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**2020 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**

**2020 Rule of Law Report**
**The rule of law situation in the European Union**

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**ABSTRACT**

Since accession to the EU in 2007, Romanian reforms in the areas of justice and anti-corruption have been followed by the Commission through the Cooperation and Verification Mechanism (CVM), as an important framework for progress towards meeting the set benchmarks.

In 2020, the Government continued to affirm its commitment to restore the path of judicial reform after the reverses of 2017-2019. This led to a significant decrease in tensions with the judiciary. The recent appointments of new leadership for the key prosecutorial services could pave the way for more efficient continuation of prosecutorial activity. However, progress towards amending the relevant legislation has been postponed due to the COVID-19 pandemic combined with the forthcoming national elections. The controversial measures with negative impact on judicial independence continue to apply, such as the Section for the Investigation of Offences in the Judiciary, tasked exclusively with the prosecution of crimes committed by judges and prosecutors. The continued implementation of these measures increases uncertainty for the functioning of the justice system, in particular through their combined effect. Moreover, some of these measures may also negatively affect the human resources within the justice system, with implications for its efficiency.

Romania has a comprehensive national anti-corruption strategic framework based on the large participation of national and local institutional actors. Despite Romania's progress and track record in the fight against corruption over the last decade, the challenges faced by the judiciary during 2017-2019 have raised questions as to the sustainability of anti-corruption reforms. Even if the current political context means less confrontation, key institutions face a challenging environment with consequences for the implementation of legal framework and institutional capacity. Although key competent institutions have continued their activity, this poses challenges to maintaining the strong track record of prosecuted cases and court judgments convicting high-level corruption. The pending amendments of the Criminal Code and Code of criminal procedures raise uncertainty about the effectiveness of the anti-corruption legal framework, making it important that legal and policy solutions are found responding to key Constitutional Court decisions. The current Government has shown a renewed commitment to make progress on the preventive side through the comprehensive National Anti-Corruption Strategy.

The relevant legal safeguards concerning media freedom and pluralism are in place. Nonetheless, issues arise in relation to the implementation and enforcement of the existing legislative framework. Transparency of media ownership appears to be incomplete, and the audio-visual media regulatory authority lacks the resources to fully perform its tasks. Media may be prone to political pressures, as specific legal safeguards for editorial independence are mostly lacking, apart from some self-regulation at newsroom or publisher level.

The ordinary process for preparing and enacting laws is well regulated, including an extended institutional set-up of checks and balances, but its effectiveness varies. Government Emergency Ordinances continue to be widely used and successive uncoordinated legislative amendments also have an impact on the quality of legislation and legal certainty, including for the business environment. There is an enabling legislative framework for civil society, which is an active force and has been able to react against attempts to limit its activities. Civil society has had an important role in defending the rule of law in Romania.

A particularity of Romania, as for Bulgaria, is that the Cooperation and Verification Mechanism (CVM) was established at the accession to the European Union in 2007 as a transitional measure to facilitate Romania's continued efforts to reform its judiciary and step up the fight against corruption[1]. In line with the decision setting up the Mechanism, the CVM ends when all the benchmarks applying to Romania are satisfactorily met[2]. In its reports of January 2017, the Commission adopted a comprehensive assessment of Romania's progress over the ten years of the CVM. It also set out a path towards the conclusion of the Mechanism based on 12 final key recommendations that, if complied with, would be sufficient to meet the goals of the CVM. Due to developments that followed in Romania the Commission issued eight additional recommendations in November 2018. In the latest CVM report, adopted in October 2019, the Commission concluded that Romania still had to progress on the recommendations of the January 2017 and November 2018 reports. In 2019, Romanian courts referred several requests for preliminary rulings to the Court of Justice of the EU on the obligations of Romania under the CVM and to follow up on CVM recommendations[3]. The cases are currently pending.

## I. JUSTICE SYSTEM

The Romanian judicial system is structured in four instances, both civil and military: the first instance county courts, the ordinary and specialised tribunals, the courts of appeal[4] 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[5], as well as appeal cases for certain civil and administrative cases. One 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, 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 in disciplinary matters. The prosecution service is headed by the Prosecutor General of the Public Prosecutor's Office attached to the High Court of Cassation and Justice. 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, and, since 2018, the Prosecutorial Section for the Investigation of Offences in the Judiciary (SIIJ)[6]. There are also military prosecutorial offices. The Prosecutor General and the Chief Prosecutors of the specialised structures, DNA and DIICOT, are

[1] Following the conclusions of the Council of Ministers, 17 October 2006 (13339/06), the Mechanism had been established by a Commission Decision of 13 December 2006 (C(2006)928).

[2] Council Conclusions on the Cooperation and Verification Mechanism, 12 December 2017 - https://ec.europa.eu/info/sites/info/files/20171212-st15587_en.pdf. The four benchmarks applying to Romania are set out in the CVM Decision. The last CVM report can be found here: https://ec.europa.eu/info/sites/info/files/technical-report-romania-2019-swd-2019-393_en.pdf.

[3] See the Opinions delivered on 23 September 2020 by Advocate General Bobek in Joined Cases C-83/19, C-127/19 and C-195/19, Cases C-291/19 and C-355/19, and in Case C-397/19.

[4] Courts of appeal judge at both first instance (more complex cases) and second instance, in appeals against decisions handed down by the lower courts.

[5] 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.

[6] 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.

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[7]. The Romanian National Union of Bar Associations is a legal entity of public interest, comprising all 41 bars in Romania. The Constitutional Court is responsible for the constitutional compliance check of laws and settling conflicts of constitutional nature between public authorities.

## Independence

**Several amendments to the Justice laws in 2018 and 2019 continue to raise concerns as regards their impact on judicial independence.** The Justice laws regulate the status of judges and prosecutors, the organisation of the justice system and the functioning of the Superior Council of Magistracy. The amendments entered into force in July and October 2018, and were further modified through several Government Emergency Ordinances. The measures raised concerns, in particular as their combined effect was considered by several national and international stakeholders to represent a serious threat to the independence of the judiciary[8]. Major issues were identified with the creation of a Section for the Investigation of Offences in the Judiciary (SIIJ), the system of civil liability of judges and prosecutors, early retirement schemes, entry into profession, and the status and appointment of high ranking prosecutors. From the outset, their implementation has confirmed the concerns of pressure on judges and prosecutors, and on the independence, efficiency and quality of the judiciary[9]. Furthermore, the continued application of the laws has highlighted new issues beyond the problems identified early on[10].

**The prolonged implementation of the amended justice laws creates increased uncertainty for the functioning of the justice system.** While the current Government has expressed willingness to engage in a dialogue with the judiciary and political parties to reverse the controversial measures, it has also pointed out that the current political situation does not provide for the right conditions to obtain a broad consensus and necessary majority in Parliament to ensure support for comprehensive reforms[11]. It is unlikely that such reforms will be undertaken before new parliamentary elections are held. The fact that these amendments remain in place creates uncertainty for the functioning of the judicial system as a whole, and for individual magistrates with regard to their independence, statute and career in particular. The uncertainty is exacerbated by strong divisions within the justice system as to the solutions to be put forward to amend the Justice laws. In this context, while based on its functions the Superior Council of Magistracy should be taking a leading role and building consensus, its recent work has been marked by internal divisions and controversy.

**The perception of judicial independence among the general public is low, and shows a decreasing trend in recent years.** The level of perceived judicial independence among the

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7 The chief prosecutor of the section to investigate crimes within the judiciary is appointed by a special procedure involving only members of the Superior Council of Magistracy.

8 Venice Commission Opinions CDL-PI(2018)007 and CDL-AD(2019)014.

9 CVM report 2018 and 2019. The Commission has recommended that Romania urgently revise the amended Justice laws taking fully into account the recommendations under the CVM and those issued by the Venice Commission and GRECO. This CVM recommendation is still pending.

10 In particular relating to appointment rules for the High Court of Cassation and Justice, for the Judicial Inspection and for the entry into profession in general.

11 Information received in the context of the country visit.

general public remains low (37%), and has been decreasing[12]. Among the companies, the level of perceived judicial independence is average (53%)[13]. In both cases, the reason most often invoked for the perceived lack of judicial independence is related to interference or pressure from the Government and politicians[14]. The public debate on the judiciary has been marked by strong tensions, and the existence of public attacks on the judiciary from the political world and the media[15], but such tensions have decreased significantly under the current Government. Although the Superior Council of Magistracy has reacted to some complaints brought to its attention regarding the defence of the independence, reputation and impartiality of magistrates, the overall activity of the Council in this area was limited[16].

**The prosecutorial Section for the Investigation of Offences in the Judiciary (SIIJ) remains in place, despite widespread criticism.** This Section[17] is tasked exclusively with the prosecution of crimes committed by judges and prosecutors. In addition, it also has jurisdiction to prosecute cases against other individuals that are investigated together with the judges or magistrates concerned[18]. The Venice Commission noted that the rationale behind the creation of this Section does not appear justified by factual evidence[19], and its establishment and practice has been criticised both for its effects on the independence of magistrates and for the negative effects it could have on the effectiveness of the prosecution[20]. Furthermore, the perception that the pressure of the Section can affect judicial independence also adversely impacts on the appearance of independence, which is in itself an

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12 Figure 44, 2020 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%).

13 Figure 46, 2020 EU Justice Scoreboard.

14 Figures 45 and 47, 2020 EU Justice Scoreboard.

15 Successive CVM reports have referred to the existence of public attacks on judges and prosecutors from the political world and media (*e. g.*, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2019) 499 final). A survey conducted among judges in 2019 found that over 50 % of them had experienced a lack of respect for their independence by the Government and the media (European Network of Councils for the Judiciary, Contribution to the online stakeholder consultation for the 2020 Rule of Law Report). The survey covered 21 EU Member States (European Network of Councils for the Judiciary (2020) - Independence and Accountability of the Judiciary – ENCJ Survey on the independence of judges 2019, Figures 43 and 45).

16 European Commission, Technical report Romania 2019 **(**SWD (2019) 393 final), p.18. Progress report under the CVM from Romanian authorities February 2020 and June 2020. In addition, when the Council found that media statements or smear campaigns have infringed on the independence or reputation of a judge or prosecution, there is rarely a follow-up from the National Audio-visual Council despite the existence of a collaboration protocol with the Superior Council of Magistracy (https://www.cna.ro/Protocol-de-colaborare-dintre.html).

17 A Separate Directorate created in 2018 within the Prosecution Service, to deal with offences committed by magistrates.

18 Law on judicial organisation No. 304/2004, Art. 88 (1) and (2).

19 Only a marginal number of corruption crimes are de facto committed by magistrates – six out of 997 cases investigated in 2017 by the anti-corruption directorate, as an example see Venice Commission (CDL-AD(2018)017), para 84.

20 Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2019) 499 final; GRECO (2019), Fourth Evaluation Round – Second interim compliance report Romania; GRECO (2019) Follow-up Report to the Ad hoc Report on Romania (Rule 34); Venice Commission Opinion (CDL-AD(2019)014); Consultative Council of European Judges (CCJE) (2019), Opinion of the CCJE Bureau following a request by the Romanian Judges Forum Association as regards the situation on the independence of the judiciary in Romania; and Consultative Council of European Prosecutors, Opinion of the CCPE Bureau following a request by the Romanian Movement for Defending the Status of Prosecutors as regards the situation on the independence of prosecutors in Romania.

essential requirement of judicial independence[21]. The current Minister of Justice has started consultations on a draft proposal to disband the Section and reinstate the previous organisational model of the prosecution services[22], but both the COVID-19 pandemic and the political situation have hindered these steps, and the Section remains operational. On 21 July 2020, Parliament rejected a draft initiative introduced by a group of members of Parliament to dismantle the Section, which had also received a negative consultative opinion from the Superior Council of Magistracy[23]. Although authorities and stakeholders report that since October 2019 the Section has ceased the practice of withdrawing appeals, and the number of cases initiated against magistrates has decreased, concerns that it can be used as a tool to put pressure on magistrates remain. In 2019, Romanian courts referred several requests for preliminary rulings to the Court of Justice of the EU, questioning the compatibility of the creation of the Section with EU law, in particular with Article 19(1) TEU and Article 47 of the Charter[24]. The cases are currently pending.

**New heads of the prosecution services were appointed in 2019, but long-standing concerns with the procedure for appointment and dismissal of high ranking prosecutors remain.** In October 2019, none of the prosecution bodies had an appointed leadership[25]. One of the first actions of the current Minister of Justice was to organise the selection procedures, with increased transparency, and take forward a leadership process for the prosecution[26]. Nevertheless, while the new DNA chief prosecutor was appointed following a positive opinion of the Superior Council of Magistracy, the Prosecutor General and the Chief prosecutor for DIICOT were appointed despite a negative opinion of the Council. This situation highlighted the long-standing shortcomings previously set out by the Commission, which, in the context of the CVM, has recommended that a more robust and independent appointment procedure is needed, and that a sustainable solution could best be achieved with the support of the Venice Commission[27].

**The dismissal in 2018 of the former anti-corruption directorate chief prosecutor has been reviewed by the European Court of Human Rights (ECtHR).** Romania was found in violation of Articles 6(1) ('Right to a fair trial') and 10 ('Freedom of expression') of the European Convention of Human Rights in the context of the dismissal of the former DNA

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21 Judgment of the European Court of Human Rights of 6 Nov. 2018, *Ramos Nunes de Carvalho e Sá v. Portugal*, 55391/13, 57728/13 and 74041/13, para 149.

22 In February 2020, following a polling of all courts and prosecution offices, the Minister of Justice put forward for consultation a proposal to dismantle the section to investigate crimes committed by magistrates, which was interrupted due to the COVID-19 pandemic. On 11 June, the invitation to submit proposals was renewed, and on 24 June a public debate was held, following a request from an ONG.

23 The Superior Council of Magistracy Plenum cast ten votes against and eight votes for the proposal, and one abstention.

24 See the Opinion delivered on 23 September 2020 by Advocate General Bobek in Joined Cases C-83/19, C-127/19 and C-195/19, Cases C-291/19 and C-355/19.

25 The DNA Chief Prosecutor had been *ad interim* since July 2018, the Prosecutor General had retired in April 2019 and the Chief prosecutor of DIICOT had resigned in October 2019.

26 The selection criteria, the name of candidates and procedures were published on the website of the Ministry of Justice, interviews were streamed. The chief prosecutor of the SIIJ is appointed through a different procedure managed by the Superior Council of Magistracy. Despite several attempts, the Superior Council of Magistracy could not finalise a procedure for nominating a chief prosecutor, deepening the internal divisions on the existence of the Section.

27 Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2019) 499 final. The CVM reports recommended to relaunch a process to appoint a Chief prosecutor and to respect negative opinions from the Superior Council on appointments or dismissals of prosecutors at managerial posts, until such time as a new legislative framework is in place in accordance with recommendation 1 from January 2017.

chief prosecutor[28]. The ECtHR held that the former chief prosecutor had not been able to effectively challenge in court the reasons for her removal from the position[29]. In that context, the ECtHR drew attention to the growing importance attached to the intervention of an authority independent of the executive and the legislature in respect of decisions affecting the appointment and dismissal of prosecutors[30]. With regard to the freedom of expression, the ECtHR underlined also that the dismissal could have a chilling effect, discouraging other prosecutors and judges from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary[31]. Regarding the participation of magistrates in the public debate, the CVM reports had expressed concern as regards the practice of the Judicial Inspection[32] of initiating disciplinary proceedings against judges and prosecutors on the basis of their public statements on the judicial reforms[33].

**Amendments to the law on the Statute of Judges and Prosecutors changed the rules governing the civil liability of judges**[34]. The new rules entitle the Ministry of Finance to assess whether a judicial error was committed in bad faith or by gross negligence and, subsequently, to initiate recovery actions against judges for the damage caused by their judgments. The new regime provides that, to establish a judge's civil liability, first, a court must establish that the judgment concerned contained a judicial error and that the harmed party should receive compensation, without the judge having rendered the contested decision being involved in this first judicial procedure. Then, the Ministry of Finance can start a recovery action in court against the judge, based on its own assessment of the fact that the judicial error resulted from the exercise of duties and prerogatives in bad faith or by gross negligence[35]. Although the Ministry has the obligation to consult the Judicial Inspection on this matter, the latter's opinion is not binding. The Council of Europe recognised that, although it may be legitimate to provide for personal liability of a judge for damage caused by a ruling rendered in bad faith or gross negligence, such possibility must be circumscribed with clear safeguards[36] in order to protect judges against abuse and prevent the executive from exerting undue pressure on judges. Concerns have been raised as regards the power assigned to the Ministry of Finance in this context[37]. The Council of Europe noted the

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[28] The dismissal took place in 2018 on a proposal of the Minister of Justice. As the Prosecutors' Section of the Council of Magistracy refused to endorse the proposal, the President of the Republic refused to sign the dismissal decree, which prompted the Prime Minister to complain to the Constitutional Court, which ultimately ordered the President to sign the decree.

[29] Judgment of the European Court of Human Rights of 5 May 2020, *Kövesi v. Romania*, 3594/19, para 157.

[30] Judgment of the European Court of Human Rights of 5 May 2020, *Kövesi v. Romania*, 3594/19, para 156. See also CCPE (2014), Opinion No.9 of the Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe on European norms and principles concerning prosecutors, para XII and explanatory note no. 73.

[31] Judgment of the European Court of Human Rights of 5 May 2020, *Kövesi v. Romania*, 3594/19, para 209.

[32] The Judicial Inspection is a statutory body within the judiciary, functioning as an autonomous structure within the Superior Council of Magistracy, competent to order and carry out disciplinary investigations in view of the exercise of disciplinary action against magistrates.

[33] CVM reports 2018 and 2019. Concerns pointed in particular to the role of the management of the Judicial Inspection during that period. The re-appointment of the same Chief Inspector in May 2019 did not assuage the concerns.

[34] Art. 1 (151) of Law No. 242/2018 amending Art. 96 of Law No. 303/2004.

[35] Art. 96(8) of Law No. 303/2004.

[36] Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 66.

[37] Notably, Venice Commission Opinion (CDL-AD(2018)017), GRECO Ad hoc Report on Romania (Rule 34) AdHocRep(2018)2), CCJE (Opinion of the CCJE Bureau following a request by the Romanian Judges Forum Association as regards the situation on the independence of the judiciary in Romania) and CCPE

potential chilling effect that this new regime could have on judges and prosecutors, especially in conjunction with the creation of the new Section for the Investigation of Offences in the Judiciary[38]. A request for a preliminary ruling regarding the new regime of civil liability of magistrates is currently pending before the Court of Justice[39].

## Quality

**The deficit of human resources in the justice system has increased.** In December 2019, over 12% of the judges' positions[40] and almost 20% of the prosecutors' positions were vacant[41]. There are concerns that the judiciary may become increasingly understaffed once the new early retirement scheme for senior judges[42] come into force[43]. While the entry into force of the early retirement scheme has been delayed[44], this is a temporary solution, which does not fully address the concerns[45]. Moreover, lower courts are also likely to be affected by staff shortages, as new provisions extended the period of training and internship for aspiring judges[46], the COVID-19 pandemic delayed new recruitment procedures and no human resources strategies have been put forward by the Superior Council of Magistracy. Furthermore, the Constitutional Court ruled that the provision entrusting the Superior Council of Magistracy with the task of approving the regulation on the organisation and conduct of the competition for admission to the judiciary is unconstitutional[47], which may lead to further delays in new recruitments[48].

**The creation of the Strategic Judicial Management did not produce the expected results.** In 2017, the Strategic Judicial Management was set up with the aim of addressing major strategic questions for the judicial system, bringing together the main institutions with

(Opinion of the CCPE Bureau following a request by the Romanian Movement for Defending the Status of Prosecutors as regards the situation on the independence of prosecutors in Romania).

38 Venice Commission Opinion (CDL-AD(2018)017), paras 117 and 164.

39 See the Opinion delivered on 23 September 2020 by Advocate General Bobek on case 397/19.

40 Out of the total of 5068 positions of judge, 4415 positions were occupied and 653 vacant.

41 Out of the total of 3029 positions of prosecutor, 2492 positions were occupied and 587 vacant.

42 The 2018 amendments to Law No. 303/2004.

43 According to the amendment, magistrates would be able to retire after 20 years of service without any condition of age, with pensions which could amount to 75 % of the last gross salary, constituting an incentive for judges and prosecutors to retire. GRECO mentions estimates that 1.500 to 2.000 magistrates would be in a position to retire under this scheme.

44 Pursuant to Law No. 239/2019, of 19 December 2019, the entry into force of the amendments to Art. 82(3) of Law No. 303/2004 was postponed until 1 January 2022.

45 In particular, the Venice Commission recommended to Romania to reconsider the early retirement scheme, to conduct an impact assessment, and, if no particularly convincing arguments for this scheme are found, to replace the early retirement with other appropriate incentives and benefits for serving magistrates. Venice Commission Opinion (CDL-AD(2018)017-e), para 155.

46 The initial and practical training of new recruits is increased to six years altogether (instead of four under the current rules). Contribution from MEDEL for the 2020 Rule of Law Report.

47 Decision no. 121/2020 regarding the exception of unconstitutionality of the provisions of art. 106 lit. a) and d) of Law no. 303/2004 on the status of judges and prosecutors, of 9 June 2020. Following this decision, on 22 June, the Ministry of Justice submitted to public debate the draft law on the admission to the National Institute of Magistracy. http://www.just.ro/ministerul-justitiei-supune-dezbaterii-publice-proiectul-de-lege-privind-concursul-de-admitere-la-institutul-national-al-magistraturii/. In September 2020, the Ministry of Justice announced the completion of the public consultation phase, and the preparation of the adoption process by the Government and subsequent transmission to Parliament.

48 Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 35: '[a] sufficient number of judges and appropriately qualified support staff should be allocated to the courts'.

responsibility for the functioning of the judicial system[49]. It was also responsible for ensuring the implementation of the Action Plan of the Strategy for the Development of the Judiciary 2015-2020[50], which would become the main motor for judicial reform, internalising the reform momentum from the CVM. The action plan included solutions to the issues of shortages of court clerks, excessive workload and delays in motivation of decisions. However, following its establishment, the Strategic Judicial Management has not been operational as planned and the action plan remains largely unimplemented.

**Romania has an overall good level of digitalisation of justice and efforts continue to develop it further.** At present, it is possible to transmit summons and to monitor the stages of proceedings online and to submit a case by electronic means, in most courts[51]. However, only some judgments are accessible online[52]. There are ongoing efforts to improve the case management system, which will be used to identify the number of definitive judgments where public institutions are debtors or creditors. Currently, an analysis is being developed to identify the steps necessary for a modernisation of the system, including features such as electronic accessibility of procedural documents, electronic archiving and electronic signature. The analysis should be concluded by the end of 2020.

**Efficiency**

**Overall, the justice system handles its caseload efficiently.** In 2018, the length of proceedings at first instance courts in civil and commercial cases decreased slightly in comparison to 2017[53], while it remained almost unchanged for administrative cases[54]. The clearance rate increased and is now above 100%[55], which means that the judicial system is able to resolve more cases than those that are lodged. In general, the length of proceedings regarding specific areas of EU law are comparatively low[56], except for money laundering cases[57].

**Legislative amendments affecting human resources may hinder Romania's efforts to reduce the length of judicial proceedings.** Several legislative changes from 2018 could put the efforts to reduce excessive length of civil and criminal cases at risk[58]. The provisions of the civil procedure code on council chamber proceedings, aiming at improving the efficiency of the handling of the cases have been eliminated[59]. However, the main concern stems from the amendments of the Justice laws which risk contributing to increasing the deficit in human

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[49] It is composed of the Minister of Justice, the President of the Superior Council of Magistracy, the President of the High Court of Cassation and Justice and the Prosecutor-General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

[50] Action Plan approved by Government Decision 282 of 2016.

[51] Figure 27, 2020 EU Justice Scoreboard.

[52] Figure 28, 2020 EU Justice Scoreboard.

[53] Figure 6, 2020 EU Justice Scoreboard.

[54] Figure 8, 2020 EU Justice Scoreboard.

[55] Figure 10, 2020 EU Justice Scoreboard.

[56] Figures 16, 17, 18, 19 and 20, 2020 EU Justice Scoreboard.

[57] Figure 21, 2020 EU Justice Scoreboard.

[58] Romania has been found in violation of Art. 6(1) of the European Convention on Human Rights on account of the excessive length of civil or criminal proceedings in a significant number of cases, and subsequently brought structural solutions to this issue. *E. g.*, Judgment of the European Court of Human Rights of 26 November 2013,Vlad v. Romania (application No. 40756/06, ) is a leading case for 30 repetitive cases regarding excessive length of civil and criminal proceedings and lack of an effective remedy, which remains under enhanced supervision of the Committee of Ministers of the Council of Europe.

[59] The entry into force of the respective provision of the Civil Procedure Code was delayed several times and eventually abrogated.

resources (see above), but also require additional judges on certain panels[60] or higher seniority in the specialised prosecution offices. Stakeholders also voice concerns as regards the efficiency of the justice system[61]. In response to these concerns, the Superior Council of Magistracy has launched two projects aimed at identifying tools needed for developing the judicial system, and addressing the causes of the overload of courts[62].

## II. ANTI-CORRUPTION FRAMEWORK

Romania has the legislative and institutional anti-corruption framework broadly in place. The implementation of the current National Anti-corruption Strategy, covering the period 2016-2020, is ongoing. The coordination of its implementation is ensured by the Ministry of Justice. The specialised anti-corruption prosecution, the National Anti-corruption Directorate (DNA) has the competence to investigate medium and high-level corruption cases and the Prosecutor General's office investigates all other corruption cases. A specialised anti-corruption directorate exists 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) is responsible for the monitoring and verification of assets, conflicts of interest and incompatibilities, including of all elected officials. The National Agency for the Management of Seized Assets (ANABI) ensures the management of seized and confiscated criminal assets.

**In the Transparency International Corruption Perceptions Index, Romania scored 44/100 and ranks 19th in the European Union and 70th globally**[63]. 83% of the Romanian respondents consider corruption widespread in their country (EU average 71%) and 64% of people feel personally affected by corruption in their daily lives (EU average 26%)[64]. As regards businesses, 97% of companies consider corruption to be widespread (EU average 63%) and 88% of companies consider that corruption is a problem when doing business (EU average 37%). At the same time, 58% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%) while 37% of companies consider that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%)[65].

**Romania has a comprehensive national anti-corruption strategic framework based on the large participation of national and local institutional actors.** The current National Anti-corruption Strategy (NAS), covering the period 2016-2020, provides for the voluntary involvement of a very large part of the public administration, including local government, and State-owned enterprises, as well as law enforcement, the prosecution service, the courts, and civil society. The prevention tools are based on corruption prevention plans developed by each participating institution through self-evaluation and risk assessments, and commonly developed methodologies, as well as peer review evaluations. The effectiveness of the strategy relies heavily on political commitment and its implementation has been rather subdued in the period 2017-2019, despite deadlines set by the Government in August 2016.

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60 The entry into force of these provisions related to the 3 judges' composition of panels (instead of 2 judges) has been delayed to 2021 (Law no. 239/2019 approved GEO no. 92/2018 for the amendment and completion of some normative acts in the field of justice).

61 Contribution from MEDEL to the online stakeholder consultation for the 2020 Rule of Law Report.

62 Contribution from the Superior Council of Magistracy to the online stakeholder consultation for the 2020 Rule of Law Report.

63 Transparency International (2020), 2019 Corruption Perceptions Index.

64 Special Eurobarometer 502 (2020).

65 Flash Eurobarometer 482 (2019). Businesses' attitudes towards corruption in the EU.

In 2019, the commitment of the current Government to address corruption has translated into a renewed impetus to implement the preventive national anti-corruption strategy. The level of implementation of the strategy has increased and the preventive actions are being followed up both at national and at local level. The Ministry of Justice is now also evaluating the strategy in view of designing the next one[66].

**The effectiveness of the investigation and sanctioning of corruption cases has been impacted by pressure exercised on the legal and institutional framework.** In the period 2013-2017, the track record of the institutions involved in investigating, prosecuting and ruling on high-level and medium level corruption has been strong and consistently maintained. In 2018 and 2019, whereas the institutions continued to investigate and sanction high-level corruption offences, the CVM reports noted a pattern of pressure on the key anti-corruption institutions, and growing concerns that the continued pressure had a detrimental impact. Both the DNA and the Prosecutor General[67] reported a backtracking of results in the fight against corruption for 2019. *Ad interim* leadership for a prolonged period impacted their capacity to deal with the constant pressure and the repeated challenges. Their institutional capacity has been further affected by detrimental provisions in the amended Justice laws on the human resources[68]. The creation of the Section to Investigate crimes within the Judiciary (SIIJ) also impacted the results of the fight against high-level corruption[69]. In addition, a number of Constitutional Court decisions have had a particular impact on high-level corruption cases notably decisions on the practices for establishing the three and five-judge criminal panels in the High Court of Cassation and Justice[70], on technical supervision methods (wiretapping)[71] and on the corruption related crime of abuse in office[72]. According to the DNA, the combined implications of these decisions are particularly severe, leading to the dropping of investigations and annulment of cases in court, annulment of final court

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66 Next to the internal evaluation, the National Anti-Corruption Strategy is also evaluated by an external contractor.

67 Information received in the context of the country visit.

68 Such as abrupt increases in seniority requirements for prosecutors or new rules for delegations. The impact of staff shortage was also increased as, at the same time, the prosecution services were forced to develop in house capacity for surveillance measures and wiretapping.

69 For cases that involve a judge or a prosecutor, the Section retains powers of criminal prosecution for all other persons potentially involved. A number of complex high-level corruption cases being investigated by the DNA and involving investigations of elected public officials were thus transferred to the new Section, while the section was understaffed and lacked the expertise. Since it became operational in October 2018, the Section has issued a negligible number of indictments. Furthermore, the Section withdrew appeals in several high-level corruption cases previously lodged by the DNA. See also CVM Progress report 2019.

70 Constitutional Court of Romania, Decisions no. 685/2018 and no. 417/2019. The Constitutional Court ruled that the practice of appointing *de jure members* – one by panel (the president or the vice-president of the High Court) – in the composition of the five-judge panels of the High Court of Cassation and Justice (HCCJ) was contrary to the rule that required that all members be drawn by lot. It also ruled that, contrary to the applicable legislation, the HCCJ had failed to establish specialist three-judge panels to deal at first instance with corruption offences. The Constitutional Court's rulings imply the possibility to reopen appeal proceedings or to have cases re-examined at first instance, under certain conditions mentioned in the respective decisions of the Constitutional Court. Several requests for a preliminary ruling regarding the legal effects of these rulings of the Constitutional Court and their compatibility with EU law are currently pending before the Court of Justice (joined cases C-357/19 and C-547/19, case C-379/19 and joined cases C-811/19 and C-840/19).

71 A number of decisions were ruled in the period 2016-2020. Constitutional Court rulings meant that for any future cases the prosecution should no longer use the technical and human capacity of Intelligence Services to collect evidence to be used in criminal procedures and should establish its own capability.

72 Constitutional Court of Romania, Decision of 2016. Uncertainty in the definition of the crime has resulted in investigations being dropped or cases annulled in court. There is a need for the legislator to clarify the definition in the Criminal Code, as is the case for a number of Constitutional Court decisions.

decisions and the reopening of trials on the merits of the cases concerned, with a risk of potentially enabling the evasion of criminal responsibility for corruption offences. In the first months of 2020, the situation appears to have improved with a reduction in political pressure and the appointments of stable management teams. Nevertheless, the uncertainty about ongoing investigations and trials in high-level corruption cases remains. During the 2015-2019 period, Romania had the second highest number of OLAF investigations (40) closed with a financial recommendation among Member States[73].

**Continued uncertainty about amendments of the Criminal Code and Criminal Procedure Code puts the fight against corruption at risk.** A number of amendments to the Criminal Code and Criminal Procedure Code are long overdue[74]. These amendments should in particular find legal and policy solutions to a number of far-reaching decisions of the Constitutional Court since 2014, which have annulled provisions of the codes and impacted in particular the fight against corruption and organised crime[75]. However, in April 2019, amendments to the Criminal Code, the Criminal Procedure Code and the special law on corruption were adopted by Parliament through urgency procedures with potential negative consequences for the fight against crime in general and the fight against corruption in particular. These amendments, which follow an initial aborted attempt of weakening the criminal codes in 2018[76], received widespread criticism and were ruled unconstitutional in July 2019[77]. Hence, they did not enter into force. The task to bring the Criminal Code and Criminal Procedure Code in line with all decisions of the Constitutional Court remains pending. The legal uncertainty and the risks to the sustainability of the fight against corruption therefore remain.

**Other obstacles to effective prosecution continue.** One specific issue concerns the accountability of Parliament in its decisions on requests from the prosecution to authorise preventive measures such as searches or arrest and on requests to authorise the investigation of a Member of Parliament when he/she is also or has been a Minister. Responding to CVM and GRECO recommendations[78], the Chamber of Deputies amended its rule of procedure in

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[73] Financial recommendations are addressed by OLAF to the EU institutions or national authorities providing or managing EU funds to seek the recovery of the defrauded EU funds to the EU budget. OLAF's financial recommendations in the two main areas of shared management (European Structural and Investment Funds and Agriculture) from 2015-2019 amounted to 0.35% of the total payments to Romania for the years 2015-2019 (with the EU-27 average at 0.36%). The financial impact of the irregularities detected by Romania itself was however higher at 2.92% (The OLAF Report 2019, Table 6).

[74] CVM reports had consistently recommended to improve the stability of the codes, with amendments limited to where specifically required by Constitutional Court decisions and transposition of EU Directives. In the 2017 CVM report, the Commission recommended that the reform of the criminal code and criminal procedure code should be concluded with Parliament taking forward the amendments presented by the Government.

[75] See previous paragraph. A number of draft laws and Emergency Ordinances have been adopted by the successive governments but most are still pending in Parliament.

[76] A first aborted attempt to weaken the criminal codes took place in 2018. The legislative changes of 24 April 2018 to the Criminal Code and to the Code of Criminal Procedure through urgency procedure were heavily criticised. In October 2018 the Constitutional Court ruled that many provisions were unconstitutional. As a result, the November 2018 CVM report (COM(2018)851) issued an additional recommendation to review the revision of the two codes taking fully into account the need for compatibility with EU law and international anti-corruption instruments, as well as the recommendations under the CVM and the Venice Commission Opinion (CDL-AD(2018)021).

[77] Constitutional Court of Romania, Decision 466 of 29 July 2019.

[78] CVM Recommendation 10:" Adopt objective criteria for deciding on and motivating lifting of immunity of Members of Parliament to help ensure that immunity is not used to avoid investigation and prosecution of corruption crimes. The government could also consider modifying the law to limit immunity of ministers to

2019 making reference to criteria set out by the Venice Commission. The new procedure has not been tested yet, and the Senate does not have a similar procedure. Two requests from the prosecution in 2019 to start investigating two former ministers and members of Parliament were rejected.

**The National Integrity Agency (ANI) continues to deliver, however its effectiveness is under stress, due to weakening of its legislative framework and decreasing resources.** ANI is responsible for examining administrative conflicts of interest, incompatibilities and unjustified wealth and has developed a strong track-record. Sanctioning incompatibilities and conflicts of interest are an important element in the prevention of corruption. ANI has also developed strong prevention tools on administrative conflicts of interest, in particular in relation to public procurement, and overall awareness campaigns, including relating to national and local elections. CVM reports have highlighted continued challenges to the legal framework for integrity and the need for stability and clarity and a robust and stable framework[79]. Several legislative changes that came into effect in 2019 weakened the regime of incompatibilities and conflicts of interest[80]. As a result ANI had to close an important number of ongoing investigations and further cases have been annulled in court. ANI also reports an increase in challenges to the application of sanctions following final court decisions for local elected officials, with the result that the sanctions for incompatibility or conflicts of interest are not applied, with consequences on the application of integrity rules for elections. The Agency has proposed to work with the Ministry of Justice and stakeholders to review the integrity laws and design a coherent and consolidated legal framework. Although the workload of the Agency increases significantly in election times, its budget has been reduced.

**Codes of ethics and conduct were introduced for members of Parliament[81] and the Government[82] in recent years**, in addition to the existing ones for the civil service. However, the effectiveness of the mechanism to enforce the code of conduct of parliamentarians remains to be proven, as there are only a few cases of members of Parliament having been disciplined[83].

**The National Agency for the Management of Seized Assets (ANABI) is fully operational**. The mission of ANABI is to ensure an effective execution rate of the confiscation orders issued in criminal matters, through an efficient management of seized assets that are distributed to the Agency by prosecutors and judges. It has progressed on the development of a national integrated system to monitor the measures taken by the authorities at each step of

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time in office. These steps could be assisted by the Venice Commission and GRECO. The Parliament should set up a system to report regularly on decisions taken by its Chambers on requests for lifting immunities and could organise a public debate so that the Superior Council of Magistracy and civil society can respond"; GRECO – Fourth Evaluation round.

79 CVM reports regretted the absence of a sustainable integrity framework (see for example COM(2017) 44).

80 One particular concern is related to a provision setting a prescription deadline of three years from the deeds that determine the state of conflict of interest or incompatibility. As a result, ANI had to close about 200 investigations, and it has further lead to cases being annulled in court, with the result that it is now unclear whether a sanction can still be applied after a final court decision if this (rather than the ANI report itself) comes after the end of the three year period.

81 Parliament of Romania, Decision no° 77/2017 on the Code of Conduct of deputies and senators.

82 Code of Conduct for members of the Government: http://gov.ro/ro/guvernul/sedinte-guvern/cod-de-conduita-al-membrilor-guvernului.

83 GRECO – Fourth Evaluation round. The 2019 CVM report further notes that the lack of explicit provisions on the respect of the independence of the judiciary does not make it clear whether the codes of conduct are able to act as effective tools of accountability.

the asset recovery process. In December 2019, over 30 non-governmental organisations requested the Government to re-instate the provisions of ANABI's mandate on 'social reuse'[84], which would have ensured that part of the confiscated proceeds of crime are used to finance crime prevention projects visible in society[85].

**Romania has a dedicated law on whistleblowing protection since 2004.** Lobbying is regulated by soft law, in particular through the setting up of a voluntary transparency register. 'Revolving doors' aspects are regulated in specific legal provisions[86]. Legislative provisions ensure protection from public authorities, public institutions and other entities for staff reporting violations of the law[87]. Many institutions have adopted operational procedures aimed at implementing the whistleblowing legislation and other integrity instruments. However, the private sector is not covered by the existing legislation.

## III. MEDIA PLURALISM

The Constitution enshrines the right to freedom of expression as well as the right of access to any information of public interest. The Audio-visual Law determines the mission and composition of the media regulator and requires it to ensure the transparency of the organisation, functioning and financing of the mass media in the audio-visual sector[88].

**The regulatory authority in the field of audio-visual media is the National Audio-visual Council (CNA).** Its mission is established by the Audio-visual Law[89]. CNA is an autonomous public authority under parliamentary control and the guarantor of the public interest in the field of audio-visual communication[90]. The decisions and opinions of the CNA are publically available on its website[91]. The Council is composed of 11 members appointed by the Parliament - by the majority of the present senators and deputies, for a 6 years mandate - on the basis of the nomination by the Senate (3 members); Chamber of Deputies (3 members); President of Romania (2 members); and the Government (3 members). The Media Pluralism Monitor (MPM 2020) assesses the independence and effectiveness of the media authority at low risk. It notes, however, the limited expertise of some of the appointed Members and a lack of consensus about norms[92]. It appears from the country visit that the budget allocated by the State to finance CNA's activities has been hit by the Covid-19 crisis, and the authority is understaffed, notably in view of the additional tasks linked to the digital environment[93].

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84 In 2018, the Government adopted an emergency ordinance abolishing the social reuse. Art. 60 of GEO no. 114/2018 repealed art. 37 of the Law no. 318/2015.

85 Centre for Legal Resources: http://www.crj.ro/apel-peste-30-de-onguri-solicita-guvernului-romaniei-inlaturarea-efectelor-distructive-ale-oug-114-2018-in-privinta-reutilizarii-sociale-a-sumelor-confiscate-din-infractiuni/.

86 Law No. 161/2003; Emergency Ordinance of the Government no. 66/2011 and the Law no. 98/2016.

87 https://www.whistleblowing.it/Romanian%20Law%20571-2004%20-%20whistleblowingEN.pdf.

88 Reporters without Borders (2020), World Press Freedom Index: Romania is at the 48th position worldwide: https://rsf.org/en/ranking.

89 Law 504/2002.

90 Input from Romania for the 2020 Rule of Law Report.

91 National Audio-visual Council of Romania website: http://www.cna.ro/-Informa-ii-privind-licen-ele-.html.

92 2020 Media Pluralism Monitor.

93 In this context, it should be recalled that the revised Audio-visual Media Services Directive (AVMSD) sets out specific guarantees for the independence and effectiveness of national media regulators. The Romanian authorities have prepared a first draft of the law transposing the revised AVMSD.

**In terms of self-regulation in the press sector, professional norms are established at the level of the newsroom or publisher.** MPM 2020 reports that the lack of specific safeguards for editorial independence and professional norms, either through legislation or self-regulation, is a cause for concern.

**Transparency of media ownership appears to be incomplete.** The Audio-visual Law[94] provides that the Council shall be required to ensure the transparency of the organisation, functioning and financing of the mass media in audio-visual sector. Rules governing transparency of media ownership are also included in the company law[95].

**State advertising is reportedly used as a method for state interference.** The MPM 2020 reports a high risk to media pluralism in this regard. Stakeholders report that there are gaps in the legislation in terms of disclosure requirements, which is seen as a factor contributing to the lack of transparency and to potential for misuse.[96] Also, the distribution of state advertising funds in a discretionary manner is a tool used by state authorities to interfere with the media, notably at the local level[97].

**While freedom of expression is recognised by the Constitution[98], and access to the journalistic profession is unrestricted, some reported issues stem from the implementation of the legal framework.** The MPM 2020 reports some issues related to the protection of freedom of expression, considering that those issues tend to arise from implementation problems rather than the legislative framework itself. The legislation meant to protect people's dignity and reputation requires those interests to be balanced against the freedom of expression. MPM 2020 reports inconsistencies in the interpretation of the law and the gravity of the sanctions applied against journalists in that context[99]. However, 'libel' and 'insult' have been decriminalised when the Criminal Code was revised back in 2014.

**The enforcement of the constitutional right of access to any information of public interest faces obstacles.** MPM 2020 reports issues with the enforcement of that right when it comes to access to documents held by public bodies. Stakeholders report that replies are often coming late[100] and/or incomplete. Nevertheless, MPM 2020 also reports that in all contentious cases concerning issues like journalistic access and use of documents or protection of sources, decisions are adjudicated in court following the ECHR case law[101]. Several stakeholders[102] referred to the alleged abuses of the data protection legislation with a view to restrict media freedom. Derogation for the processing of personal data for journalistic purposes are limited in the Romanian Data Protection Law[103]. MPM 2020 considered that the

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94 The Audio-visual Law 504/2002 (*Legea audiovizualului*).
95 Law 31/1990.
96 Contribution from the European Federation of Journalists for the 2020 Rule of Law Report.
97 Findings of the 2020 Media Pluralism Monitor, as confirmed and clarified during the country visit.
98 Constitution of Romania, Art. 30.
99 Judgment of the European Court of Human Rights of 28 July 2020, *Monica Macovei v. Romania* (application no. 53028/14) pointing to a violation of the right to freedom of expression and holding that the remedy - damages and the order to pay for the final judgment to be published in newspapers - had a chilling effect on the applicant's freedom of expression.
100 The time period to reply has been extended from 30 to 60 days. See https://www.osce.org/representative-on-freedom-of-media/449380. This extension is however temporary, as was established through the Presidential Decree No. 195/2020, Art. 56, annex 1, its application being limited to the state of emergency period.
101 Statement from the OSCE representative: https://www.osce.org/representative-on-freedom-of-media/449380.
102 Information received in the context of the country visit to Romania.
103 Law no. 190/2018, Art. 7.

'national version of the GDPR' did not feature adequate protection for journalistic work and reported a case where the Romanian Data Protection Authority (DPA) allegedly sought the disclosure by a news outlet of its sources.

**Threats to Romanian journalists have been reported due to their professional activities**. In 2019 and 2020, the Council of Europe Platform to promote the protection of journalism and safety of journalists published four alerts concerning Romania: two alerts related to abusive defamation lawsuits, one to a death threat targeting an investigative journalist[104], and one to a suspension of transmission of a TV station[105].

## 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[106]. The Constitutional Court is the guarantor for the supremacy of the Constitution and is responsible for the review of laws[107].

**The process for preparing and enacting laws is well regulated, including an extended institutional set-up of checks and balances.** According to the Constitution, Parliament is the legislative authority, while the Government has only delegated powers in the legislative process. The ordinary legislative process foresees that the draft legislation should be endorsed by the public authorities with responsibilities in its application and subject to public consultation[108]. Moreover, the Legislative Council, an advisory expert body of Parliament, provides an opinion on all new draft legislation, ensures the systematic unification and co-ordination of the whole body of laws, and keeps the official record of the legislation of Romania[109]. Where the legislative initiative is exercised by the Government, the draft law must be submitted to Parliament, where it is discussed and adopted by both chambers. The President of Romania promulgates the law, but has the prerogative to return the law to Parliament, once, for reconsideration[110]. An *ex ante* constitutionality check can be requested by the president of Chamber of Deputies, the President of the Senate, the Government, a group of Members of Parliament, the High Court of Cassation and Justice, the President of Romania or the Ombudsman.

**The ordinary legislative process is often side-lined by the widespread use of Government Emergency Ordinances (GEOs)[111].** The Constitution provides that the adoption of GEOs is only possible in exceptional and motivated cases of urgency, and not for certain categories of laws such as constitutional laws or laws affecting fundamental rights. Nonetheless, successive governments have used GEOs to legislate in many areas, including

[104] The investigation of the case is on-going.
[105] Council of Europe, Platform to promote the protection of journalism and safety of journalists. Also published on the Mapping Media Freedom platform.
[106] Constitution of Romania, Art. 74. 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.
[107] Constitution of Romania, Art. 142.
[108] The initiator of a legal act has the obligation to publish the draft law at least 30 days before being submitted for analysis, approval and adoption.
[109] Constitution of Romania, Art. 79.
[110] Constitution of Romania, Art. 77(2).
[111] GEOs have the force of law as soon as they are published in the Official Journal. While they have to be eventually confirmed as laws by Parliament, there is no deadline.

in justice and electoral matters and in areas affecting fundamental rights, raising concerns regarding the quality of legislation, legal certainty and the respect for the separation of powers[112]. In contrast to the ordinary legislative procedure, there is no obligation of consultation and the institutional checks cannot be exercised[113]. While the Ombudsman (‘*Avocatul Poporului*’) may challenge the use of the GEOs before the Constitutional Court, this prerogative has seldom been used. In a consultative referendum in May 2019 organised following the initiative of the President of the Republic[114], a majority of citizens supported banning the adoption of GEOs in the area of justice, as well as extending the right to challenge ordinances directly at the Constitutional Court also to other authorities than the Ombudsman.

**A state of emergency was declared in the context of the COVID-19 pandemic.** The State of emergency was declared by the President of the Republic on 16 March, with the consent of Parliament[115]. In this context, Romania notified the Council of Europe a derogation from the obligations under the European Convention on Human Rights[116]. Following a request from the Ombudsman in relation to fines that could be applied, among others, for not respecting quarantine rules[117], the Constitutional Court found that contested provisions were unconstitutional, given that, as they restricted or affected fundamental rights and freedoms of the citizens or fundamental institutions of the State, they had to be adopted through a law, as a formal act of Parliament, and not through a GEO[118].

**Legislative amendments many times lack predictability and quality, and raise concerns with regard to the public interest.** Institutional stakeholders report that key legislation is changed too often, while the objective of the amendments is often unclear and the resulting laws can be contradictory[119]. The rapid changes of legislation through GEOs and the lack of legal certainty are also detrimental for the investments environment[120]. In various policy fields, numerous legislative amendments of the same laws, including contradictory changes, have been initiated and adopted by Parliament in the last three years. During the legislative

[112] CVM report January 2017; CVM report November 2017; CVM report November 2018; CVM report October 2019; Venice Commission Opinion (CDL-AD(2018)021); Venice Commission Opinion (CDL-AD(2019)014), GRECO (2018), Ad-hoc Report on Romania and GRECO (2016) Fourth Evaluation Round – Evaluation Report.

[113] Only non-binding opinions can be delivered (e.g., the opinion of the Legislative Council)

[114] The questions submitted in the referendum were the following: ‘1. Do you agree with the prohibition on amnesties and pardons for corruption offences?; 2. Do you agree with the prohibition of the approval by the Government of emergency ordinances in the field of offences, punishments and judicial organisation and with the extension of the right to directly appeal against the ordinances to the Constitutional Court?’.

[115] Decree on the establishment of the emergency situation on the territory of Romania, of 16 March 2020. The state of emergency was initially declared for a period of 30 days, and further extended for a new period of 30 days. Following rulings from the Constitutional Court questioning the legal basis of the state of emergency and the role of the Parliament in the decision, the Parliament adopted Law 55/2020 establishing the civil rights that can be restricted during a pandemic. After the ending of the second period of the state of emergency, Romania is in state of danger since 15 May.

[116] Permanent Representation of Romania to the Council of Europe (2020), Note verbale JJ9014C, of 18 March 2020. Romania withdrew the derogation on 15 May 2020 (Permanent Representation of Romania to the Council of Europe (2020), Note verbale JJ9051C, of 15 May 2020).

[117] The request referred to GEO No. 34/2020. The Ombudsman invoked the lack of clarity and predictability of the legal text, which did not contain a rigorous description of a misdemeanour and allowed sanctions to be established by military ordinances.

[118] Decision No. 152/2020, of 6 May 2020.

[119] Examples of institutional stakeholders voicing this concern cited in past CVM reports include the High Court of Cassation and Justice, DNA, and ANI.

[120] The lack of legal certainty has been also underlined in the context of the European Semester; European Semester Country Report 2020.

process, the Legislative Council often exercises its prerogative to highlight the contradictory nature of draft amendments, as well as the possible incompatibilities with the Constitution, but its opinions are only consultative. A large part of the legislative proposals adopted by Parliament are challenged to the Constitutional Court before their promulgation.

**Despite the framework in place, impact assessments and public consultations are not sufficiently used.** While draft normative acts are transmitted for analysis and approval to the public authorities concerned only after finalisation of the public consultation, this consultation procedure is seen as formal[121]. However, many local and central authorities do not publish the proposed legislation for public debate, and emergency or national security reasons are often invoked to restrict transparency[122].

**The Government has taken measures to improve transparency and accountability.** These measures taken at national and local levels aim at opening the administration through the adoption of open government principles and initiatives. The Government also made available a dedicated open data platform where a list of open data sets are publicly available[123]. In the Commission's Assessment framework for Public Administration and Governance, Romania scores very low as regards the quality of procurement data and transparency in public procurement[124].

**The Government committed to putting in place an Action Plan to address the issue of implementation of court decisions and application of jurisprudence of the courts by public administration**. After being found in violation of Article 6(1) of the European Convention on Human Rights for the failure or significant delay by the State or by legal entities under the responsibility of the state to abide by final domestic court decisions[125], Romania has to set up structural measures necessary to guarantee the execution of pecuniary and non-pecuniary rulings by the public administration. Romania is under enhanced supervision from the Council of Europe Committee of Ministers for the execution of this judgment[126]. On 3 April 2019, the Romanian Government approved a Memorandum on measures to ensure the execution of judgments against a public debtor, in accordance with the case law of the ECtHR regarding non-execution or execution with delay of the judgments handed down against a public debtor. This plan includes a mechanism to provide accurate statistics to enable future monitoring.

**Independent authorities play a role in safeguarding fundamental rights and the rule of law.** The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of European Network on National Human Rights Institutions[127], and has a promotional mandate and addresses a wide range of human rights in Romania. In 2020, a legislative procedure was initiated to clarify the mandate and attributions of RIHR, which grants it competence to issue opinions at the request of parliamentary committees on drafts or other

[121] Public administration characteristics and performance in EU28: Romania, 2018, p. 868.
[122] Public administration characteristics and performance in EU28: Romania, 2018, p. 872.
[123] Government data portal: http://data.gov.ro/.
[124] European Commission (2019), Assessment framework for Public Administration and Governance: 2.4 out of 10 points.
[125] Judgment of the European Court of Human Rights of 6 September 2005, *Săcăleanu group v. Romania* (Application No. 73970/01).
[126] Department for the Execution of Judgments of the European Court of Human Rights (2019), Decision CM/Del/Dec(2019)1340/H46-15.
[127] It had been previously accredited with C status, which is no longer a valid accreditation status. The Romanian Institute applied for accreditation in 2020.

issues regarding human rights which are examined in Parliament[128]. The Ombudsman[129] is mandated to defend individuals' rights and freedoms in their relationship with the public authorities. It is a public authority, autonomous and independent. Its prerogatives include referring laws and government ordinances, including Government Emergency Ordinances, to the Constitutional Court for *ex post* constitutional review[130].

**Romanian civil society is active in defending the rule of law, and has reacted to attempts to limit the activities of non-governmental organisations** Freedom of association is enshrined in the Constitution, and Government Ordinance 26/2000 provides for the rules governing the setting up associations and foundations[131]. This act creates the framework for facilitating the access of associations and foundations to private and public resources, as well as the partnership between the public authorities and the legal persons of private law without patrimonial purpose. The strong involvement of civil society in the anti-corruption efforts has been key to encourage reforms. Between 2017 and 2019, the civil society was active in criticising controversial reforms[132] and expressing its strong support for the rule of law. Stakeholders report that there have been several attempts to interfere in the activities of non-governmental organisations[133], but that the joint reaction of civil society has prevented them to materialise[134]. In particular, stakeholders expressed concern that the transposition into Romanian law of EU rules on combating money laundering and terrorist financing[135] could have an impact on non-governmental organisations, namely by requiring them to publish in the registry at the Ministry of Justice all the beneficiaries of their activities or all their donors, which civil society organisations have opposed[136].

[128] Contribution from the European Network on National Human Rights Institutions for the 2020 Rule of Law Report.

[129] The Ombudsman is not an ENNRHI member and is not accredited. The Ombudsman applied for accreditation in 2020.

[130] Art. 15(h) and (i), Law No. 35/1997, of March 13.

[131] 4173 federations, associations, foundations, unions and foreign legal persons were registered in the official Registry in the reference period (2019 – April 2020).

[132] See section I.

[133] The civil society space is considered to be narrowed (ratings given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed).

[134] Contribution from Funky Citizens for the 2020 Rule of Law Report.

[135] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

[136] Contribution from Funky Citizens for the 2020 Rule of Law Report; contribution from the European Network on National Human Rights Institutions for the 2020 Rule of Law Report.

**Annex I: List of sources in alphabetical order*.**

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*


CEPEJ (2018), European judicial systems: efficiency and quality of justice.

CIVICUS (2020), Romania country profile. https://monitor.civicus.org/country/romania/.

Consultative Council of European Judges (CCJE) (2019), Opinion of the CCJE Bureau following a request by the Romanian Judges Forum Association as regards the situation on the independence of the judiciary in Romania.

Consultative Council of European Prosecutors (CCPE) (2019), Opinion of the CCPE Bureau following a request by the Romanian Movement for Defending the Status of Prosecutors as regards the situation on the independence of prosecutors in Romania.

Council of Europe: Committee of Ministers (2010), Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

Council of Europe: Committee of Ministers (2016), Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors.

Court of Justice of the European Union, *Associação Sindical dos Juízes Portugueses*, case C-64/16., judgment of 27 February 2018.

Directorate-General for Communication (2016, 2017, 2018, 2019, 2020), Eurobarometer: perceived independence of the national justice system in the EU among the general public.

Eurocommerce (2020), Single Market Barriers Overview.

European Commission (2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020), The EU Justice Scoreboard.

European Commission (2017), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2017) 44 final.

European Commission (2017), Technical report Romania 2019 SWD(2017) 25 final.

European Commission (2017), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2017) 751 final.

European Commission (2017), Technical report Romania 2019 SWD(2017) 701 final.

European Commission (2018), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2018) 851 final.

European Commission (2018), Technical report Romania 2019 SWD(2018) 551 final.

European Commission (2020), The OLAF Report 2019.

European Commission (2019), Assessment framework for Public Administration and Governance.

European Commission (2019), Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2019) 499 final.

European Commission (2019), Technical report Romania 2019 (SWD (2019) 393 final.

European Commission (2020), European semester country report – Romania.

European Network of Councils for the Judiciary (2020), Independence and Accountability of the Judiciary – ENCJ Survey on the independence of judges, 2019.

European Network on National Human Rights Institutions (2020), Contribution from the European Network on National Human Rights Institutions for the 2020 Rule of law Report.

European Union Agency for Fundamental Rights (2020), Submission to the European Commission in the context of the preparation of the first annual Rule of Law Report.

Funky Citizens (2020), Contribution to the online stakeholder consultation for the 2020 Rule of Law Report.

GRECO (2014), Fourth evaluation round – evaluation report on corruption prevention in respect of members of parliament, judges and prosecutors – Romania.

GRECO (2019), Fourth evaluation round – evaluation report on corruption prevention in respect of members of parliament, judges and prosecutors – Compliance report Romania.

GRECO (2019), Follow-up Report to the Ad hoc Report on Romania (Rule 34).

MEDEL (2020), Contribution to the online stakeholder consultation for the 2020 Rule of Law Report.

National Union of Romanian Judges e a. (2020), Report on the State of the Justice System and of the Rule of Law in Romania.

Romanian Government (2020), Written contribution to the 2020 Rule of Law Report.

Superior Council of Magistracy (2020), Contribution to the online stakeholder consultation for the 2020 Rule of Law Report.

Venice Commission (2012), Opinion on the compatibility with constitutional principles and the rule of law of actions taken by the government and the parliament of Romania in respect of other state institutions and on the government emergency ordinance on amendment to the law No. 47/1992 regarding the organisation and functioning of the Constitutional Court and on the government emergency ordinance on amending and completing the law No. 3/200 regarding the organisation of a referendum of Romania, CDL-AD(2012)026.

Venice Commission (2019), Opinion on Emergency Ordinances No. 7 and GEO No. 12 Amending the Laws of Justice.

Virtual country visit to Romania in the context of the 2020 Rule of Law Report.

**Annex II: Country visit to Romania**

The Commission services held virtual meetings in June 2020 with:

- Association of Romanian Judges
- Association "Mişcarea pentru apărarea statutului procurorilor"
- Center for independent journalism
- Expertforum
- Freedom House
- Funky citizens
- High Court of Cassation and Justice
- Initiative for Justice Association
- Legal Commission of the Chamber of Deputies
- Legislative Council
- Media Association – Cluj
- Ministry of Justice
- National Agency for the Management of Seized Assets
- National Anti-corruption Directorate
- National Anti-corruption Strategy
- National Audiovisual Council
- National Integrity Agency
- National Union of the Romanian Judges
- Ombudsman
- OCCRP
- Prosecutor's Office attached to the High Court of Cassation and Justice
- Romanian Judges' Forum
- Secretariat General of the Government
- Superior Council for Magistracy

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

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU