the Venice Commission “regrets the haste of the adoption procedure”, noting that “the parliamentary debate was conducted in a rushed manner”. For more details on the adoption procedure, see also progress report for Romania under the Cooperation and Verification Mechanism (CVM) (COM(2022) 664 final), p. 3.

<sup>10</sup> As stated in the 2022 CVM Report, the new composition of the SCM, which started its mandate in January 2023, has an opportunity to ensure transparency and accountability. See COM(2022) 664 final, p. 17 and p. 28. The new SCM demonstrated its commitment to give a new impetus to transparency and accountability by publishing online in April 2023 an action plan on transparency and accountability.

<sup>11</sup> As underlined in the Commission’s 2022 CVM report, the new leadership of the Judicial Inspectorate has now the opportunity to ensure that disciplinary investigations are no longer used as an instrument to exert pressure on the activity of judges and prosecutors, in line with the case law of the CJEU. The 2022 CVM report also noted that a remaining concern relates to the possibility for the Chief Inspector to overrule a decision to dismiss a case, or any decision taken by an inspector following a preliminary investigation. See COM(2022) 664 final, pp. 17-19. See Judgment of 11 May 2023, *Inspekția Judiciară*, in Case C-817/21, where the CJEU analysed the legislation applicable before the entry into force of the revised Justice Laws.

<sup>12</sup> The 2022 CVM Report highlights that new rules have been introduced for the promotion of judges to the High Court of Cassation and Justice (HCCJ), where promotions on the basis of a competitive written test have been replaced by a selection based on an evaluation of the judicial decisions taken by candidates during their entire activity at the Court of Appeal and an interview before the section for judges of the SCM. Once promoted to the HCCJ, judges are also excluded from further professional evaluations. CVM report 2022, p. 5. See also footnote 31. Under the new Justice Laws, the president, vice-presidents and section presidents of the HCCJ are appointed by the SCM section for judges, for a period of 3 years renewable once, following an interview consisting of supporting a managerial plan, a verification of managerial and communication skills and a verification of knowledge specific to the position. This new procedure does not comprise written tests, whereas



concluded that on the whole the laws seem to be heading in the right direction<sup>13</sup>. It nevertheless issued several specific recommendations that the Government has committed to further analyse and take into utmost account and more generally if further actions are necessary<sup>14</sup>. Therefore, significant progress has been made to address the recommendation made in the 2022 Rule of Law Report on the Justice Laws.

**A panel of high-level experts was created to analyse how to implement the recommendations of the Venice Commission in the national legislative framework.** On 19 December 2022, the Venice Commission adopted an opinion in which it analysed targeted aspects of the Justice Laws<sup>15</sup>. With regard to the new safeguards for the appointment of high-ranking prosecutors<sup>16</sup>, the Venice Commission noted that a period of three years' term of office, with a possibility of renewal, creates a potential risk<sup>17</sup> and recommended introducing a longer appointment period, with no possibility of renewal<sup>18</sup>. An appointment procedure was conducted under the new rules in December 2022 for the three chief prosecutors<sup>19</sup>. Under the new Justice Laws, deputy managers in courts and prosecutors' offices<sup>20</sup> are appointed by the relevant SCM section upon proposal by the court president or head of the prosecutor's office. Stakeholders have raised concerns that such a system risks concentrating the decision-making power in the hands of the head of the court or prosecutor's office<sup>21</sup>. The Venice Commission recommended introducing a competitive selection for deputy managers<sup>22</sup>. Furthermore, the

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previously, candidates to these positions were submitted to the same written examinations as those applying to management positions in lower courts.

<sup>13</sup> CDL-AD(2022)045, para. 74. On different aspects covered by the Venice Commission Opinion, see paragraph below.

<sup>14</sup> For details see 2022 CVM report COM(2022)664, p. 28.

<sup>15</sup> CDL-AD(2022)045. The scope of the opinion did not cover all the three Justice Laws, but was limited to issues raised in PACE Resolution 2466 (para. 10).

<sup>16</sup> For details see 2022 CVM report COM(2022)664, pp. 8-9.

<sup>17</sup> CDL-AD(2022)045, para. 45: "there is a potential risk that a prosecutor who is seeking re-appointment by a political body will behave in such a manner as to obtain the favour of that body or at least be perceived as doing so".

<sup>18</sup> CDL-AD(2022)045, paras. 44-47 and 76.

<sup>19</sup> On 30 March 2023, the Romanian President signed the decrees appointing the new Prosecutor General and the new Chief Prosecutor of the DNA following positive opinions by the SCM section for prosecutors. In April 2023, the Romanian President signed the decree for the appointment of the chief DIICOT prosecutor, following a negative opinion of the SCM section for prosecutors. The SCM section for prosecutors has a stronger role in the appointment procedure under the new Justice Laws. It now has to be consulted and participates in the selection committee. The SCM's opinion remains consultative and in case of a negative opinion, the Minister of Justice has the obligation to organise a second interview with the candidate concerned, taking into account the arguments laid out in the SCM opinion. The Venice Commission however noted that this is a relatively weak safeguard, and that the decisive role for the Minister is not in accordance with its previous recommendation to attribute a major role to the SCM Section for prosecutors. Still, it considered that the sharing of political responsibility between the Minister and the President partly meets its earlier criticism and indicated that the role of the SCM strengthened since it will issue an opinion that can force the Minister, if the opinion is negative, to reconsider the choice and justify it publicly CDL-AD(2022)045, paras 40-42.

<sup>20</sup> Art. 167 of Law No. 303/2022 applies to vice-presidents and section presidents in first instance county courts, ordinary and specialised tribunals and courts of appeal, as well as to all prosecutors in managerial positions in prosecutor's offices attached to the same courts, except for chief prosecutors.

<sup>21</sup> See, for instance, input from Expert Forum for the 2023 Rule of Law Report, p. 11. Information also received from magistrates' association in the context of the country visit.

<sup>22</sup> CDL-AD(2022)045, para. 28-35. The Venice Commission also criticised the lack of clarity in the law as to the weight of the management plans in the selection and the possible lack of discretion of the relevant SCM section not to appoint the proposed candidate.

Justice Laws<sup>23</sup> provide that the Prosecutor General may overrule in writing decisions taken by any lower prosecutor when he or she deems that the decision is unlawful or unfounded. The Venice Commission recommended that the Prosecutor General should not be able to bypass the prosecutorial hierarchy when finding prosecutorial measures unlawful or unfounded<sup>24</sup>. In January 2023, the Government set up a panel of high-level national experts to present a report on adequate legislative solutions to follow up on the Venice Commission opinions in order to further reinforce the efficiency and independence of the judiciary. This panel is expected to submit its assessment by 1 September 2023.

**Changes to the civil and disciplinary liability regimes strengthen the independence of the judiciary, while some cases of disciplinary sanctions in relation to certain magistrates continue to raise concerns.** As stated above, procedural safeguards were added to the civil<sup>25</sup> and disciplinary<sup>26</sup> liability regimes for magistrates. The recusal of SCM members sitting in disciplinary panels can now be requested on the grounds of a conflict of interest or lack of impartiality, and limitation periods have been introduced to exclude the possibility to trigger disciplinary liability indefinitely<sup>27</sup>. Moreover, two disciplinary offences which generated concerns respectively for judicial independence and the primacy of EU law were eliminated<sup>28</sup>. The possibility to request the judicial review of disciplinary sanctions continues to be ensured. Some cases of disciplinary sanctions have continued to raise concerns. Following disciplinary actions opened by the Judicial Inspectorate, the SCM excluded two judges from the magistracy, who have challenged these sanctions before the HCCJ<sup>29</sup>. The HCCJ has annulled disciplinary sanctions applied in similar cases in 2022<sup>30</sup>. More recently, the SCM section for judges rejected

<sup>23</sup> Law No. 304/2002, Art. 68(3). Art. 68(4) of the same law gives the chief prosecutors of DNA and DIICOT the same power within their respective directorates.

<sup>24</sup> CDL-AD(2022)045, para. 52-53 and 76.

<sup>25</sup> COM(2022) 664 final, p. 4. In particular, under Articles 268-269 of Law No. 303/2022, the magistrate concerned is immediately notified of and may intervene in actions for compensation for alleged miscarriage of justice against the State. Furthermore, the Ministry of Finance does not have a discretionary power anymore to lodge a recourse action against the magistrate but can do so only if the relevant section of the SCM finds the existence of bad faith or grave negligence in the miscarriage of justice, on the basis of a report drawn up by the Judicial Inspectorate.

<sup>26</sup> Ibid. In particular the decisions of the SCM sections in disciplinary matters must now be reasoned and notified without delay to the magistrate concerned, instead of within 20 days, and disciplinary sanctions are removed from the magistrate's record three years from their date of enforcement, if the magistrate is not subject to a new disciplinary sanction during this period. This is particularly important for disciplinary sanctions not to affect indefinitely the career of magistrates.

<sup>27</sup> Art. 51(2) of Law 305/2022 provides for a limitation period for disciplinary liability of magistrates of 4 years from the date of the offence, which may be interrupted and extended to a maximum of five years.

<sup>28</sup> COM(2022) 664 final, p. 4. The offences concerning "actions affecting the honour, professional rectitude, or the prestige of justice, committed during the performance or outside the performance of work duties" and "non-compliance with the decisions of the Constitutional Court or the decisions issued by the High Court of Cassation and Justice in resolving appeals in the interest of the law" were abolished. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 6-7.

<sup>29</sup> On 19 December 2022, the section for judges of the SCM excluded three times from the magistracy two judges from the Bucharest Court of Appeal who had been dealing with high-profile corruption cases for alleged undue delays, non-compliance with provisions on random allocation of cases, as well as bad faith or gross negligence. On 15 March 2023, the same two judges were excluded a fourth time from the magistracy, for exercising their functions in bad faith. They both appealed the disciplinary sanctions before the HCCJ.

<sup>30</sup> In November 2022, the HCCJ annulled the disciplinary sanctions imposed by the SCM on 14 December 2021 on three out of five judges of the Constanța Court of Appeal who had participated in sentencing high-level corruption offences, and lowered the sanctions to warnings for the remaining two judges. The HCCJ also annulled all three decisions of exclusion from magistracy adopted against a judge, respectively for posting



the disciplinary action initiated by the Judicial Inspectorate against a judge for delays in adjudicating cases and gross negligence, taking into account the heavy workload of the judge concerned<sup>31</sup>. Judges' associations have perceived unannounced searches by judicial inspectors in public premises as creating pressure and intimidating the targeted magistrates<sup>32</sup>.

**Some progress was made on the remaining concerns regarding the investigation and prosecution of criminal offences by magistrates.** In the 2022 Rule of Law Report, it was recommended to Romania to “take measures to address remaining concerns about the investigation and prosecution of criminal offences in the judiciary, taking into account European standards and relevant Venice Commission opinions”<sup>33</sup>. Following the dismantlement of the Section for the Investigation of Offences in the Judiciary (SIJ) in March 2022, no procedural incidents have been reported in the implementation of the new system established to investigate offences committed by magistrates, which is based on designated prosecutors within the Prosecutor's Offices attached to the High Court of Cassation and Justice (HCCJ) as well as the Courts of Appeal<sup>34</sup>. However, the designated prosecutors are still dealing with a significant backlog of cases re-assigned from the former structure<sup>35</sup>. It will be important to monitor the functioning of the new system over time, in particular given the absence of additional safeguards in light of the case law of the Court of Justice of the EU<sup>36</sup>. While the designated prosecutors are prioritising manifestly unfounded cases that can be closed without referral to court, a large number of such cases possibly based on ‘vexatious complaints’ is still open<sup>37</sup>, and risk exerting pressure on the magistrates concerned. The designated prosecutors have not yet issued any indictment and the new system will have to show its ability to deal efficiently with corruption cases within the judiciary. Some concerns were expressed regarding the transparency and smooth conduct of appointment procedures of the prosecutors, whereby the Superior Council of Magistracy (SCM) proposed less candidates than the number of positions available, some of which were not approved by the Prosecutor General<sup>38</sup>. This is

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videos related to his private life on social media, allegedly engaging in political activities as a member of NGOs and gross negligence in the exercise in his functions. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 6.

<sup>31</sup> Decision of the SCM section for judges of 3 May 2023 in case 29/J/2022. Under Article 51(3) of Law No 305/2022, the Judicial Inspectorate may appeal the decision within 15 days from its delivery.

<sup>32</sup> Information received from magistrates' associations in the context of the country visit.

<sup>33</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 2.

<sup>34</sup> For more details on the institutional model, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 4-5.

<sup>35</sup> As of 31 December 2022, out of a total of 8062 cases allocated under Law No 49 of 11 March 2022 on the abolition of the Section for the Investigation of Offences in the Judiciary, the designated prosecutors were able to close 2472 cases. The remaining backlog varies considerably for each territorial unit, as the Prosecutor's Office attached to the Bucharest Court of Appeal was for instance only able to close 56 out of 1277 allocated cases. See Annex 1 to the input from the Romanian Authorities for the 2023 Rule of Law Report.

<sup>36</sup> The new structure should be ‘accompanied by specific guarantees such as, first, to prevent any risk of that section being used as an instrument of political control over the activity of those judges and prosecutors likely to undermine their independence and, secondly, to ensure that exclusive competence may be exercised in respect of those judges and prosecutors in full compliance with the requirements arising from Articles 47 and 48 of the Charter’, Judgment of the Court of Justice of 18 May 2021, Asociația ‘Forumul Judecătorilor Din România’ and Others, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, ECLI:EU:C:2021:393, para. 223.

<sup>37</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 4.

<sup>38</sup> See contribution from the Romanian Magistrates' Association, the National Union of Romanian Judges, the Association of Judges for the Defence of Human Rights and the Romanian Public Prosecutors' Association for the 2023 Rule of Law Report, pp. 2-4.

particularly problematic for prosecution services with a high number of cases regarding magistrates, such as the Prosecutor's Offices attached to the Bucharest Court of Appeal and to the HCCJ, which are functioning with a low number of designated prosecutors<sup>39</sup>. Given the absence of procedural incidents reported under the new prosecutorial structure and its results in dealing with its backlog of cases, some progress was made regarding the 2022 recommendation on the investigation and prosecution of criminal offences by magistrates.

**The management of the budget of lower courts was transferred from the executive branch to the judiciary.** The revised Law on judicial organisation transfers the responsibility to manage the budget for the personnel costs and salary rights of the courts of appeal, tribunals, specialised tribunals and courts of first instance from the Ministry of Justice to the HCCJ. While this implies a greater budgetary independence for the justice system, the HCCJ might face difficulties in terms of resources to perform this task<sup>40</sup>, which already generated abundant litigation between magistrates and the State regarding salary rights.

## Quality

**Despite continued efforts to improve the situation, the increasing shortage of magistrates is generating serious concerns, as it could impact the quality and efficiency of the judiciary over time.** Following an unprecedented number of retirements requested by magistrates over the last year<sup>41</sup>, the situation of human resources in the justice system has worsened overall<sup>42</sup> and has become critical in some courts and prosecution services<sup>43</sup>. The situation is particularly concerning at the Prosecutor's Office attached to the HCCJ<sup>44</sup>, where

<sup>39</sup> Following the appointment of six designated prosecutors out of 15 within the Prosecutor's Office attached to the High Court of Cassation and Justice, three of them retired, and it is now functioning with only three designated prosecutors. Only three are currently assigned to the Prosecutor's Office attached to the Bucharest Court of Appeal, which also has the heaviest caseload among territorial units. Information received from the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice in the context of the country visit to Romania.

<sup>40</sup> In order to facilitate a smooth takeover of the budgetary tasks, Art. 142 (10) of Law No. 304/2022 on judicial organisation foresees that the Ministry of Justice is providing the HCCJ with logistical support, human and material resources for a period of up to 6 months. This period was extended until 31 December 2023 by Government Emergency Ordinance No. 34 of 12 May 2023. It remains to be seen whether this transitional support period will be sufficient. Information received from the HCCJ in the context of the country visit. See also input from Funky Citizens for the 2023 Rule of Law Report, p. 14.

<sup>41</sup> In 2022, 451 judges and 256 prosecutors retired. Between 1 January and 31 March 2023, 81 judges and 44 prosecutors retired. See additional written replies from the SCM.

<sup>42</sup> The deficit of magistrates was estimated at around 2000 positions at the beginning of 2023. Whereas in January 2022, 4403 out of 5072 judge positions were filled and 669 were vacant, 4057 were filled out of 5068 and 1011 were vacant on 31 March 2023. There were 662 vacant prosecutor positions out of 3041 in January 2022, and 860 vacant positions out of 3038 on 31 March 2023. See input from Romania for the 2023 Rule of Law Report, p. 10, and additional written replies from the SCM. As regards the situation in previous years, see 2021 and 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Romania, p. 8 and p. 9 respectively.

<sup>43</sup> In this context, it is to be noted that, according to European standards, a sufficient number of judges and appropriately qualified support staff should be allocated to courts. See Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 35. Moreover, since a proper functioning of the judiciary is strongly dependent on the quality of judges, prosecutors and staff, human resources and the status of the judiciary form an important area of the quality model. See European Commission for Efficiency of Justice (CEPEJ), Checklist for promoting the quality of justice and the courts adopted by the CEPEJ at its 11th plenary meeting (Strasbourg, 2-3 July 2008), p. 4.

<sup>44</sup> Its occupancy rate on 1 January 2022 was 62,25% and decreased to 43,49% as of 31 December 2022, mainly due to the number of retirements. Among other causes, the public ministry also pointed to the lack of

more than half of the positions required by law are vacant, and where the heavy caseload per magistrate might have an impact on the quality of justice. Similarly, the HCCJ is facing particular challenges, as some of its chambers might not have a sufficient quorum to keep functioning following a number of retirements, and possible further retirements in the near future<sup>45</sup>. Admissions to the magistracy, primarily through competitions organised by the SCM, are currently not sufficient to compensate for the outflow of magistrates, and to address the shortages in the short term, in particular given the seniority requirement in higher courts and prosecution services<sup>46</sup>. The increase of the training period at the National Institute of Magistracy (INM) from two to three years, which will come into force in 2024, could put additional pressure on human resources, and the SCM has reiterated its calls to maintain the previous two-year period<sup>47</sup>. Only a few leading judge and prosecutor positions were filled<sup>48</sup> following competitions organised in 2022 and 2023, potentially due to a low pool of eligible candidates, as well to a lack of interest to apply for such positions<sup>49</sup>. In order to mitigate the impact of the shortage of magistrates, the Government decided to generalise the recruitment of assistant magistrates after the successful implementation of a pilot project in several courts<sup>50</sup>.

**Digital tools for case management, court statistics and online availability of court decisions are being further developed.** The project for the development of a new case management system (ECRIS V) is being implemented further by the Ministry of Justice, with the collaboration of the SCM, the Bucharest Court of Appeal and the Prosecutor's Office attached to the HCCJ<sup>51</sup>. Furthermore, a new version of the STATIS application, a tool

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admissions to the profession during the period when the INM could not organise competitions, the change in the conditions for effective promotion in 2018, and the uncertainty as to the conditions for retirement. See input from Romania for the 2023 Rule of Law Report, p. 10.

<sup>45</sup> Due to the high seniority requirement to be appointed to the HCCJ, it will be difficult to address the shortage of magistrates, and it would be important to provide incentives for incumbent judges to continue working after they are eligible for retirement. Information received from the HCCJ in the context of the country visit. The percentage of female judges at the HCCJ is of around 80%, currently the highest percentage among supreme courts within the EU. See figure 36, 2023 EU Justice Scoreboard.

<sup>46</sup> A competition for admission to the INM was organised between July 2022 and March 2023, for a total of 300 positions of justice auditors and 26 positions of specialized staff assimilated to judges and prosecutors open for competition. In this respect, the INM recommends increasing the total number of justice auditors, but assesses that a corresponding increase in its resources would be necessary. See written contribution from the SCM and the INM in the context of the country visit, p. 25.

<sup>47</sup> During the parliamentary procedure leading to the adoption of Law 303/2022, the SCM supported the need to maintain the two-year training duration, which it considered sufficient for the quality of both theoretical and practical training. The SCM also considered an increased duration could create the risk of significant malfunctions in courts and prosecutor's offices from a human resource perspective. The INM also considers it would be preferable to return to the two-year training period. See written contribution from the SCM and the INM in the context of the country visit, p. 17 and 25.

<sup>48</sup> In 2022, two competitions were organised to fill in vacant management positions as president and vice-president at courts, resulting in the appointment of 36 candidates. Following a competition organised in 2022 for the appointment in 213 leading prosecutor positions in prosecutors' offices attached to the courts of appeal, to the tribunals, specialized tribunals to first instance courts, only 60 prosecutors were appointed to such positions. See input from Romania for the 2023 Rule of Law Report, pp. 4-5.

<sup>49</sup> See written contribution from the SCM and the INM in the context of the country visit, p. 3.

<sup>50</sup> Following a pilot project implemented in 19 courts in 2022, which showed the positive impact of the activity carried out by this new category of staff on the time needed to draft decisions and solve cases, Government Emergency Ordinance No. 127 of 21 September 2022 created 165 contractual staff positions of legal experts within the organizational chart of the SCM.

<sup>51</sup> Under milestone 164 of its RRP, Romania committed to fully operationalise ECRIS V by 31 December 2025. For more details regarding the aim and steps of the project, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 9-10.

retrieving data stored in ECRIS to generate statistical data<sup>52</sup>, is under development<sup>53</sup>. The swifter availability of more precise and targeted case statistics facilitates the management of workload and human resources in courts and allows identifying reforms necessary to limit repetitive litigation<sup>54</sup>. The ReJust website, an online portal for the availability of court decisions developed and managed by the SCM<sup>55</sup>, was improved with additional search functionalities<sup>56</sup> and now gives access to all decisions in courts of first instance, tribunals and courts of appeal<sup>57</sup>. The technical issues affecting the portal, which were mentioned in the 2022 Rule of Law Report<sup>58</sup>, were solved<sup>59</sup>. Several projects in the field of digitalisation have been or are being implemented by the Prosecutor's Office attached to the HCCJ, notably to develop standard integrated management tools at the level of the territorial prosecutorial units<sup>60</sup>. While Romania is performing well as regards the availability of secure electronic communications for courts<sup>61</sup>, there is room for improvement as to their availability for prosecution services<sup>62</sup> as well as regarding digital solutions in criminal proceedings<sup>63</sup>.

## Efficiency

**The efficiency of the justice system has improved.** The overall efficiency in civil and commercial cases has improved, with the length of proceedings decreasing in all instances<sup>64</sup>. Despite an increase in the number of incoming cases<sup>65</sup>, the clearance rate for resolving civil and commercial cases remains above 100%<sup>66</sup>, meaning that more cases are resolved than those entering the system. However, the number of pending cases remains high<sup>67</sup>. As regards the efficiency in administrative cases, there have been significant improvements in first instance courts, where the disposition time decreased to 293 days in 2021 (compared to 690 days in

<sup>52</sup> These statistics include incoming, pending, suspended, and solved cases, caseload, and activity volume.

<sup>53</sup> The new version will provide new reports and allow real-time querying of ECRIS data with advanced filters. Input from Romania for the 2023 Rule of Law Report, p. 14.

<sup>54</sup> Under a project implemented by the SCM, a new module was added to the STATIS application to generate statistics on repetitive cases. A mechanism was created to identify the early inflation of disputes generated by regulatory deficiencies and take the necessary measures to relieve the courts of excessive caseload in non-criminal matters. See input from Romania for the 2023 Rule of Law Report, Annex 3, pp. 3-4.

<sup>55</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 10.

<sup>56</sup> Besides the search by keyword, it is not possible to filter results by court category, instance, subject matter, procedural stage, solution type and document category, and apply successive filters. The search interface was also modernised and previous technical issues, such as bottlenecks and timeouts, were solved. See written contribution from the SCM and the INM in the context of the country visit, p. 15.

<sup>57</sup> The HCCJ ensures the online availability of its own decisions, part of which are published on its website (<https://www.iccj.ro>). Input from Romania for the 2023 Rule of Law Report, p. 13.

<sup>58</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 10.

<sup>59</sup> Input from Romania for the 2023 Rule of Law Report, p. 15. Information also received from civil society organisations in the context of the country visit to Romania.

<sup>60</sup> The aim is to enhance the predictability of managerial decisions, especially regarding human resource, workload management capacity, and the distribution of tasks within each territorial unit. See input from Romania for the 2023 Rule of Law Report, Annex 5, p. 4.

<sup>61</sup> Figure 44, 2023 EU Justice Scoreboard.

<sup>62</sup> Figure 45, 2023 EU Justice Scoreboard.

<sup>63</sup> Figure 47, 2023 EU Justice Scoreboard.

<sup>64</sup> Figure 5, 2023 EU Justice Scoreboard.

<sup>65</sup> Figure 3, 2023 EU Justice Scoreboard.

<sup>66</sup> Figure 11, 2023 EU Justice Scoreboard.

<sup>67</sup> Figure 13, 2023 EU Justice Scoreboard.



2020)<sup>68</sup>, and the clearance rate rose above 100% in 2021, after having registered a sharp decrease to 48.4% in 2020<sup>69</sup>.

**There have been no developments regarding the impact of measures taken to address the issue of the excessive length of civil and criminal proceedings following final judgments of the European Court of Human Rights.** As previously noted in the Rule of Law Report<sup>70</sup>, Romania remains under enhanced supervision by the Committee of Ministers of the Council of Europe for the excessive length of civil and criminal proceedings, and lack of effective remedy in this respect<sup>71</sup>. The impact of the general measures taken to address this issue remains to be assessed, and Romanian authorities are still to provide the Committee of Ministers with complete statistical data enabling to fully assess the situation. The latest assessment of the Committee of Ministers dates back to 2016, and no further statistical data was submitted since then<sup>72</sup>.

## **II. ANTI-CORRUPTION FRAMEWORK**

The Ministry of Justice coordinates the implementation of the National Anti-Corruption Strategy for 2021-2025. The specialised anti-corruption prosecution, the National Anti-Corruption Directorate (DNA), has the competence to investigate serious corruption cases, while the Prosecutor General's office investigates all other corruption cases. There are also specialised prosecution offices attached to the High Court of Cassation and Justice (HCCJ) and courts of appeal for corruption offences committed by prosecutors and judges<sup>73</sup>. A specialised anti-corruption directorate (DGA) is established in the Ministry of Interior, competent for integrity and corruption issues within the staff employed by the Ministry, including the police. The National Integrity Agency (ANI) carries out administrative investigations regarding conflicts of interests, incompatibilities of activities and unjustified wealth, and is responsible for the monitoring and verification of declarations of assets, including of all elected officials. The National Agency for the Management of Seized Assets (ANABI) ensures the management of seized and confiscated criminal assets and facilitates the tracing and identification of proceeds.

**The perception among experts and business executives is that the level of corruption in the public sector remains high.** In the 2022 Corruption Perceptions Index by Transparency International, Romania scores 46/100 and ranks 25<sup>th</sup> in the European Union and 63<sup>th</sup> globally<sup>74</sup>.

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<sup>68</sup> Figure 8, 2023 EU Justice Scoreboard.

<sup>69</sup> Figure 12, 2023 EU Justice Scoreboard.

<sup>70</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 12.

<sup>71</sup> Judgment of the European Court of Human Rights of 26 November 2013, *Vlad v. Romania*, 40756/06.

<sup>72</sup> Committee of Ministers, 1259th meeting (7-8 June 2016).

<sup>73</sup> The prosecution offices linked to the HCCJ are competent for offences committed by members of the Superior Council of Magistracy who are judges or prosecutors, judges of the HCCJ and prosecutors of the POHCCJ, judges of the Courts of Appeal and the Military Court of Appeal and prosecutors of the public prosecutor's offices attached to these courts, as well as judges of the Constitutional Court of Romania. Offences committed by all other judges and prosecutors in the system are investigated by specially designated prosecutors working within the prosecution offices attached to courts of appeal.

<sup>74</sup> Transparency International (2023), Corruption Perceptions Index 2022. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

This perception has been relatively stable over the past five years<sup>75</sup>. The 2023 Special Eurobarometer on Corruption shows that 79% of respondents consider corruption widespread in their country (EU average 70%) and 49% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>76</sup>. As regards businesses, 92% of companies consider that corruption is widespread (EU average 65%) and 75% consider that corruption is a problem when doing business (EU average 35%)<sup>77</sup>. Furthermore, 39% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>78</sup>, while 27% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>79</sup>.

**The implementation of the new Anti-Corruption Strategy is well on track.** The first monitoring report of the National Anti-Corruption Strategy (NAS) for 2021-2025 is scheduled to be adopted in mid-2023, covering the first implementation year<sup>80</sup>. Under its Recovery and Resilience Plan, Romania has committed to completing at least 70% of the measures in the anti-corruption strategy by the end of 2025<sup>81</sup>. As part of the measures taken, the Ministry of Justice is developing a new draft of the protocol on legal education in schools, as well as a national risk map to identify corruption risks in the area of public procurement, the latter to be co-financed by the Commission<sup>82</sup>.

**Romania committed to take legislative action on bribery of foreign public officials.** The negotiation process for accession by Romania to the Organisation for Economic Co-operation and Development (OECD) started in January 2022. Within that framework, Romania aims to accede to the OECD Anti-Bribery Convention<sup>83</sup> and its Working Group. According to the OECD, the scope of the offence of foreign bribery in the legislation in Romania is too restricted and the sanctions too low. In March 2023, the Working Group decided to accept Romania's request<sup>84</sup>. Romania became an associate member in the Working Group in May.

**A positive track record continued to be maintained in combating corruption, including as regards high-level cases.** As referred to in the 2022 Rule of Law Report<sup>85</sup>, the DNA continued to increase the number of indictments and courts made more final judgments in

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<sup>75</sup> Romania increased its score with one point this year, just like last year. It also increased the global ranking which was 66 last year. The ranking in the EU remained the same. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>76</sup> Special Eurobarometer 523 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

<sup>77</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>78</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>79</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

<sup>80</sup> Input from Romania for the 2023 Rule of Law Report, p. 19.

<sup>81</sup> Annex to the Council Implementing Decision 12319/21 on the approval of the assessment of the recovery and resilience plan for Romania, target 428.

<sup>82</sup> Input from Romania for the 2023 Rule of Law Report, annex 7.

<sup>83</sup> OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction.

<sup>84</sup> The full assessment report highlighted some issues in relation to the definition of foreign public official and the low sanctions for the offence of foreign bribery; (OECD) Romania: Accession to the OECD Anti-Bribery Convention, Full assessment report, DAF/WGB(2023)12. Romania will need to take further legislative or other measures to address these issues.

<sup>85</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 13.



corruption cases, however, without reducing the serious backlog of cases<sup>86</sup>. The mandate of the previous Chief Prosecutor ended in February 2023, and a new Chief Prosecutor took office in April 2023. The prosecution of corruption and corruption-assimilated offences by the General Prosecution Service shows similar results<sup>87</sup>. In the reporting period, there were numerous indictments and convictions in high-level corruption cases. The HCCJ dealt with 5 cases of high-level corruption offences, involving 28 defendants, of which 5 were sentenced to imprisonment and 18 were acquitted. For the 5 remaining defendants, the criminal proceedings were terminated<sup>88</sup>, mostly for reasons of expiry of the statute of limitations<sup>89</sup>.

**Significant progress has been made on the DNA's operational challenges although recruitment remains to be further improved.** The 2022 Rule of Law Report recommended to Romania to 'address the operational challenges of the National Anti-Corruption Directorate, including as regards recruitment of prosecutors [...]'<sup>90</sup>. The SCM and the Prosecutor General report that the lack of resources in the judiciary, with more people retiring than recruited, has a negative impact on the effective prosecution of corruption offences<sup>91</sup>. As for the DNA itself, in March 2023, of the 195 prosecutor posts foreseen in the DNA, 158 posts were filled and 37 posts were vacant, making up for an occupancy rate of 81%<sup>92</sup>. This is an increase in comparison to the same months in 2021 and 2022, when the occupancy rate was 75%<sup>93</sup> and comes closer to the commitment of Romania under the RRP to increase it to 85% by 30 June 2023<sup>94</sup>. The DNA reported that at the end of June, the occupancy rate was 85%<sup>95</sup>. The trend is positive but further efforts are needed as resources are still insufficient to handle the caseload, and as recruiting prosecutors within the DNA remains difficult. The seniority requirement to be appointed to the DNA remains an important reason for the limited number of applications to fill vacancies<sup>96</sup>. Prosecutors must have at least ten years seniority and three years of mandatory training in the INM. Transitional provisions were, however, introduced, that provide for a

<sup>86</sup> Input from Romania for the 2023 Rule of Law Report, p. 25-26, and information received from DNA in the context of the country visit. The number of pending cases was 6 129 in 2022, compared to 6 076 in 2021. During 2022, a total of 404 (317 in 2021) cases concerning 779 (730 in 2021) defendants were sent to trial. Of these, 565 (same as in 2021) were prosecuted by indictment and 214 (165 in 2021) by plea agreement. The courts rendered 348 (255 in 2021) final judgments and 439 (427 in 2020) defendants were convicted. The number of files older than 5 years from the date of notification has decreased substantially: 263 (compared to 323 in 2021).

<sup>87</sup> During 2022, a total of 1 662 (1 493 in 2021) cases involving non-serious corruption offences were solved, of which 266 (201 in 2021) indictments and plea agreements were issued, by which 327 (253 in 2021) defendants were sent to trial. There were 203 (142 in 2021) final judgments, by which 184 (151 in 2021) individuals were convicted (input from Romania for the 2022 Rule of Law Report, p. 26).

<sup>88</sup> Input from Romania to the 2023 Rule of Law report, p. 27.

<sup>89</sup> Input received from the HCCJ in the context of the country visit to Romania.

<sup>90</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 2.

<sup>91</sup> Input received from SCM and Prosecutor General in the context of the country visit to Romania.

<sup>92</sup> Information received from DNA in the context of the country visit to Romania.

<sup>93</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 16.

<sup>94</sup> Milestone 429 of Romania's RRP requires an 'Occupation rate of 85% of National Anti-Corruption Directorate prosecutor positions attained' (by 30 June 2023).

<sup>95</sup> With 167 posts filled. Information received from DNA in the context of the country visit.

<sup>96</sup> For the vacancy of 41 prosecutor positions in December 2022, only 32 candidates applied. The Constitutional Court declared unconstitutional a law decreasing the seniority requirement to seven years, and it was not changed in the Justice laws. See 2022 CVM Report, p. 22. The Strategy for the development of the judiciary 2022-2025 (adopted in April 2022) lists, within the objective of stepping up the fight against corruption, the action called "Modification of the appointment procedure and seniority requirements for DNA prosecutors". According to input from Romania for the 2023 Rule of Law report, the seniority requirements are seen as important for the quality of the prosecution act.

training requirement of two years instead of three until 2024 and include the training period in the calculation of seniority until 2026<sup>97</sup>. Other factors explaining the limited number of applications include the high workload and pressure, negative reporting on prosecutorial work in the media, and the lack of benefits to compensate for these aspects<sup>98</sup>. Since December 2022, oral interviews for the DNA are no longer broadcast, which is expected to encourage more people to apply<sup>99</sup>. Given remaining shortages of prosecutors in the DNA, delegation, secondment, and transfer remain important tools. However, since the competence for the delegation of prosecutors, including within the DNA, passed from the SCM to the Prosecutor General's Office, all requests for delegation to the DNA have been rejected<sup>100</sup>. According to the EPPO, the cooperation with national authorities is good<sup>101</sup>. Therefore, there has been significant progress to address the recommendation made in the 2022 Rule of Law Report on the operational challenges faced by the DNA.

**The reform of Romania's Codes of Criminal Law and Criminal Procedure has been adopted.** As explained in the 2022 Rule of Law and CVM Reports<sup>102</sup>, Romania needed to align several provisions in the Code of Criminal Law and Code of Criminal Procedure with the relevant decisions of the Constitutional Court of Romania under its Recovery and Resilience Plan<sup>103</sup>. The government adopted draft amendments to the two Codes on 28 December 2022. For the fight against corruption, the most important amendments covered the crime of abuse of office (Articles 297 and 298 of the Criminal Code) and the use of intelligence activities as evidence (Article 139 of the Code of Criminal Procedure). On 11 April 2023, the HCCJ referred certain amendments to the Codes to the CCR for a constitutionality review prior to their promulgation<sup>104</sup>. On 17 May 2023, the CCR held that the amendments on the crime of abuse of office are constitutional, and that some more amendments would be necessary to guarantee the possibility of review of the legality of evidence gathered in intelligence activities<sup>105</sup>. Following this decision, the Government explained that the necessary amendments would be

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<sup>97</sup> As described in the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM (2022) 664 final, 22.11.2022, pp. 22-23.

<sup>98</sup> Information received from DNA in the context of the country visit to Romania.

<sup>99</sup> Information received from the Prosecutor General in the context of the country visit.

<sup>100</sup> Information received from DNA in the context of the country visit to Romania. Previously, when the power of delegation was with the Superior Council of Magistracy, DNA requests were mostly admitted.

<sup>101</sup> Written input from the EPPO for the 2023 Rule of Law Report. According to the EPPO's 2022 Annual Report, the majority of the EPPO cases in Romania concern fraud (more than 140), and there are relatively less corruption cases (12).

<sup>102</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 14. 2022 CVM Report, p. 11.

<sup>103</sup> Annex to Council Implementing Decision 12319/21 on the approval of the assessment of the recovery and resilience plan for Romania, milestone. Milestone 424, entitled 'Amendment of the Criminal Code and Criminal Procedure Code', states that those amendments must enter into force by 31 December 2022 and 'bring the provisions of the Criminal Code and the Criminal Procedure Code that entered into force in 2014 in line with the Constitutional provisions, in accordance with the relevant national Constitutional Court decisions on the constitutionality aspects of the recent changes made to the Criminal Code and Criminal procedure.' The Commission will only assess the fulfilment of the milestone upon the submission by Romania of the relevant payment request.

<sup>104</sup> HCCJ, Decision No. 2 of 11 April 2023 seizing the Constitutional Court. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 14.

<sup>105</sup> Press release of the CCR of 17 May 2023; judgment published in the Official Journal No. 490, on 6 June 2023.

made and that the draft Criminal Codes would be adopted by the end of the current parliamentary term<sup>106</sup>. They were adopted on 28 June 2023.

**A Government Emergency Ordinance was adopted to clarify the statute of limitation, but the delayed legislative response led to the closing of corruption cases and the annulment of convictions.** Under Article 155(1) of the Criminal Code, the statute of limitations could be interrupted by “any procedural act”, and a new statute of limitations period would begin to run. In 2018, the Constitutional Court of Romania (CCR) declared this legislative solution unconstitutional, due to a lack of clarity and predictability<sup>107</sup>. A Government Emergency Ordinance was eventually adopted on 30 May 2022 to provide the necessary clarity<sup>108</sup>. The CCR issued a new decision on 26 May 2022<sup>109</sup> stating that as of the moment it rendered its first decision in 2018, there was no legislative provision that could have allowed for the statute of limitations for criminal liability to be interrupted. Only the general provision on the statute of limitation was therefore applicable (Article 154 of the Criminal Code). In October 2022, the High Court of Cassation and Justice (HCCJ) issued an interpretative decision that confirmed that until the adoption of the Government Emergency Ordinance on 30 May 2022, there was no legal ground for the interruption of the statute of limitations<sup>110</sup>. The effects of the CCR and HCCJ decisions will therefore continue in the future for all offences committed until May 2022. The National Anticorruption Directorate estimated that following these decisions, 557 criminal cases could be closed. While the exact prejudice would need to be assessed case by case, the National Anticorruption Directorate estimates damage in these cases to around EUR 1.2 billion<sup>111</sup>. Until May 2023, courts already terminated 81 finalised cases, involving 186 defendants<sup>112</sup>. To mitigate the impact, the DNA has asked to suspend 208 cases where the issue of the statute of limitations was raised, pending a referral to the Court of Justice of the European Union (CJEU) for a preliminary ruling<sup>113</sup>.

**Corruption trials have been deferred due to judicial reorganisation, risking delays and even reaching the statute of limitation.** Corruption charges can only be brought before specialised judges and, previously, all criminal division panels were considered specialised. However, Law 304/2022 significantly reduced the number of panels that can hear corruption cases. Subsequently, the SCM decided that cases pending before panels no longer considered competent should be taken over by panels set up in line with the new law. This transfer entails

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<sup>106</sup> Letter from the Minister of Justice C. Predoiu of 24 May 2023 to the European Commission.

<sup>107</sup> CCR Decision no. 297/2018; [https://www.ccr.ro/wp-content/uploads/2020/07/Decizie\\_297\\_2018.pdf](https://www.ccr.ro/wp-content/uploads/2020/07/Decizie_297_2018.pdf).

<sup>108</sup> Government Emergency Ordinance no. 71: It specifies that the statute or limitations in Article 155 of the Criminal Code can be interrupted by the “performance of any procedural act in question which, according to the law, must be communicated to the suspect or defendant”.

<sup>109</sup> CCR Decision no. 358/2022; [https://www.ccr.ro/wp-content/uploads/2022/06/Decizie\\_358\\_2022.pdf](https://www.ccr.ro/wp-content/uploads/2022/06/Decizie_358_2022.pdf).

<sup>110</sup> HCCJ, Decision no. 67 of the 25<sup>th</sup> of October 2022; <https://www.iccj.ro/2022/10/25/decizia-nr-67-din-25-octombrie-2022-privind-natura-juridica-a-norme-le-care-reglementeaza-efectul-interruptiv-de-prescriptie-al-actelor-de-procedura-respectiv-daca-sunt-norme-de-drept-substantial-sus/>. The new element of this decision was that the statute of limitation could also not be interrupted in relation to offences committed before the first CCR decision in 2018.

<sup>111</sup> DNA press release, 28 October 2022; <http://www.pna.ro/comunicat.xhtml?id=11549>.

<sup>112</sup> Information received from DNA in the context of the country visit to Romania. Some examples of terminated cases include the charges of abuse of office against the former head of DIICOT and the conviction of 5 years for influence peddling against the former president of the Chamber of Deputies and former deputy governor of the National Bank of Romania.

<sup>113</sup> The reference is C-107/23 PPU Lin. Advocate General Sanchez Bordona rendered his opinion on 29 June 2023, ECLI:EU:C:2023:532.

the resumption of the proceedings, with all the arguments and evidence having to be presented anew before the new panel. Although the law set a 30-day time limit, not all pending cases have been transferred yet. In May 2023, 230 cases falling under the DNA's competence had been transferred, out of all 527 ongoing cases in first instance proceedings and 190 cases in appeal proceedings. Delays in transfers and the resumption of proceedings might result in reaching the statute of limitation in certain cases<sup>114</sup>.

**There has been some progress as regards the recommendation on the new system for investigating and prosecuting corruption offences in the judiciary.** In the 2022 Rule of Law Report, it was recommended to Romania to '[...] closely monitor the impact of the new system on investigating and prosecuting corruption offenses in the judiciary'<sup>115</sup>. As mentioned above<sup>116</sup>, designated prosecutors are dealing with a significant backlog of cases. They have so far not issued any new indictment and the new system has therefore yet to show its ability to deal efficiently with corruption cases within the judiciary. The Superior Council for Magistracy (SCM) has difficulties filling the positions of designated prosecutors at the HCCJ. At the end of 2022, there were 8 prosecutors appointed out of the 14 posts available<sup>117</sup>, whereas 42 out of 45 prosecutors were appointed at the local prosecution offices. The SCM notes that the prospects are not promising because only few prosecutors apply<sup>118</sup>, and the pool of eligible applicants is very limited due to strict seniority requirements<sup>119</sup>. The SCM considers that it is too early to carry out a comprehensive evaluation of the new structure<sup>120</sup>. As previously reported, when the SIIJ was replaced in March 2022, the rule was maintained that if other persons are investigated for corruption together with judges and prosecutors, the whole corruption file would be transferred from the DNA to the designated prosecutors. A new rule was created that allowed for the separation of the cases, where possible<sup>121</sup>. The DNA transferred 16 cases to the new prosecutors up until April 2023, of which four cases were separated<sup>122</sup>. All in all, there has therefore been some progress to address the recommendation made in the 2022 Rule of Law Report on the impact of the new system on investigating and prosecuting corruption offenses in the judiciary.

**Continued attention to integrity of law enforcement led to positive results.** The Anti-Corruption Directorate (DGA) in the Ministry of Interior carried out 94 professional integrity tests on its employees (including police officers) in 2022. In two cases, the employee received

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<sup>114</sup> Information received from DNA in the context of the country visit to Romania. Both the transfer and the resumption of the proceedings is dependent on the administrative actions of the courts and the date set for the hearings in each case.

<sup>115</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 2.

<sup>116</sup> See above p. 7 and footnote 35.

<sup>117</sup> There were only 3 prosecutors operational in March 2023, according to the joint written input from the Romanian Magistrates' Association, the Romanian Public Prosecutors' Association, the National Union of Romanian Judges and the Association of Judges for the Defense of Human Rights in the context of the country visit to Romania.

<sup>118</sup> Input provided by SCM in the context of the country visit to Romania and SCM's annual report for 2022.

<sup>119</sup> At least 12 years' experience is required for those designated to work for the prosecutors' offices attached to the courts of appeal and at least 15 years' experience is required in respect of the Prosecutor's Office attached to the High Court of Cassation and Justice.

<sup>120</sup> Written input from the SCM in the context of the country visit to Romania, March 2023.

<sup>121</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 16.

<sup>122</sup> Information received from DNA in the context of the country visit to Romania. In one case, the proceedings are pursued by DNA, whereas DNA closed the other three cases, in relation to offences under its jurisdiction. In the same timeframe DNA received 149 complaints concerning alleged offences committed by judges or prosecutors, all of which were redirected to the new structure.



sums of money or benefits in order not to perform the duties of the service, and in one case there were indications of violations of professional ethics. In 2022, 34 integrity incidents were reported, compared to 50 in 2021 and 47 in 2020<sup>123</sup>. The DGA organised 4 687 information and training activities in 2022 to promote integrity, which were attended by 66 274 people from the Ministry of Interior<sup>124</sup>. The DGA presented in 2022 a report on the risks and vulnerabilities identified at the level of the Ministry of the Interior and its units, the causes generating vulnerabilities as well as the prevention and control measures.

**Steps are being taken to update and codify the legislative framework on integrity, but this will not cover revolving doors.** The evaluation of the existing framework on integrity showed that the fragmentation of the rules on integrity makes it difficult to comply and follow-up with the legal obligations, that there are gaps in the personal scope of asset declaration obligations, and inconsistencies in the regime of incompatibilities<sup>125</sup>. In February 2022, the ANI started the implementation of a project on updating the integrity legislation. The project is scheduled to be finalised by the end of 2023, and its main output will be a legislative proposal, that should enter into force by the end of 2024, in line with Romania's commitments under the RRP<sup>126</sup>. The project is limited to the core of ANI's mandate, namely conflicts of interests, incompatibilities of activities and unjustified wealth. Though this would represent a significant consolidation, it would not cover other aspects of integrity rules, such as on revolving doors (post-employment rules)<sup>127</sup>, which will therefore remain limited and scattered over different laws<sup>128</sup>. It is to be noted that in November 2022, the Senate adopted rules with objective criteria to decide on requests for lifting parliamentary immunities, mirroring the rules already adopted in 2019 by the Chamber of Deputies.

**Important steps were made towards the digitalisation of the disclosure and verification of asset declarations.** The National Integrity Agency (ANI) continues to investigate incompatibilities, conflicts of interest and unjustified wealth<sup>129</sup>. Since January 2022, asset and interest declarations have to be filled in electronically, and from 1 January 2024, ANI will no longer accept declarations signed by hand, which will reduce the risk of errors and improve the searchability of information<sup>130</sup>. By 31 December 2022, over 10.8 million asset and interest disclosures were published<sup>131</sup>. ANI finalised a risk analysis platform to help with the

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<sup>123</sup> Anti-Corruption Directorate, Ministry of Interior, Annual Report 2022, p. 8-9.

<sup>124</sup> Ibid, p. 5.

<sup>125</sup> Input received from ANI in the context of the country visit to Romania.

<sup>126</sup> Milestone no. 431 of Romania's RRP states: 'Consolidated laws on integrity shall enter into force. The update of the integrity legislation shall be realized based on a prior evaluation and analysis of the integrity laws, together with an initial clustering of the normative acts. Within the second phase of the project, the existing laws shall either be unified and updated, or new normative acts shall be proposed.'

<sup>127</sup> Input from ANI in the context of the country visit to Romania.

<sup>128</sup> As noted with concern in the 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 16, 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 18.

<sup>129</sup> Written input from Romania in the context of the 2023 Rule of Law Report, p. 19.

<sup>130</sup> Input from the Ministry of Justice and ANI in the context of the country visit to Romania. This date was postponed from 2023 to 2024 in order to grant all stakeholders the opportunity to allow for electronic signature.

<sup>131</sup> Written input from Romania in the context of the 2023 Rule of Law Report, p. 21. Declarations are maintained on ANI's website for the duration of the term of office and three years after its termination.

verification of the disclosures, which will be operational by the second half of 2023<sup>132</sup>. A vice-president for the ANI was appointed in December 2022 for 4 years<sup>133</sup>.

**The National Integrity Agency is the competent authority to receive whistleblower reports.** The law on whistleblowers' protection was amended in December 2022, making ANI the body responsible for external reporting<sup>134</sup>. The law requires ANI to set up by February 2023 a specialised structure comprised of approximately 15 integrity inspectors. In March 2023, two integrity inspectors were operational, and a competition to recruit five more inspectors resulted in the appointment of one inspector. ANI asked for additional funds to comply with its new obligations (EUR 700.000), which are expected to be provided in the second semester of 2023<sup>135</sup>. The law was again changed in March 2023 to clarify the provisions on anonymous reporting and to bring it fully in line with the provisions of Directive (EU) 2019/1937, as required by Romania's RRP<sup>136</sup>.

**The enforcement of the lobbying rules for Members of Government remains to be improved.** An Interest Groups' Transparency Register for meetings with Members of Government is in place on the basis of a Memorandum of Understanding (MoU) (since October 2016). The General Secretariat of the Government replaced this MoU by an order in September 2022<sup>137</sup>, which also extends the range of dignitaries who can create an account in the platform to the local government level. Local level officials are, however, not obliged to register an account of their meetings. Members of Government also remain free to register meetings or not, and there is no verification of the completeness or accuracy of the records<sup>138</sup>.

**There has been no progress yet to introduce rules on lobbying for Members of Parliament.** The 2022 Rule of Law Report recommended to Romania to 'introduce rules on lobbying for Members of Parliament'<sup>139</sup>. There are still no rules on the engagement of members of Parliament with lobbyists and other third parties seeking to influence the legislative process, as well as no clear restrictions on gifts, hospitality, favours and other benefits<sup>140</sup>. The Legislative Council of the Parliament reported that there are no plans to address this in the foreseeable future<sup>141</sup>. As noted in the 2022 Rule of Law Report, important legislative reforms in Romania, such as the introduction of lobbying rules, need to receive clear high-level political

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<sup>132</sup> Input received from ANI in the context of the country visit to Romania.

<sup>133</sup> Written input from Romania in the context of the 2023 Rule of Law Report, p. 18 referring to Senate's Decision no. 174/19.12.2022.

<sup>134</sup> As mentioned in the 2022 Rule of Law Report Romania, p. 20 the law of June 2022 that aimed to transpose Directive (EU) 2019/1937 was criticised, including by the EPPO.

<sup>135</sup> According to ANI, the Ministry of Finance informed the ANI in January 2023 that additional financial resources can be allocated on the occasion of the first budget rectification for the year 2023, which usually happens in the second part of the year.

<sup>136</sup> Annex to Council Implementing Decision 12319/21 on the approval of the assessment of the recovery and resilience plan for Romania, milestone 430.

<sup>137</sup> RRP Milestone 410 - Entry into force of instructions for the use and proper enforcement of the Single Register of Transparency of Interests.

<sup>138</sup> SG Order on minimum transparency rules on the recommended framework of collaboration between decision-makers at central and local government level and interested persons from civil society stakeholders to promote public policy initiatives.

<sup>139</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 2.

<sup>140</sup> GRECO (2023) Fourth Evaluation Round - Third Interim Compliance Report, p. 4.

<sup>141</sup> Information received from the Legislative Council in the context of the country visit to Romania.



support<sup>142</sup>. Therefore, there has been no progress yet on the implementation of the recommendation made in the 2022 Rule of Law Report.

**Legislation was proposed to improve the transparency of political party financing and the enforcement of related rules.** The framework for political party financing, as described in the 2022 Rule of Law Report<sup>143</sup>, did not change. However in November 2022, the Permanent Electoral Authority (PEA) published<sup>144</sup> draft legislation aiming to address some of the concerns raised in the 2022 Rule of Law Report. It would for example require political parties to be more transparent on how they spend money. Political advertising, including favourable media reports and coverage, would have to be marked as such. The draft also seeks to raise the monetary sanctions for non-compliance with the legal provisions. Some NGOs believe that the law does not go far enough, including by not reducing the overall public funding budget, which grew from EUR 47 million in 2021 to EUR 51 million in 2022<sup>145</sup>. The project has been submitted by the PEA to the Government for approval, and it was sent to the Senate on 25 April 2023.

**Corruption risks highlighted included environmental protection and protection of cultural heritage.** The National Anticorruption Strategy (NAS) 2021-2025 gives priority to preventive measures in sectors exposed to corruption: public health system, education system, the financing of political parties and election campaigns, public administration, business environment, environmental protection, and protection of cultural heritage, the last two being newly introduced<sup>146</sup>. According to the DNA, corruption is for instance used to enable the illegal logging and fraudulent exploitation of timber<sup>147</sup>. The NAS 2021-2025 also acknowledges corruption as a facilitator of organised crime groups. The DIICOT reported that 11% of the analysed criminal groups in 2022 have used corruption to facilitate or cover up their crimes (compared to 15% in 2021)<sup>148</sup>. Among the cases indicted in 2022, the DNA sent to court 15 offences of setting up organised crime groups, but it has no joint cases with DIICOT<sup>149</sup>. The Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 40% of companies in Romania (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years<sup>150</sup>. The number of integrity warnings issued by the electronic system to prevent conflicts of

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<sup>142</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 13. According to the OECD, Romania should develop a strategy to increase support from top leadership in implementing the National Anti-Corruption Strategy. (2023) OECD Working Party of Senior Public Integrity Officials "Stocktaking of the Public Integrity System in Romania", p. 11.

<sup>143</sup> Ibid, p. 20.

<sup>144</sup> The President of the Permanent Electoral Authority (PEA) resigned in January 2023, after ANI found a conflict of interest when he appointed his sister-in-law to the PEA. See G4Media (2023), "Florin Mitulețu Buică resigned from the leadership of the Permanent Electoral Authority".

<sup>145</sup> Written input from Expert Forum in the context of the 2023 Rule of Law report questionnaire and "We demand real transparency in the funding of political parties! | Expert Forum".

<sup>146</sup> Input from Romania for the 2023 Rule of Law Report, p. 23. According to the NAS 2021-2025, illegal logging, air pollution, destruction of rivers and illegal closing of landfills are serious problems involving the use of corruption. Vulnerabilities in the cultural field were often the result of a lack of anti-corruption education provided to the people involved, as well as to a lack of adequate prevention tools.

<sup>147</sup> Information received from DNA in the context of the country visit to Romania.

<sup>148</sup> 2022 Annual Activity Report DIICOT, p. 25.

<sup>149</sup> Written input from DNA in the context of the country visit to Romania.

<sup>150</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). This is 14 percentage points above the EU average. In the context of the European Semester, a Country Specific Recommendation is addressed to Romania to improve the efficiency of public procurement and ensure full and sustainable implementation of the national public procurement strategy.

interests in public procurement has stabilised over the last three years, with 22 integrity warnings in 2022, in comparison to 26 in 2021, and 20 in 2020<sup>151</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

The right to freedom of expression as well as the right of access to any information of public interest is enshrined in the Constitution<sup>152</sup>. The media regulator (National Audiovisual Council) is the sole regulatory authority in the field of audiovisual media services. The mission and composition of the media regulator are set out in the Audiovisual Law<sup>153</sup>. The organisation and functioning of the Romanian Broadcasting Society and the Romanian Television Society are regulated by Law 41/1994. Access to information is regulated by Law No 544 of 12 October 2001 on free access to information of public interest<sup>154</sup>.

**A new audiovisual law was adopted, and the National Audiovisual Council (CNA)'s budget needs to reflect its new tasks.** Romania transposed the Audiovisual Media Services Directive (AVMSD)<sup>155</sup> on 11 July 2022 with the new Audiovisual Law<sup>156</sup>. In March 2023, Parliament appointed a new president of the CNA. The Audiovisual Law provides<sup>157</sup> that the Council's activity is to be financed from the state budget, so that it can perform its functions effectively and contribute to the activity of the European Regulators Group for Audiovisual Media Services (ERGA). The increase in the 2022 budget for the CNA did not allow the CNA to hire staff or improve its technology systems, despite the additional tasks entrusted to it under the new law. The CNA is currently preparing public consultations on secondary legislation, which will clarify the implementation of the new legislative provisions in areas such as accessibility, promotion of European works or media literacy<sup>158</sup>.

**There have been no significant changes in the implementation of the legal framework concerning transparency of media ownership.** Issues regarding the transparency of media ownership referred to in the 2022 Rule of Law Report remain<sup>159</sup>. Similarly to the previous version of the law, the new Audiovisual Law provides that all legal persons holding an audiovisual licence are obliged to make public the name of the outlet, its legal status and place of business, the name of its legal representative and of the major associates or shareholders, the names of the persons running the company and of those who mainly assume editorial responsibility as well as a list of the publications edited by the legal person in question and of other programme services offered<sup>160</sup>. The CNA has published a document with incomplete information on the shareholding structure of companies holding audiovisual licenses. Although

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<sup>151</sup> Written input from Romania for the 2023 Rule of Law Report, p. 22. When the system was initially launched in 2018, there were 69 integrity incidents, followed by 40 in 2019. See the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 21.

<sup>152</sup> Art. 30 and 31 of the Romanian Constitution.

<sup>153</sup> Audiovisual Law No. 504/2022, of 11 July 2022.

<sup>154</sup> Romania ranks 53rd in the 2023 Reporters without Borders World Press Freedom Index compared to 56th in the previous year.

<sup>155</sup> Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities

<sup>156</sup> Audiovisual Law No. 504/2022, of 11 July 2022.

<sup>157</sup> Art. 16, Audiovisual Law No. 504/2022.

<sup>158</sup> Information received from CNA in the context of the country visit to Romania.

<sup>159</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 21.

<sup>160</sup> Article 48 of Audiovisual Law No. 504/2022, of 11 July 2022.

the CNA must ensure the transparency of the organisation, functioning and financing of the media in the audiovisual sector, including providers of video-sharing platforms, some audiovisual operators oppose the publication of some information collected by the CNA, as they consider it personal data<sup>161</sup>. No media specific rules apply to print and digital media, which are subject to general rules governing transparency of ownership included in national company law. According to the CNA, information on media ownership is available in the National Trade Register Office, although this requires the payment of a fee<sup>162</sup>. As regards media concentration, the Audiovisual Law<sup>163</sup> aims to protect pluralism and cultural diversity by limiting ownership concentration and by ensuring that the audience share in the audiovisual field does not create dominant positions in the shaping of public opinion. The same Law also sets the criteria for defining market shares of the services as well as the threshold to consider that an operator holds a dominant position. However, these provisions only cover broadcast media, and there are no cross-media concentration regulations<sup>164</sup>. Moreover, according to the Media Pluralism Monitor, plurality of media providers, which is an indicator reflecting media concentration, has an 83% risk score

**There has been no progress on the 2022 recommendation to enhance the independent governance and editorial independence of public service media.** The 2022 Rule of Law Report recommended to Romania to ‘strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account the European standards on public service media’<sup>165</sup>. A bill<sup>166</sup> of June 2021 to reform the law on public broadcasting and radio companies<sup>167</sup> continues to be<sup>168</sup> discussed by the legislator and no further mechanisms to ensure the independence of public service media have been adopted. As stated in the Rule of Law Report of 2022, the system for appointing and dismissing the Board of Directors of the public service broadcaster is still subject to political influence. Public service media, in particular the public TV, suffers from a lack of credibility and relevance in the market<sup>169</sup>. Even if journalists can do their job in a way that can be considered independent, they are not responsible for the decision on what kind of topics and content is broadcasted<sup>170</sup>. Therefore, no progress has been done on the implementation of the recommendation made in the 2022 Rule of Law Report.

**The financing of media, in particular audiovisual media, by political parties lacks transparency.** The Parliamentary Assembly of the Council of Europe adopted a resolution in October 2022 which stated that ‘media freedom and pluralism need to be strengthened. In particular, the use of public funds by political parties to finance media and influence their

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<sup>161</sup> Information received in the context of the country visit to Romania from the CNA.

<sup>162</sup> Ibidem.

<sup>163</sup> Art. 44, Audiovisual Law No. 504/2022.

<sup>164</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 16.

<sup>165</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 2.

<sup>166</sup> Pl-x. nr. 262/2021, Legislative proposal to amend Law no. 41/1994 on the organization and functioning of the Romanian Broadcasting Company and the Romanian Television Company.

<sup>167</sup> Law No. 41, of 17 June 1994, on the organization and functioning of the Romanian Broadcasting Company and the Romanian Television Company.

<sup>168</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 22.

<sup>169</sup> Information received in the context of the country visit to Romania from the NCA; 2023 Media Pluralism Monitor, country report for Romania, p. 8.

<sup>170</sup> Information received in the context of the country visit to Romania from TVR.

content on the basis of secret contracts is of the utmost concern’<sup>171</sup>. The resolution asked the Romanian authorities ‘to ensure specific safeguards for editorial independence and introduce legal requirements to disclose secret contracts between political parties and the media that involve the transfer of public funds to the latter’<sup>172</sup>. The MPM reported that some outlets – including television channels – have received money from major political parties in exchange for the production or publication of certain kinds of material<sup>173</sup>. It is also not always possible for the public to know what is news and what is, effectively, an advertisement<sup>174</sup>. The CNA cannot intervene in such cases, since, while it can monitor broadcasters’ contracts, it cannot intervene on the editorial line of broadcasters. Civil society organizations were very critical about the lack of transparency on this issue<sup>175</sup> and indicated that authorities refuse to provide information on these agreements due to data protection considerations<sup>176</sup>. According to the CNA<sup>177</sup>, the new provisions of the Audiovisual Law, which prohibit the sponsoring of news programmes and information programmes on political themes<sup>178</sup>, address this concern.

**There have been no significant improvements to the legal framework on access to information.** A bill<sup>179</sup> intended to update the freedom of information act<sup>180</sup> is still not approved. In May 2022, the relevant Committee of the Chamber of Deputies adopted a positive report on the proposal. In November 2022<sup>181</sup>, the Government issued a negative opinion<sup>182</sup>. A Government Decision of June 2022<sup>183</sup> amended the methodological norms for the free access to information of public interest to optimise the procedure for the *ex officio* display of information of public interest at the level of public entities. Stakeholders express concerns that the current law is not efficiently enforced in practice and that the protection of personal data is often used as a blanket reason to refuse access to documents<sup>184</sup>.

**The situation regarding threats, instances of harassment, and violence against journalists remains an issue**<sup>185</sup>. Since the publication of the 2022 Rule of Law Report, one new alert was activated in the Council of Europe’s Platform to Promote the Protection of Journalism and

<sup>171</sup> Resolution 2466 (2022) of the Parliamentary Assembly of the Council of Europe: The honouring of membership obligations to the Council of Europe by Romania, para. 11.

<sup>172</sup> Ibidem, p. 16.4.4.

<sup>173</sup> 2023 Media Pluralism Monitor, country report for Romania, p. 222.

<sup>174</sup> Ibidem.

<sup>175</sup> Contribution from Expertforum and Funky Citizens for the 2023 Rule of Law Report, p.p. 16-17 and p. 20 respectively.

<sup>176</sup> Information received from civil society organisations (Expertforum, Funky Citizens) in the context of the country visit to Romania; Contribution from Centre for Public Innovation for the 2023 Rule of Law Report, p. 18.

<sup>177</sup> Information received from CNA in the context of the country visit to Romania.

<sup>178</sup> Art. 34(4), Audiovisual Law No. 504/2022.

<sup>179</sup> PL-x 529/2020 Draft Law for the transparency of information of public interest and the ease of access for citizens by amending and supplementing Law no. 544/2001 on free access to information of public interest.

<sup>180</sup> Law No 544 of 12 October 2001 on free access to information of public interest.

<sup>181</sup> Contribution from Centre for Public Innovation for the 2023 Rule of Law Report, p.p. 18-20.

<sup>182</sup> In its negative reply, the Government referred to its Decision of June 2022 and to Law No 179/2022 on open data and the re-use of public sector information and argued that adoption of the proposal could lead to confusion in the application of Laws No 544/2001 and No 179/2022. The legislative procedure can be followed at [https://www.cdep.ro/pls/proiecte/upl\\_pck2015.proiect?idp=18851&tot=1](https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=18851&tot=1).

<sup>183</sup> Government Decision no. 830/27.06.2022. Input from Romania, p. 35.

<sup>184</sup> Contribution from Civil Society Development Foundation for the 2023 Rule of Law Report, p. 24. Information received from individual journalists and civil society organisations in the context of the country visit to Romania.

<sup>185</sup> 2023 Media Pluralism Monitor, country report for Romania, p. 10.

Safety of Journalists, which refers to online threats against journalists<sup>186</sup>. The platform registers 15 active alerts. Regarding the two alerts referred to in the 2022 Rule of Law Report<sup>187</sup>, the first case<sup>188</sup> remains under investigation, while the second case was closed in November 2022, after the court found that accusations were unfounded<sup>189</sup>. The use of strategic lawsuits against public participation (SLAPPs) by some politicians to undermine the work of certain journalists and their watchdog role remains an issue<sup>190</sup>. There is no anti-SLAPP legislation in place<sup>191</sup>. In December 2022, the Parliament adopted a new cyber security law that among others can be relied on to deal with cases of propaganda or disinformation campaigns<sup>192</sup>. The Romanian Ombudsman challenged<sup>193</sup> the law before the Constitutional Court, arguing that it does not clearly identify the subjects targeted by it and tasks several bodies, such as the Romanian Intelligence Service (SRI), to ensure national security by countering “propaganda or disinformation campaigns”, failing however to define what constitutes such campaigns. Stakeholders express concerns that this leaves room for a broad interpretation and could give bodies such as the SRI a wide discretion in determining the actions falling within that category<sup>194</sup>. The Constitutional Court ruled on the constitutionality of the law on 28 February 2023<sup>195</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Romania is a semi-presidential representative democratic republic. The Romanian Parliament is bicameral, comprising the Senate (the upper house), and the Chamber of Deputies (the lower house). The Government, Deputies, Senators, or a group of no less than 100.000 citizens have the right of legislative initiative<sup>196</sup>. The Constitutional Court is competent to review the

<sup>186</sup> In November 2022, journalist Parászka Boróka was intimidated by the statements of a leading politician. The statements were condemned by the Prime Minister of Romania and the local police opened an inquiry. Council of Europe, Platform to promote the protection of journalism and safety of journalists, Romania. <https://fom.coe.int/en/alerte/detail/107638614;globalSearch=false>; 2023 Media Pluralism Monitor, country report for Romania, p. 14.

<sup>187</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 23. Contribution from the Romanian Institute for Human Rights for the 2023 Rule of Law Report, p. 14.

<sup>188</sup> Case against Emilia Serca. 2023 Media Pluralism Monitor, country report for Romania, page 14.

<sup>189</sup> Case against Alin Cristea Contribution from Fundatia pentru Dezvoltarea Societatii Civile for the 2023 Rule of Law Report, page 19; 2023 Media Pluralism Monitor, country report for Romania, page 14.

<sup>190</sup> 2023 Media Pluralism Monitor, country report for Romania, p. 7.

<sup>191</sup> 2023 Media Pluralism Monitor, country report for Romania, p. 14.

<sup>192</sup> Law No. 58 of 14 March 2023 on the cybersecurity and cyber defence of Romania, and amending certain legislative acts.

<sup>193</sup> Sesizarea de neconstituționalitate referitoare la prevederile Legii privind securitatea și apărarea cibernetică a României precum și pentru modificarea și completarea unor acte normative (PL-x nr. 773/2022, L828/2022) – 27 December 2022.

<sup>194</sup> . 2023 Media Pluralism Monitor, country report for Romania, pp. 15 and 24. Activewatch, 9 March 2023. <https://activewatch.ro/articole/legea-securitatii-cibernetice/>.

<sup>195</sup> Romanian Constitutional Court, Press Release, 28 February 2023, page 2. <https://www.ccr.ro/wp-content/uploads/2023/02/comunicat-de-presa-28-februarie-2023.pdf>.

<sup>196</sup> Art. 74, Constitution of Romania. The citizens who exercise their right to a legislative initiative must belong to at least one quarter of the country's counties, while, in each of those counties or the Municipality of Bucharest, at least 5 000 signatures should be registered in support of such initiative.



constitutionality of laws and to settle conflicts of constitutional nature between public authorities<sup>197</sup>.

**New instruments aim to improve the transparency and quality of decision-making and legislation, though the use of government emergency ordinances (GEOs) has increased.** Several measures, addressing commitments in Romania's national Recovery and Resilience Plan<sup>198</sup>, were taken to address the long-standing concerns regarding the stability and predictability of legislation<sup>199</sup>. In this context, a new law<sup>200</sup> tasked the Legislative Council with publishing on its website consolidated normative acts after they are amended<sup>201</sup>, thus contributing to the transparency of legislation. However, the use of GEOs increased, both in number (192 in 2022, compared to 145 in 2021) and proportionally to the total number of normative acts (31% in 2022, compared to 8.6% in 2021)<sup>202</sup>. The quality of law-making and frequent changes in legislation remains a significant reason for concern about the effectiveness of investment protection among companies in Romania<sup>203</sup>. According to the Legislative Council, a large number of GEOs were adopted to deal with the COVID-19 pandemic and with the situation generated by Russia's war of aggression against Ukraine, as well as to implement milestones and targets under Romania's RRP or to transpose EU directives in view of imminent infringement proceedings. In several cases, the Legislative Council issued opinions assessing that the draft GEOs did not present valid reasons justifying the extraordinary situation that cannot be postponed<sup>204</sup>. As noted in the 2022 Rule of Law Report, the extensive use of this instrument continues to raise concerns, notably due to the derogatory rules on shortened public consultations, limited constitutional review and delayed approval by Parliament, although they produce effects immediately<sup>205</sup>. As required also by Romania's Recovery and Resilience Plan, a new methodology for the use of GEOs was adopted in September 2022 and is expected to foster good practices in their elaboration, substantiation and consistent use<sup>206</sup>.

<sup>197</sup> Constitution of Romania, Art. 146. A partial renewal of CCR members will take place this year, with two judges already proposed by the political parties and endorsed by the Parliament. The selection procedure was challenged at the Constitutional Court.

<sup>198</sup> Annex to Council Implementing Decision 12319/21 on the approval of the assessment of the recovery and resilience plan for Romania, milestones 401, 404, and 412 (2021).

<sup>199</sup> Previous Rule of Law Reports highlighted the issues linked with frequent amendments to legislation, the extensive use of fast-track procedures and government emergency ordinances. See 2020, 2021 and 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Romania, p. 15, p. 20 and pp. 24-25, respectively.

<sup>200</sup> Under Law No. 343 of 9 December 2022, after amendments come into force, laws, as well as ordinances, emergency ordinances and Government decisions are displayed, in a consolidated version, on the website of the Legislative Council in editable format within 15 days, or 25 days for complex laws.

<sup>201</sup> Milestone 412 of Romania's RRP required the "Entry into force of the legislative amendments to ensure publication of the full text of the laws after amendments". Under milestone 412 of its RRP, Romania committed to amend Law 24/2000 by 30 September 2022 to require the republication of consolidated version of laws whenever they are amended. See Annex to Council Implementing Decision 12319/21, p. 488.

<sup>202</sup> In 2022, 192 GEOs were adopted for a total of 621 normative acts, as compared with 145 GEOs for a total of 1685 normative acts in 2021. Input from Romania for the 2023 Rule of Law Report, pp. 38-39.

<sup>203</sup> Figure 54, 2023 EU Justice Scoreboard indicates that 'Frequent changes in legislation or concerns about quality of the law-making process' are of concern to 32% of companies in Romania.

<sup>204</sup> Ibid.

<sup>205</sup> For more details, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 24-25. See also contribution from the Centre for Public Innovation for the 2023 Rule of Law Report, p. 21.

<sup>206</sup> Milestone 411 of Romania's RRP required the "entry into force of the Methodology for the use of Emergency Ordinances", intended to "specify the circumstances under which these ordinances may be used and how their impact shall be assessed (ex post, ex ante) as well as the associated procedures for their preparation and



**There has been no progress so far in ensuring effective public consultations, but commitments were made to improve such processes.** The 2022 Rule of Law Report recommended to Romania to “[e]nsure effective public consultation before the adoption of draft legislation”<sup>207</sup>. As underlined in the 2022 Rule of Law Report<sup>208</sup>, although legislation foresees mandatory public consultations before the adoption of draft legislation, their effectiveness can still be improved, both as regards their length and the authorities’ feedback on the input collected. The Romanian Institute of Human Rights reported that, although the law stipulates that the explanatory memorandum of a draft legislative act must include the results of the public consultation<sup>209</sup>, the relevant authorities are often overlooking this obligation, and the reasons for rejecting certain proposals does not always appear clearly<sup>210</sup>. In 2022, a large number of normative acts were adopted through expedited procedures, with shortened public consultations and parliamentary debates, irrespective of their normative impact<sup>211</sup>. The possibility, introduced in 2022, to derogate from the minimum 30-day public consultation period in case of emergency<sup>212</sup>, was also used several times, and stakeholders raised concerns that the requirement of “exceptional circumstances requiring the adoption of immediate solutions” is too widely defined<sup>213</sup> and often relied upon without adequate reasoning<sup>214</sup>. Romania’s RRP includes several projects aimed at improving the quality of public consultation processes<sup>215</sup>. Therefore, no progress has yet been made to address the recommendation made in the 2022 Rule of Law Report to ensure effective public consultation before the adoption of draft legislation.

**On 1 January 2023, Romania had 113 leading judgments of the European Court of Human Rights pending implementation, an increase of seven compared to the previous year**<sup>216</sup>. Romania’s rate of leading judgments from the past ten years that remained pending

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approval and the role of Government Secretariat General and Ministry of Justice for ensuring gatekeeping and overall quality control”. See Annex to Council Implementing Decision 12319/21, pp. 487-488. The methodology, adopted through Government Decision 1173 of 21 September 2022, is not creating new rules, but consolidating all the applicable rules deriving from the Constitution, legislation and other relevant regulatory acts, and describing the procedures for their initiation and adoption.

<sup>207</sup> Ibid., p. 2.

<sup>208</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 25-26.

<sup>209</sup> Art. 31(1)(e), Law No. no. 24 of 27 March 2000 on the rules of legislative technique for the elaboration of normative acts.

<sup>210</sup> Written input from the Romanian Institute of Human Rights for the 2023 Rule of Law Report, p. 14.

<sup>211</sup> For instance, the public consultation process for the draft Justice Laws drew criticism from magistrates’ associations and civil society, as well as from the Venice Commission, which lamented “the haste of the adoption procedure”, noting that “the parliamentary debate was conducted in a rushed manner”. See CDL-AD(2022)045, para. 12-13, contribution from Expert Forum for the 2023 Rule of Law Report, p. 10, and contribution from the Civil Society Development Foundation for the 2023 Rule of Law Report, p. 10.

<sup>212</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 25-26.

<sup>213</sup> The constitutional challenge lodged by the Ombudsperson in March 2022 is still pending. Input from Romania for the 2023 Rule of Law Report, Annex 10, p. 1.

<sup>214</sup> Written input from the Centre for Public Innovation for the 2023 Rule of Law Report, p. 15, and 2022 Annual Civic Space Report – Romania, p. 11.

<sup>215</sup> Under Target 406 of its RRP, Romania committed to “conduct annual training sessions for staff of civil society organizations to increase their capacity and skills to participate effectively in public consultation processes” by 31 December 2024 and, under Target 407, to improve the “process of public consultation and involvement of interested stakeholders [...] through 20% increase in the number of draft legislative acts subject to public consultation and involvement of stakeholders at central level” by 31 March 2026. Annex to Council Implementing Decision 12319/21, pp. 482-484.

<sup>216</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee’s practice to group

was at 60% (compared to 57% in 2022), and the average time that the judgments had been pending implementation was 4 years and 8 months (compared to over 4 years and 2 months in 2022)<sup>217</sup>. The oldest leading judgment, pending implementation for 17 years, concerns the right to protection of property due to expropriations and nationalisations<sup>218</sup>. On 15 June 2023, the number of leading judgments pending implementation has increased to 119<sup>219</sup>. Romania remains under enhanced supervision from the Committee of Ministers of the Council of Europe for the longstanding structural problem of non-implementation or delayed implementation of final domestic court decisions delivered against the State or legal persons under the responsibility of the State<sup>220</sup>.

**There has been no further progress on obtaining accreditation for the National Human Rights Institution.** The 2022 Rule of Law Report recommended to Romania to “[c]ontinue efforts to establish a National Human Rights Institution taking into account the UN Paris Principles”<sup>221</sup>. As underlined in previous Rule of Law Reports<sup>222</sup>, Romania currently does not have an institution accredited as a National Human Rights Institution<sup>223</sup>, as the applications lodged in 2020 by the Romanian Institute for Human Rights (RIHR) and by the Ombudsperson before the Global Alliance of National Human Rights Institutions’ (GANHRI) Sub-Committee on Accreditation (SCA) are still pending. Several changes to the legislation governing the RIHR would be necessary for it to comply with the UN Paris principles<sup>224</sup> and therefore receive a positive assessment, in particular the principles relating to the powers conferred to it and to

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cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>217</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 6.

<sup>218</sup> Judgment of the European Court of Human Rights of 21 July 2005, *Strain and Others v. Romania*, 57001/00, pending implementation since 2005.

<sup>219</sup> Data according to the online database of the Council of Europe (HUDOC-EXEC).

<sup>220</sup> The leading case in the relevant group of cases gave rise to the Judgment of the European Court of Human Rights of 6 September 2005, *Săcăleanu group v. Romania* (Application No. 73970/01). In its last examination of March 2023, the Committee of Ministers noted that national authorities are still to provide information concerning the outstanding individual measures. As regards general measures, in September 2022, the Romanian authorities indicated that steps were under way to establish, within the Government Secretariat General, a structure tasked with ensuring the execution of the relevant national judgments. No further information was communicated to the Committee of Ministers, which however noted that draft proposals submitted to public consultation envisage setting up a mechanism with powers of prevention and control, to ensure the implementation of pecuniary and non-pecuniary awards by public debtors. Draft laws initiated by Parliament also foresee shortening the deadlines for payment by public authorities and making the Ministry of Finance responsible for making the payment in case the public authority does not comply with its obligations.

<sup>221</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 2.

<sup>222</sup> *Ibid.*, p. 28.

<sup>223</sup> The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of the European Network on National Human Rights Institutions (ENNHRI). In 2020, both the RIHR and the Romanian Ombudsperson applied for accreditation before the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation. See 2020, 2021 and 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Romania, p. 17, pp. 23-24 and p. 28 respectively.

<sup>224</sup> The Paris principles require NHRIs to be independent in law, membership, operations, policy and control of resources; to have a broad mandate; pluralism in membership; broad functions; adequate powers; adequate resources; cooperative methods; and engage with international bodies.

the political representation in its management board<sup>225</sup>. Several draft laws were discussed in Parliament and rejected<sup>226</sup>. Since the 2022 Rule of Law report, no further steps have been taken to ensure compliance with the UN Paris principles, taking into account the SCA recommendations of 2011<sup>227</sup>. RIHR reports that this is negatively impacting its functioning and its efforts to comply with UN Paris principles and seek accreditation<sup>228</sup>. Although the role of the RIHR was recently extended<sup>229</sup>, the law governing its functioning and activities has not been modified since its creation in 1991, and it currently faces an acute deficit of staff, particularly due to insufficiently attractive remuneration<sup>230</sup>. Similarly, no further developments have been registered regarding the application lodged by the Ombudsperson before GANHRI<sup>231</sup>. Therefore, there has been no progress yet in addressing the recommendation made in the 2022 Rule of Law Report on establishing a National Human Rights Institution.

**While improvements to the legal framework have been reported, civil society organisations continue to face legal and financial challenges.** The civil society space continued to be assessed as narrowed<sup>232</sup>. Civil society organisations (CSOs) are reporting that, although legislation has improved in the last years, they are experiencing difficulties in the procedures regarding their registration, dissolution and other related procedures, such as access to registries and the amendment of constitutive documents<sup>233</sup>. This is mainly due to the lack of clarity and predictability in the implementation of the legal framework, resulting in a high administrative burden, lengthy court proceedings and a non-uniform judicial practice regarding CSOs<sup>234</sup>. As regards access to funding, larger CSOs are more likely to obtain public funding, while smaller ones are relying mostly on private donations, for which public policies create a

<sup>225</sup> Contribution from RIHR for the 2023 Rule of Law Report, p. 9. See also International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), May 2011, pp. 20-21.

<sup>226</sup> Contribution from RIHR for the 2023 Rule of Law Report, pp. 8-9.

<sup>227</sup> In its 2011 report, the SCA recommended in particular to amend national legislation on RIHR to confer it a human rights protection mandate (including the power to address recommendations to public authorities and to analyse the human rights situation in Romania), to modify the appointment process and composition of its General Board, and to include safeguards for the tenure and immunity of its members. See International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), May 2011, pp. 20-21.

<sup>228</sup> Contribution from RIHR for the 2023 Rule of Law Report, p. 3.

<sup>229</sup> In 2022, the Ministry of Justice tasked the RIHR with monitoring the implementation of Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'). Contribution from the Romanian Institute for Human Rights for the 2023 Rule of Law Report, p. 15.

<sup>230</sup> The RIHR currently has a staff deficit of 60%, 70% of the vacancies being specialised positions. Contribution from the Romanian Institute for Human Rights for the 2023 Rule of Law Report, p. 10.

<sup>231</sup> Information received from the Ombudsperson in the context of the country visit to Romania.

<sup>232</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>233</sup> Written contribution from the Center for Not-for-Profit Law Association for the 2023 Rule of Law Report, p. 19. Other issues identified include the lack of digitalisation of the procedures for registering, dissolving a CSOs and operating amendments as well as deficiencies in the public registries of CSOs.

<sup>234</sup> This concerns in particular their registration, dissolution or amendments to their constitutive documents. It is also reported that the inconsistency and uncertainty in existing procedures, exacerbated by frequent amendments to relevant legislation, make it difficult, particularly for smaller CSOs, to comply with administrative requirements. 2022 Annual Civic Space Report – Romania, p. 4, and contribution from the Civil Society Development Foundation for the 2023 Rule of Law Report, p. 22.

favourable philanthropic environment<sup>235</sup>. However, the Government itself concluded that legislative changes over the last years have weakened the ability of CSOs to ensure an adequate level of financial sustainability<sup>236</sup>. Finally, a recently adopted law limiting the possibility of CSOs to challenge building permits, including on environmental grounds<sup>237</sup>, is generating concerns within civil society, and more than 100 CSOs have signed an open letter calling the Romanian President not to promulgate the law<sup>238</sup>. Another legislative proposal, which would have severely limited CSOs' right to access to justice by restricting their legal standing and by extending their patrimonial liability, was eventually withdrawn by the senators who initiated it.

**Initiatives are ongoing to simplify procedures for recognising and funding associations carrying out activities of general interest.** The General Secretariat of the Government (GSG) committed to implement a project<sup>239</sup> to standardise the administrative procedures for the recognition of public utility status to associations and foundations<sup>240</sup>, which gives them special rights and obligations<sup>241</sup>. Given the discrepancies in the way each competent public authority implements the legal framework for public utility status<sup>242</sup>, the main objective of the project is

<sup>235</sup> Donations are encouraged in Romania particularly thanks the ease of operation and political environment favourable to philanthropic organisations, as well as tax benefits. Index for Civil Society Sustainability 2021, p. 9.

<sup>236</sup> General Secretariat of the Government, Public policy proposal regarding the standardization and efficiency of the financing mechanism based on Law no. 350/2005, p. 5. The study notes that the taxation of part-time employment and new rules for granting sponsorships from companies have contributed to weakening of the ability of CSOs to operate. A draft law that would have obligated CSOs to publish a registry of persons using the possibility to redirect 3,5% of their income tax for donations, which generated concerns as to the practical impossibility for CSOs to collect such information, was withdrawn by its initiators.

<sup>237</sup> The Law amending Law No. 50/1991 on the authorization of the execution of construction works, Law No. 554/2004 on Administrative Litigation, and Law No. 350/2001 on territorial planning and urban planning, was adopted by Parliament on 21 November 2022, and declared constitutional by Decision No. 40 of the Constitutional Court of 22 February 2023. It imposes a 30-day deadline, only on CSOs, to challenge building permits or urbanism documents in court, and reduces from five to one year the limitation period for the right to challenge the decisions approving land use and urban planning documents.

<sup>238</sup> The open letter to the Romanian President, signed by 112 CSOs, can be found here: <https://www.declic.ro/scrisoare-deschisa-adresata-administratiei-prezidentiale/>.

<sup>239</sup> The project, which is part of an Open Government Partnership, is foreseen in a National Action Plan 2022-2024 of July 2022. Input from Romania for the 2023 Rule of Law Report, p. 42.

<sup>240</sup> Art. 39 of Government Ordinance 26/2000 on associations and foundations provides that the request for public utility status must be sent to the GSG and granted by Government Decision. Under Art. 38 of Government Ordinance 26/2000, an association or foundation can be recognized as being of public utility if the following conditions are met: a) carrying out activities in the general interest; b) having operated for at least 3 years and achieved part of the set objectives; c) presenting an activity report showing significant activity; d) having adequate material, logistics, members and staff for the proposed purpose; f) collaborating with public institutions or associations or foundations; and f) having achieved significant results in view of the proposed purpose or presenting letters of recommendation from competent authorities.

<sup>241</sup> Under Art. 41 of Government Ordinance 26/2000, the public utility status gives the right to be assigned free use of public property and to mention such status in all documents issued, as well as a series of obligations as regards the level of activity, reporting, and cooperation with public authorities. However, CSOs point out to the lack of perceived benefits attached to the status, and the difficulties in accessing public resources that should be made available by local administrations. Contribution from the Center for Not-for-Profit Law Association for the 2023 Rule of Law Report, p. 19, and 2022 Annual Civic Space Report – Romania, p. 5.

<sup>242</sup> The GSG found it necessary to clarify the stages of the procedures for obtaining the public status, noting the absence of designated structure, within each competent authority, for granting, monitoring and evaluating public utility status, and the resulting lack of objectivity and transparency in the implementation of those procedures. See National Action Plan 2022-2024, p. 10. CSOs also pointed out the difficult and non-transparent procedure of obtaining the public utility status. Contribution from the Center for Not-for-Profit

to develop a single digital tool for the management of applications as well as a centralised coordination mechanism within the GSG to support those authorities and streamline exchanges with applying legal entities. However, a draft law tabled by parliamentarians, that would oblige CSOs with a public utility status to publish any public good they have received, and the Government to verify at least every three years if the CSO still has public utility, is criticised by CSOs for the undue administrative burden it might create<sup>243</sup>. In addition, the GSG has issued a policy proposal to standardise, streamline and make more transparent the allocation of non-refundable public funds for non-profit activities of general interest<sup>244</sup>. Following a study in which an extensive analysis of the issues in the implementation of Law No. 350/2005 was conducted<sup>245</sup>, as well as a public consultation process involving central and local public administration institutions and civil society organisations, the GSG made concrete proposals to improve the applicable legal framework and procedures<sup>246</sup>.

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Law Association for the 2023 Rule of Law Report, p. 19, and 2022 Annual Civic Space Report – Romania, p. 5.

<sup>243</sup> 2022 Annual Civic Space Report – Romania, p. 5. Legislative proposal PL-x nr. 122/2023 to amend Government Ordinance 26/2000 was rejected by the Senate and is currently examined by the Chamber of Deputies. It received a negative opinion from the Government, which considers the new obligations unnecessary and inconsistent with the applicable legal framework.

<sup>244</sup> Input from Romania for the 2023 Rule of Law Report, p. 43. The regime for this type of funding is regulated by Law No. 350/2005 of 2 December 2005 regarding the regime of non-refundable financing from public funds allocated for non-profit activities of general interest.

<sup>245</sup> Among other issues, the study assesses a lack of transparency in the drafting of documents, evaluation of projects and allocation of funds, the short duration of the funding contracts, the high administrative burden, the reduced amount of funding allocated for each project, and the lack of clear criteria for evaluating the quality of the mode of implementation and services provided as part of the financed projects. See General Secretariat of the Government, Public policy proposal regarding the standardization and efficiency of the financing mechanism based on Law No. 350/2005, pp. 18-21.

<sup>246</sup> In particular, it is proposed to harmonise all the procedures and criteria for the allocation of non-refundable funding, to lower the administrative burden and to create a single digital portal for lodging and processing funding applications.



## Annex I: List of sources in alphabetical order\*

\* *The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at [https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en).*

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## **Annex II: Country visit to Romania**

The Commission services held virtual meetings in March 2023 with:

- Association of Romanian Judges
- Association “Mișcarea pentru apărarea statutului procurorilor”
- Bar Association
- Center for independent journalism
- Constitutional Court
- Expertforum
- Foundation for the Development of Civil Society
- Freedom House
- Funky citizens
- High Court of Cassation and Justice
- Initiative for Justice Association
- Judicial Inspectorate
- Legislative Council
- Ministry of Justice
- Ministry of Culture
- National Agency for the Management of Seized Assets
- National Anti-corruption Directorate
- National Anti-corruption Strategy
- National Audiovisual Council
- National Integrity Agency
- National Integrity Council
- National Union of the Romanian Judges
- Ombudsperson
- Prosecutor’s Office attached to the High Court of Cassation and Justice
- Romanian Institute for Human Rights
- Radio Romania
- Rise Project
- Romanian Judges’ Forum Association
- Romanian Television Society
- Secretariat General of the Government
- Superior Council for the Magistracy

\* The Commission also met the following organisations in a number of horizontal meetings:

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum

- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU