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COMMISSION STAFF WORKING DOCUMENT

**2021 Rule of Law Report
Country Chapter on the rule of law situation in Romania**

Accompanying the

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

**2021 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 in these areas. The CVM continues in parallel to the rule of law mechanism, of which Romania is an integral part – as any other Member State until all benchmarks are satisfactorily met.

The Government is proposing reforms aimed at addressing the concerns raised by the amendments of the justice laws of 2017-2019, which drew criticism for their negative impact on independence, quality and efficiency of justice. In a preliminary ruling of 18 May 2021, the Court of Justice of the EU has examined several aspects of these reforms and confirmed those concerns, in particular in relation to the Section for the Investigation of Offences in the Judiciary. A draft law to dismantle this Section is being examined in Parliament. A legislative procedure has been initiated to amend the justice laws. Human resources shortages have been accentuated by the lack of recruitment of new magistrates, combined with the retirement of a significant number of magistrates. These shortages have added more pressure on magistrates, with implications for the quality and efficiency of justice.

The institutional framework to combat corruption is comprehensive, but its effectiveness will require sustained political will as committed by the Government. The adoption of a new Anti-corruption Strategy for 2021-2025 is a key priority. The effectiveness of the investigation and sanctioning of medium and high-level corruption has improved, confirming the previous track-record. The National Anti-Corruption Directorate has achieved better results, though the 2017-2019 amendments to the justice laws continue representing a major impediment to its good functioning. Amendments to the criminal codes remain necessary. In the absence of solid legislative and policy solutions to Constitutional Court decisions, there are increased obstacles and legal uncertainty for the fight against corruption. Increased institutional cooperation in the context of the elections in 2020 could mark a change of approach on the integrity for elected officials. The Agency for the Management of Seized Assets remains fully operational and the PREVENT electronic system on conflict of interests is effective.

Legal safeguards concerning media freedom and pluralism are in place. However, concerns remain in relation to the implementation and enforcement of the existing legislative framework, particularly regarding access to information. The National Audiovisual Council still lacks the resources to fully perform its tasks, and its activity has been affected by the expiry of several mandates of its members. Transparency of media ownership continues to be incomplete. Media can be prone to political pressure, especially when their revenues depend on state advertising. Lawsuits against investigative journalists for defamation continue to be reported. In the context of the COVID-19 pandemic, media received support through funds allocated for governmental media campaigns aimed at preventing the spread of COVID-19.

Concerns remain on the stability and predictability of legislation, as legislation is changed often and the resulting laws can be contradictory, and on a limited use of impact assessments. Following the May 2019 referendum, no significant Government Emergency Ordinances were adopted in the field of justice. In the context of the COVID-19 pandemic, a state of alert is in place, with increased parliamentary scrutiny. Following the ruling of the Court of Justice of the EU of 18 May 2021 on several aspects of the justice laws, the Constitutional Court gave a judgment on 8 June 2021, which raises serious concerns, as it questions the principle of primacy of EU law. The legislation on associations and foundations was amended in 2020 to lower the bureaucratic burden for NGOs.

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 corruption¹. In line with the decision setting up the mechanism and as underlined by the Council, the CVM ends when all the benchmarks applying to Romania are satisfactorily met. 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, if developments were not such as to reverse the course of progress. The November 2018 report concluded that developments had reversed or called into question the irreversibility of progress, and that eight additional recommendations had to be made. The Commission's latest CVM report, adopted in June 2021, assessed progress on the 12 recommendations of January 2017 and the eight additional recommendations of November 2018. That report concluded that since the last CVM report in 2019, the situation within the parameters of the CVM benchmarks has seen a clear positive trend, and welcomed the fact that a strong renewed impetus has been given in 2021 to reform and to repair the backtracking of the 2017-2019 period. The result is that there is progress across all the remaining CVM recommendations and many are on the path to being fulfilled if progress remains steady².

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 appeal³ 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 persons⁴, 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, 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 (SIJ)⁵. 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 Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2021) 370 final.

³ Courts of appeal judge at both first instance (more complex cases) and second instance, in appeals against decisions handed down by the lower courts.

⁴ 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.

⁵ 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 Magistracy⁶. Romania participates in the European Public Prosecutor's Office. 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 constitutionality check of laws and for settling conflicts of constitutional nature between public authorities.

Independence

The perception of judicial independence is average, having improved significantly as compared to previous years among the general public. The level of perceived judicial independence among the general public is now average (51%), up from 37% in 2020⁷. Among the companies, the level of perceived judicial independence is average (45%), a decrease of 8 percentage points as compared to 2020⁸. Whereas the reason most often invoked by the general public for the perceived lack of judicial independence remains interference or pressure from the Government and politicians, the first source of concern among companies is interference or pressure from economic or other specific interests⁹.

The 2017-2019 amendments of the justice laws are being reviewed. The Justice laws, as amended between 2017 and 2019, define the status of magistrates and organise the judicial system and the Superior Council of Magistracy¹⁰. These laws are central for the independence of magistrates and the good functioning of the judiciary. The amendments to the justice laws, still in force, had a serious impact on the independence, quality and efficiency of the justice system¹¹. Major issues were identified in particular 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 prosecutors¹². As mentioned in the 2020 Rule of Law Report and in the CVM 2021 Report¹³, the implementation of the amended laws soon confirmed concerns, and new issues have emerged in the intervening years. With the amended laws still in force, the concerns related to the adverse impact on the functioning of the justice system remain. In particular, the SIIJ is still operational, and serious concerns regarding its functioning

⁶ 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.

⁷ Figure 48, 2021 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%).

⁸ Figure 50, 2021 EU Justice Scoreboard.

⁹ Figures 49 and 51, 2021 EU Justice Scoreboard.

¹⁰ Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on judicial organization, and Law no. 317/2004 on the Superior Council of Magistracy.

¹¹ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2021) 370 final; the 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 3 noted that the prolonged implementation of the 2018-2019 justice laws creates increased and lasting uncertainty for the functioning of the justice system as a whole, and for individual magistrates with regard to their independence, statute and career in particular.

¹² 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 5. Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2021) 370 final.

¹³ *Ibid.*, p. 3.

remain¹⁴, although it has been less active over the last year. On 30 September 2020, the then Minister of Justice presented for a six-month public consultation draft texts for comprehensive amendment of the justice laws¹⁵. According to the Minister of Justice, the draft laws were elaborated following an analysis of the requirements of the European Commission's CVM Report, GRECO reports and Venice Commission's opinions. The stated objective of the draft laws is to remedy the negative effects of the 2017-2019 amendments, and propose solutions to many issues identified in CVM reports, in particular as concerns the dismantling of the SIIJ, increasing the degree of professional independence of prosecutors by repealing the legislative provisions as modified in 2018, the civil liability of magistrates, the restrictions on the freedom of expression of magistrates, and the procedures for revocation and appointments of prosecutors in management positions. In January 2021, the Government adopted a memorandum reflecting the political commitment to address all pending CVM recommendations. The plans set out in the memorandum include a draft law abolishing the Section for investigating criminal offences within the judiciary (SIIJ) and amendments to the justice laws, both directly connected to CVM recommendations. At the end of the public consultation and following several rounds of debates with the judiciary, on 29 March 2021, the current Minister of Justice sent the three draft amended laws to the Superior Council of Magistracy for an opinion. The Minister of Justice committed to sending the draft laws to the Venice Commission for an opinion, at the same time as these would be sent to the Parliament. It is important that these legislative changes safeguard judicial independence, in line with EU law and taking into account Council of Europe recommendations. One important development is the judgment of the CJEU of 18 May 2021, which considered a number of provisions of the justice laws in the light of Articles 2 and 19(1) TEU and of the CVM decision, in particular as regards the SIIJ and the *ad interim* appointments to management positions within the Judicial Inspectorate, as well as the personal liability of judges as a result of judicial error¹⁶. The CJEU also recalled that a Member State cannot amend its legislation, particularly as regards the organisation of justice, in such a way as to bring about a reduction in the protection of the value of the rule of law¹⁷.

A separate draft law aimed at dismantling the prosecutorial Section for the Investigation of Offences in the Judiciary (SIIJ) is being discussed in Parliament. The draft law was published on the website the Ministry of Justice on 4 February 2021. On 11 February 2021, the Superior Council of Magistracy issued a negative opinion on the draft law, arguing that additional guarantees to protect magistrates from potentially abusive corruption investigation are needed¹⁸. The Government adopted the draft law unchanged on 18 February and sent the draft to Parliament. On 24 March 2021, the Chamber of Deputies adopted the draft law, but added provisions which in its view are necessary to protect magistrates against abusive corruption investigations proposing that a request for approval of

¹⁴ In particular with regards to the chilling effect on judges and prosecutors (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, para. 219).

¹⁵ See footnote 10.

¹⁶ 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, paras 179-241.

¹⁷ *Ibid.*, para. 162. See also Judgment of the Court of Justice of 20 April 2021, *Repubblika v Il-Prim Ministru*, Case C-896/19, para. 64.

¹⁸ The SCM states that the proposed solution is not accompanied by guarantees to give effect to the principle of judicial independence, by ensuring adequate protection of judges and prosecutors against pressure, and notes the general obligation of the legislator to provide appropriate guarantees to ensure actual judicial independence when legislating on the judiciary.

sending to court should first pass through the Superior Council of Magistracy for corruption-related offences¹⁹. This proposal was met with strong criticism from civil society, a large part of the judiciary as well as from within the Superior Council of Magistracy²⁰ since it was considered that it could have the effect of limiting the accountability of magistrates. The draft law is now under discussion in the Senate as decisional chamber. On 29 March 2021, the Minister of Justice requested the Venice Commission an opinion on the draft law, and in particular on the additional guarantees, to ensure consistency with Council of Europe standards. In its opinion of 5 July 2021, the Venice Commission welcomes Romania's intention to dismantle the SIIJ and restore the competence of the specialised prosecutors' offices such as the DNA and DIICOT, but recommends to remove the amendments of the Chamber of Deputies²¹. In its judgment of 18 May 2021, in relation to the SIIJ, the Court of Justice ruled that the legislation creating such a specialised section must be justified by objective and verifiable requirements relating to the sound administration of justice, ensure that that section cannot be used as an instrument of political control over the activity of judges and prosecutors and that the section exercises its competence in compliance with the requirements of the Charter of Fundamental Rights of the European Union²². In a judgment of 7 June 2021, the Pitești Court of Appeal was the first referring court to apply the ruling of the Court of Justice, declaring that the SIIJ's existence is not justified by objective and verifiable requirements relating to the sound administration of justice and that it is therefore not competent to investigate a case brought before it²³. It is important that the ongoing legal reform in the sense of dismantling the SIIJ and restoring the material competence of the specialised prosecutors' offices for the ongoing cases is carried out in line with EU law, in particular with the ruling of the Court of Justice of the EU²⁴, and taking into account European standards.

The Court of Justice of the EU issued a preliminary ruling regarding the civil liability of the judges and prosecutors. The 2020 Rule of Law Report²⁵ mentioned concerns with the regime of civil liability introduced in the 2017-2019 justice laws, in particular as regards the

¹⁹ Under the proposed amendment, magistrates could only be indicted for offences against the administration of justice, corruption offences, abuse of office or offenses assimilated to corruption with the prior approval of the Section for Judges or the Section for Prosecutors of the Superior Council of Magistracy.

²⁰ There are diverging opinions within the SCM on abolishing the SIIJ, on the need for guarantees and on whether the guarantees proposed by the Chamber of Deputies are appropriate.

²¹ The Venice Commission points out that this set of amendments “introduces a new type of inviolability for judges and prosecutors within the framework of a highly sensitive field (criminal prosecution) which goes far beyond functional immunity” and that “[c]riminal proceedings that fall outside the remit of functional immunity should not fall within the competence of the SCM and should be brought directly before the courts of law without the SCM's prior screening”. Venice Commission Opinion (CDL-AD(2021)019), p. 14.

²² The Court added that practical examples taken from the activities of the SIIJ confirm the materialization of the risk that that section is akin to an instrument of political pressure and exercises its powers to alter the course of certain criminal investigations or judicial proceedings concerning, inter alia, acts of high-level corruption in a manner which raises doubts as to its objectivity (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, paras. 219 and 223).

²³ On 23 June 2021, the Judicial Inspection started a disciplinary investigation against the judge of the Pitești Court of Appeal who rendered the aforementioned judgment, on the grounds that he committed bad faith or gross negligence in the exercise of his duties in relying on the judgment of the Court of Justice of the EU to assess the competence of the prosecution section.

²⁴ *Ibid.*

²⁵ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 3.

power assigned to the Ministry of Finance in this context²⁶, as the rules entitle the latter 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 Council of Europe noted the 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 Judiciary²⁷. In its judgment of 18 May 2021, the Court of Justice of the EU ruled on the regime of civil liability of judges²⁸, indicating that it must provide clearly and precisely the necessary guarantees ensuring that neither the investigation nor the action for indemnity may be converted into an instrument of pressure on judicial activity²⁹. The new draft justice laws of March 2021 on which the Minister of Justice requested the opinion of the SCM propose amendments to the provisions on civil liability of judges and prosecutors. It is important that the proposed amendments duly reflect the ruling of the Court of Justice of the EU, and take into account the relevant European standards³⁰.

The draft justice laws include changes to the rules governing the appointment and accountability of the Judicial Inspection management. The Court of Justice examined the compatibility with Articles 2 and 19(1) TEU of the power for the Government to carry out interim appointments to management positions within the Judicial Inspection, which is responsible for conducting disciplinary proceedings against judges and prosecutors. In its judgment of 18 May 2021, the Court found that, since the persons occupying managerial positions within the Judicial Inspection are likely to exercise a decisive influence on the latter's activity, the rules governing their appointment must be designed so that they cannot give rise to any legitimate doubt as to the use of the prerogatives and functions of that body as an instrument of pressure on judicial activity or of political control of that activity³¹. In recent years, judicial institutions, including the Superior Council of Magistracy itself, highlighted concerns with the lack of accountability of the Judicial Inspection, citing the high proportion of cases brought by the Inspection eventually rejected in court, the concentration of all decision making with the Chief Inspector³² and the limits to the oversight powers of the Superior Council of Magistracy³³. The new draft justice laws of March 2021 on which the

²⁶ See, in particular, 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; CCPE, 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.

²⁷ Venice Commission Opinion (CDL-AD(2018)017), paras. 117 and 164.

²⁸ 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.

²⁹ The Court added that the rights of defense of judges should be fully respected and that a court should rule on the personal liability of judges (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, para. 241).

³⁰ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 66-71.

³¹ The Court further held that that national legislation is likely to give rise to such doubts where, even temporarily, it has the effect of allowing the government of the Member State concerned to make appointments to the management positions of the body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors, by disregarding the ordinary appointment procedure laid down by national law (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, para. 207).

³² The Chief Inspector can only be subject to an external audit which is ordered by the Inspection itself, and then the audit report is examined only by a selected handful of members in the Council.

³³ Until 2018, under law 317/2004, both the Chief Inspector and the deputy Chief Inspector were selected by the SCM Plenum through by a competition including a written test, an interview and the presentation of the

Minister of Justice requested the opinion of the SCM, proposes amendments to the provisions on the appointment of the Chief and deputy Chief Inspectors, as well as the control mechanisms regarding the activity of the Judicial Inspection.

The procedure for appointment of high-ranking prosecutors is being reviewed as part of the amendments to the justice laws. As highlighted in the 2020 Rule of Law Report³⁴, CVM reports³⁵ and several opinions of the Venice Commission³⁶, there continue to be concerns with the current law regarding the balance between the influence of different institutions on the appointment process and the concentration of power with the Minister of Justice. In 2020, two out of the three high-ranking prosecutors were appointed despite a negative opinion of the Superior Council of Magistracy³⁷. In the new draft justice laws under preparation, the Minister of Justice aims to address these concerns by proposing changes to the appointment procedure. In particular, the new draft laws proposes the strengthening of the role of the Superior Council of Magistracy, by introducing the requirement of a binding opinion of the section for prosecutors of the Superior Council of Magistracy on the appointment proposed, and that the President could reject the appointment any number of times instead of once, in accordance with recommendations from the Venice Commission³⁸.

The dismissal procedure of top prosecutors is to be amended following a ruling by the European Court of Human Rights (ECtHR). On 5 May 2020, the ECtHR held that the former chief prosecutor had not been able to effectively challenge in court the reasons for her removal from the position³⁹. In the draft amendments of the justice laws⁴⁰, a review procedure before an administrative court has been added to the procedure for dismissal of top prosecutors⁴¹. The Government presented its action plan for the execution of the judgment in

management project. Under the current law, only the Chief Inspector is appointed by the SCM after an interview before a commission with three judges, one prosecutor and one member of civil society. The SCM plenum formally appoints the candidate but can only object on the grounds that the rules were not respected. The deputy Chief Inspector and the Directors of respective Sections are selected by the Chief Inspector, whose powers to organise the inspection have also been increased.

³⁴ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 5.

³⁵ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2021) 370 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.

³⁶ In particular the Venice Commission recommended “*to develop an appointment scheme, which would give the Prosecutors’ Section of the SCM a key and pro-active role in the process of the appointment of candidates to any top position in the prosecution system*”. Venice Commission Opinion (CDL-AD(2019)014-e), para. 38.

³⁷ One of these was the Chief prosecutor for the Directorate for investigation of organised crime and terrorism (DIICOT). Following her resignation in September 2020, this institution has an ad interim chief.

³⁸ Venice Commission Opinion (CDL-AD(2018)017), para. 52.

³⁹ Judgment of the European Court of Human Rights of 5 May 2020, *Kövesi v. Romania*, 3594/19, para 157. 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 chief prosecutor of the Anti-Corruption Directorate. 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. 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.

⁴⁰ See footnote 36.

⁴¹ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2021) 370 final, p. 9.

February 2021, and the Committee of Ministers of the Council of Europe assessed its implementation in June 2021⁴².

Quality

The deficit of human resources in the justice system remains a concern. As of December 2020, almost 10% of the judges' positions and close to 16% of the prosecutors' positions were still vacant⁴³, which has also an impact on the efficiency of the justice system. Although the early retirement scheme for magistrates introduced in 2018, which allowed the possibility of retirement after 20 years of service, was repealed by Parliament in March 2021 following recommendations from both the Venice Commission and GRECO, close to 300 magistrates retired in 2020⁴⁴ and close to 150 during the first quarter of 2021⁴⁵, further increasing this deficit. The judgment of the Constitutional Court declaring unconstitutional the provision requiring the Superior Council of Magistracy to approve the regulation on the organisation and conduct of the competition for admission to the judiciary⁴⁶ created a legal void, which led to no competition to recruit new magistrates being organised in 2020. In order to bridge this legislative gap, on 22 June 2020, the Ministry of Justice submitted to public debate a draft law on the admission to the National Institute of Magistracy, which was adopted by the Senate on 3 February 2021. However, upon *ex ante* referral by a group of parliamentarians, the Constitutional Court declared the law in question unconstitutional⁴⁷. As a result, the legislation in force did not allow for the organisation of competitions for admission to the judiciary, leading to further delays in new recruitments and to an increase in the caseload of judges and prosecutors, adding pressure on judges and prosecutors with implications for the quality and efficiency of justice⁴⁸. A new law, adopted by Parliament on 28 June 2021, addressed the abovementioned legal void and will allow competitions for admission to the judiciary to take place in 2021 and 2022. By Decision of 14 July 2021, the Constitutional Court declared unconstitutional the provisions of that law which would have decreased from ten to seven years the seniority required for taking part in the competitions for the appointment of DNA and DIICOT prosecutors.

The Strategic Judicial Management has not been able to operate effectively. It was set up in 2017 to address major strategic questions for the judicial system, bringing together the main institutions with responsibility for the functioning of the judicial system⁴⁹. The 2021

⁴² In its decision of 9 June 2021, the Committee of Ministers of the Council of Europe invited the Romanian authorities to keep the Committee duly informed about the developments in the legislative process and any changes which may yet be brought to the relevant draft provisions, in particular those laying down the procedure for the removal of high-ranking prosecutors and the attending safeguards (CM/Del/Dec(2021)1406/H46-21).

⁴³ A slight decrease in relation to 2019 (2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 7).

⁴⁴ In 2020, the section for judges of the SCM granted 168 requests for retirement, whereas the section for prosecutors granted 126 such requests. See old.csm1909.ro/csm/index.php?cmd=0301&tc=s.

⁴⁵ During the first three months of 2021, a total of 145 magistrates retired, including 106 judges and 39 prosecutors, showing an ascending trend.

⁴⁶ Decision no. 121/2020 of 9 June 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.

⁴⁷ Decision of the Constitutional Court of 17 March 2021.

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'.

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.

CVM Report confirmed earlier findings that the Strategic Judicial Management had not been operating as intended and that the action plan remained largely unimplemented⁵⁰. While several meetings of the Strategic Judicial Management took place in late 2019, and the professional institutional cooperation could resume, no tangible results were achieved. In early 2021, the Minister of Justice started reconvening meetings, and first discussions took place on the functioning of the Strategic Judicial Management and on the human resources strategy for 2021-2022.

The Constitutional Court declared that judgments in criminal matters must be reasoned in fact and in law at the time of their delivery. Provisions of the Code of Criminal Procedure allowed such judgments to be drawn up no later than 30 days after their delivery, which gave rise to situations where a final judgment had to be executed while the convicted person was still not aware of the reasons for the sentence. On 7 April 2021, the Constitutional Court held that the drafting of a criminal judgment subsequent to its delivery deprives the convicted person of the right of access to justice and the right to a fair trial⁵¹. This time discrepancy between decision and reasoning had already been highlighted as a long-standing issue⁵². On 12 May 2021, a new law entered into force, which requires that the delivery and the publication of the reasoning of a judgment in criminal cases should happen at the same time within a given deadline after the end of the hearing.

Data show that, overall, there is a good level of digitalisation of the justice system. In 2020, a large amount of information about the judicial system is provided online for the general public⁵³. Digital technology such as the electronic management case system, the electronic case allocation and distance communication technology, is broadly used by courts⁵⁴. Arrangements for producing machine-readable judicial decisions in civil, commercial and administrative cases are also in place⁵⁵. However, stakeholders report that improvements are still necessary⁵⁶.

The COVID-19 pandemic led to an increase in the use of digital tools in the justice system. During 2020, the number of videoconferencing systems in courts increased, which led to a higher number of videoconference hearings⁵⁷. However, stakeholders report that remote hearings remain limited, as judges still favour holding the hearings in person rather than by videoconferencing⁵⁸. In September 2020, the Ministry of Justice announced a draft

⁵⁰ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2021) 370 final, p. 13-14.

⁵¹ See Constitutional Court of Romania, Decision no. 233 of 7 April 2021. The National Bar Union has raised the delay in motivations as a major issue.

⁵² COM(2017) 33 and Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism (SWD(2017) 25), p.20 “The time discrepancy between the decision and the motivation can also impact negatively on the coherence and the quality of decisions, and can fuel speculation about the reasons for the decision and distrust or criticism of the judicial institutions.” A remaining CVM recommendation recommends that the Strategic judicial Management finds solutions to delays in motivation of decisions; Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2021) 370 final, p. 13.

⁵³ Figure 38, 2021 EU Justice Scoreboard.

⁵⁴ Figure 40, 2021 EU Justice Scoreboard.

⁵⁵ Figure 46, 2021 EU Justice Scoreboard.

⁵⁶ Contribution from Funky Citizens for the 2021 Rule of Law Report, p. 13; Contribution from Expert Forum for the 2021 Rule of Law Report, p. 2.

⁵⁷ Input from Romania for the 2021 Rule of Law Report, p. 19.

⁵⁸ Contribution from APADOR – Helsinki Committee for the 2021 Rule of Law Report, p. 9.

law regarding remote justice during the COVID-19 pandemic that would extend the possibility to hold videoconference hearings⁵⁹. In criminal matters, the draft law provides the possibility for persons deprived of liberty⁶⁰ to be heard by videoconference at the place of detention without their consent, if the court considers that this means is without prejudice to the proper conduct of the proceedings and to the rights and interests of the parties. The draft law also provides for the possibility for persons, other than those deprived of their liberty, to be heard by videoconference, but only with their consent. The draft law was adopted by Parliament on 28 April 2021⁶¹.

Efficiency

The overall efficiency in civil, administrative and commercial cases remains stable. In 2019, the length of proceedings at first instance courts in civil and commercial cases slightly decreased in comparison to 2018⁶², while it somewhat increased for administrative cases⁶³. The clearance rate for resolving civil, commercial, administrative at first instance cases decreased to some extent⁶⁴ and is now at 100%. The length of proceedings regarding specific areas of EU law remains low⁶⁵, except for money laundering cases, where it considerably increased⁶⁶. The challenges in terms of workload are however uneven among courts. For instance, lower courts in civil matters have reported a particularly high caseload⁶⁷, and the suspension of the activity of the courts during the state of emergency worsened the situation. Romania remains under enhanced supervision of the Committee of Ministers of the Council of Europe concerning the execution of measures to address the excessive length of proceedings following judgments of the European Court of Human Rights⁶⁸. The Committee of Ministers has noted that the reform of the civil and criminal procedure was, by all accounts, successfully completed, but an impact assessment still has to be made to evaluate the effect of those measures.

II. ANTI-CORRUPTION FRAMEWORK

Romania has a legislative and institutional anti-corruption framework broadly in place. A National Anticorruption Strategy is in place since 2016 and coordination of its implementation is ensured by the Ministry of Justice. The institutional anti-corruption framework remained unchanged. The specialised anti-corruption prosecution, the National Anti-corruption Directorate (DNA) has the competence to investigate medium and high-level corruption cases, while the Prosecutor General's office investigates all other corruption cases. DNA also investigates offences committed against the financial interests of the EU, as well as certain categories of serious offences of economical-financial criminality. A specialised anti-corruption directorate exists in the Ministry of Interior (DGA), competent for integrity and

⁵⁹ See Ministry of Justice, Draft law on some measures in the field of justice in the context of the COVID-19 pandemic.

⁶⁰ Pre-trial detention, serving a custodial sentence or an educational measure of deprivation of liberty.

⁶¹ Law no. 114/2021 on measures in the field of justice in the context of the COVID-19 pandemic.

⁶² Figure 6, 2021 EU Justice Scoreboard.

⁶³ Figure 8, 2021 EU Justice Scoreboard.

⁶⁴ Figure 10, 2021 EU Justice Scoreboard.

⁶⁵ Figures 16, 17, 18, 19 and 20, 2021 EU Justice Scoreboard.

⁶⁶ Figure 21, 2021 EU Justice Scoreboard.

⁶⁷ Information received in the context of the country visit to Romania.

⁶⁸ As regards for instance the execution of the judgment of 26 November 2013, *Vlad v. Romania* (application No. 40756/06), a leading case regarding excessive length of civil and criminal proceedings and lack of an effective remedy.

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 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 2020 Corruption Perceptions Index by Transparency International, Romania scores 44/100 and ranks 19th in the European Union and 69th globally⁶⁹. This perception has been relatively stable⁷⁰ over the past five years⁷¹.

Adoption of a new National Anti-corruption Strategy for 2021-2025 is a priority for the Government. Progress on the National Anti-Corruption Strategy is a key national priority on the political agenda of the Government. The 2016-2020 National Anticorruption Strategy came to an end in 2020. An internal evaluation and an external audit, performed by the OECD, are currently ongoing, in view to inform the preparation of the new National Anti-Corruption Strategy (2021-2025). The Ministry of Justice, coordinating the Strategy, reports that it achieved progress in the implementation of the 2016-2020 strategy in many of the participating administrations and public bodies, although it has been uneven, in particular in high risk areas such as health, education or public procurement. The progress included improved procedures to deal with sensitive issues, a significant decrease of integrity incidents, increased transparency and an improved service to citizens, including through digitalisation. Key features of this strategy are considered best practice among participating institutions and will be carried forward into the next strategy, notably the peer-review monitoring mechanism and the participatory decision-making process through five anti-corruption platforms (regrouping stakeholders). The Ministry of Justice has nevertheless pointed out that next to the dedicated implementation, the effectiveness of the strategy relies in particular on the political will to give impetus for the implementation of the measures in all participating administrations and public institutions, including at local level. The evaluations are being finalised, and the Ministry of Justice organised a public consultation with the five anti-corruption platforms regrouping stakeholders on the new Strategy, and expects to propose the adoption of the new national Anti-corruption Strategy by the end of 2021.

The effectiveness of the investigation and sanctioning of medium and high-level corruption has improved. The appointment of a new Chief Prosecutor of the National Anti-corruption Directorate and of further staff in management positions in 2020 has brought new impetus and institutional stability. This has led to increasing the quality of the investigations and the files brought to court. In 2020, DNA achieved better results than in 2019, with an

⁶⁹ Transparency International, Corruption Perceptions Index 2020, pp. 2-3. 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).

⁷⁰ In 2015 the score was 46, while, in 2020, the score is 44. 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.

⁷¹ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

increase in the number of high-level indictments and a reduction in the backlog of cases⁷². There was also progress at the level of the courts with an increase in court decisions⁷³. In 2020, the number of complaints from citizens and ex-officio complaints on alleged corruption deeds have increased marking a change of the decreasing trend since 2015. The DNA sees it as a sign of renewed confidence from the public in this institution and role, which had been seriously affected by the attacks it suffered in the 2017-2019 period. The communication policy of the DNA was also changed in 2020, so that names of the suspects are no longer mentioned in press releases when investigations are opened, limiting public exposure for suspects.

The 2017-2019 amendments to the justice laws represented a major impediment for the good functioning of the DNA, which will continue for as long as they are in force⁷⁴. The general problems faced by the judicial system have been particularly difficult for DNA⁷⁵. DNA has faced a human resources deficit⁷⁶, adding more pressure on prosecutors at a time when DNA faced the extra challenge of developing its own technical capacity to implement court orders using special investigation techniques⁷⁷. In addition, the effective treatment of some high-level corruption cases continues to be adversely affected by the Section to Investigate Offences within the Judiciary (SIIJ), which continues to intervene in ongoing high-level corruption files investigated by the DNA. The problematic practice of withdrawal of appeals in high-level corruption cases was stopped after the Constitutional Court ruled in July 2020 that the transfer of appeals to the SIIJ was unconstitutional⁷⁸. There is also an increased risk of impunity in high-level corruption files that the SIIJ deals with, notably because of its slow handling of cases⁷⁹. The SIIJ handling of complaints against prosecutors from persons convicted for corruption has also been seen as putting pressure on DNA prosecutors. The ongoing amendments of the justice laws, including to abolish the SIIJ, will be important steps to ensure that the good functioning of the DNA be sustainable.

Continued uncertainty as regards amendments to the criminal code and criminal procedure code remains an important challenge in the fight against corruption. As

⁷² National Anti-corruption Directorate (DNA), 2020 Activity Report. In 2020, the files mainly dealt with public procurement, bribery, EU funds fraud. DNA also registered 105 files of corruption in relation to combatting the COVID-19 pandemic.

⁷³ The increase reflects the results of all courts dealing with DNA cases. For 2020, the High Court of cassation and Justice reports that less cases have been solved, that a number of cases are suspended, and that less cases have been registered. DNA also reports a lower proportion of acquittals in 2020, though the number in 2019 was inflated due to the decriminalisation of offences.

⁷⁴ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 10-11.

⁷⁵ General issues regarding human resources for the judiciary also affecting DNA include restrictions to delegations, important number of retirements. Specific issues for DNA include that the seniority requirements for working in the DNA abruptly changed to 10 years, and the oral examination for non-management posts before the SCM is broadcast (contrary to other prosecution departments), which acts as a deterrent for candidates. The seniority requirement for heads of section is 15 years.

⁷⁶ In March 2021, DNA reports that only 75% of posts were filled (131 nominated and 14 delegated out of 145 positions), and that 2 leadership positions were vacant. On 9 June 2021, a call for applications for 42 positions of prosecutors both in the central office and in the territorial ones has been launched by DNA.

⁷⁷ A Government Decision supplemented the DNA with 90 police officers.

⁷⁸ Decision of the Constitutional Court of 7 July 2020.

⁷⁹ SIIJ Activity Report: The efficiency of the SIIJ is another concern with 6600 cases pending and few cases finalized in 2020 (500 closed and 2 sent to court). The low efficiency is an additional risk factor of impunity in high-level corruption cases.

highlighted in the 2020 Rule of Law Report and in the 2021 CVM report⁸⁰, another important challenge in the fight against corruption is the absence of policy and legislative solutions to the rapid succession of far reaching Constitutional Court decisions annulling or interpreting provisions of the criminal code and criminal procedure code since 2014⁸¹. Amendments to the criminal code and criminal procedure code remain necessary⁸². This situation has led to increased obstacles and legal uncertainty regarding the investigation, prosecution and sanctioning of high-level corruption cases⁸³. This has led to cases failing in court, legal uncertainty on the admissibility of evidence, as well as to the restart of investigations or trials⁸⁴. The impact on ongoing high-level corruption cases of the Constitutional Court rulings regarding the compositions of the three-judges panels for high-level corruption cases and five-judges final appeal panels at the High Court of Cassation and Justice has yet to unfold⁸⁵. In its recent judgment, the Court of Justice of the EU held that the principle of primacy of EU law precludes national legislation with constitutional status, which deprives a lower court of the right to disapply of its own motion a national provision falling within the scope of the CVM framework and which is contrary to EU law. Where it is proved that the EU Treaty or the CVM Decision has been infringed, the principle of the primacy of EU law will require the referring court to disapply the provisions at issue, whether they are of a legislative or constitutional origin⁸⁶. An important policy step was taken in February 2021 when the Parliament definitely rejected problematic amendments to the codes put forward during 2018-2019 which were found unconstitutional in their entirety by the Constitutional Court.

The Chamber of Deputies has set criteria to decide on requests for lifting parliamentary immunities but the Senate has not yet followed through. In June 2019, the Chamber of Deputies amended its rules of procedure and made specific reference to the criteria set out in the Venice Commission's report on the purpose and waiver of parliamentary immunity⁸⁷. The Senate has not adopted such rules yet.

⁸⁰ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (COM(2021) 370 final).

⁸¹ *Ibid.*

⁸² *Ibid.*, p. 10.

⁸³ DNA estimates that in 2020, at least 45 suspects were acquitted as a consequence of the Constitutional Court decisions.

⁸⁴ A recent CCR Decision of 6 April 2021 further impacts at least 67 ongoing DNA investigations, as investigations will need to be restarted.

⁸⁵ Although the decisions of the Constitutional Court do not apply to past cases where a final judgement has been rendered, they can have consequences for ongoing cases. The 5-judges panel decision has allowed for extraordinary appeals of final cases in certain conditions, while the 3-judges panel decision could entail the restart of trial with a new designated panel. DNA reports that 8 cases involving 41 defendants are currently suspended at the High Court of Cassation and Justice, that 10 cases involving 107 defendants have restarted at first instance, and 5 cases with 90 defendants are restarted from the preliminary chamber. Preliminary ruling requests are pending at the Court of Justice.

⁸⁶ 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, paras 251-252.

⁸⁷ Venice Commission Opinion (CDL-AD(2014)011). This follows CVM and GRECO recommendations. In its report of March 2021, GRECO notes that an informal requirement for prosecutorial bodies to submit the whole file when prosecuting a minister or a former minister who is also a Member of Parliament has apparently been lifted. GRECO Fourth Evaluation Round – Second interim compliance report including Follow-up to the ad hoc (rule 34) Report.

The National Integrity Agency (ANI) continues to investigate incompatibilities, conflicts of interest and unjustified wealth⁸⁸. ANI's work should also be facilitated by a July 2020 amendment allowing for electronic submissions of assets and interest disclosures⁸⁹, which became operational in May 2021. ANI reports that its 2020 budget was sufficient to carry out its tasks, as the initially reduced budget was supplemented later in the year⁹⁰. ANI faces some uncertainty over its leadership positions. The position of President has been vacant since December 2019 and the mandate of the Vice-President expires later this year⁹¹. Selection procedures were eventually initiated in April 2021.

The legal framework on integrity remains fragmented. The 2020 Rule of Law report highlighted continued challenges to the legal framework for integrity and the need for stability, clarity and a robust framework. A series of amendments modifying the integrity laws, notably in 2017-2019, had the effect of weakening the ability of the ANI to carry out its work, as well as exacerbating an already fragmented legal landscape. In particular, two proposals that entered into force in 2019 further increased legal uncertainty as regards the applicable integrity regime and the application of sanctions⁹². In 2020 and 2021, the High Court of Cassation and Justice clarified the interpretation of the law. The Court ruled that the sanction applies, even if the incompatibility concerns a previous mandate, and that a limitation period of three years should refer to the need for ANI to finalise an investigation within three years of the facts that determine the existence of a state of conflict of interest or incompatibility (rather than that the sanction does not apply after three years)⁹³. ANI has welcomed these decisions, which restore clarity and certainty in the possibility to impose sanctions after a final court decision. A consolidation of the laws on integrity, incompatibilities and conflicts of interest would allow case-law and corruption prevention policies to be taken into account and provide a stable basis for the future.

During local and national elections in 2020, ANI increased its awareness-raising on integrity rules for candidates and has shared information with the relevant authorities on candidates who are under interdiction to hold a public office. Before the local elections of 20 September 2020, ANI reached out to central and local electoral authorities to inform on candidates who could be under a ban to hold a public office following a sanction for incompatibility or conflict of interests in the previous mandate⁹⁴. Furthermore, after the

⁸⁸ In 2020, the National Integrity Agency finalised 1.143 cases and 175 cases have remained definitive and irrevocable. The same year, 204 administrative fines were applied, for failure to submit assets and interest disclosures in legal terms, for non-disciplinary sanctions applied after the ascertaining act remained final, and for failure to comply with the legal provisions.

⁸⁹ Amendment to the Law no. 176/2010 regarding integrity in exercising the public offices and dignities. From 2022 onwards, electronic submission will be compulsory.

⁹⁰ Initial budget was 34.802.000 RON, while the final budget was 37.432.000 RON.

⁹¹ No competition was organized in 2020 as the National Integrity Council (CNI), the body that supervises the activity of ANI and has the competence to organise the competition for selecting the president and vice-president, could not reach a quorum. The Senate had not nominated new members since 2018. Eventually, in March 2020, the Senate nominated 10 members of the CNI and the first meeting took place immediately.

⁹² The first amendment set a prescription deadline of three years from the facts that determine the existence of a state of conflict of interest or incompatibility, and resulted in the closure of a high number of ongoing cases and doubts on the possibility to impose sanctions. The second amendment introduced a lowered sanctioning regime regarding conflict of interests for local elected officials, which ANI considered does not allow for dissuasive sanctions.

⁹³ Decisions 74/2020 of 16 November 2020 and HCCJ Decision 1/2021 of 18 January 2021.

⁹⁴ Over 500 persons were concerned by an interdiction; National Integrity Agency (ANI), Communicate on prevention and consignment measures adopted by the National Integrity Agency in the context of the organisation of local elections 2020.

elections, ANI sent to the Courts, who have the competence to validate the mandates of the newly elected officials, a nominal list of candidates under the interdiction to occupy a public office for three years. While a number of candidates were prevented from running for office, and others have been denied office, the courts ruled in about half of the candidates who were under interdiction that they are allowed to hold the elected office⁹⁵. As regards the national elections, as part of the validation process following the elections, the Validation Committee of the Romanian Senate asked ANI to communicate definitive and irrevocable decisions issued by Courts regarding incompatibilities or conflict of interests of the elected Senators. ANI found that none of the elected Senators were under the interdiction to occupy an office. The Chamber of Deputies has requested ANI's point of view regarding the disclosure made by a series of deputies, with respect to their potential incompatibilities⁹⁶.

The PREVENT electronic system to prevent conflicts of interests in public procurement is effective, as the number of detected conflicts of interest has significantly reduced. In 2020, the PREVENT system analysed 19 140 procurement procedures, in order to identify possible conflicts of interest. In 2020, the integrity inspectors issued ten integrity warnings, amounting to approximately EUR 11.1 million. During the State of Emergency in the context of the COVID-19 pandemic, public authorities and legal entities, in which the state is the major shareholder, were allowed to make direct purchases of materials and equipment to combat the pandemic, without publishing into the Public Procurement Electronic System) and exceeding the value threshold (which is around EUR 27,000) for publication in the electronic system. This meant that these direct purchases were not run through the electronic system, and thus have not been scrutinized by the PREVENT System. To address the issue of scrutinizing the procedures carried out through direct procurement, ANI has developed a mechanism meant to analyse, based on information available from public sources, data sets on these procedures. The goal of this mechanism is to identify consumed conflicts of interest in these procurement procedures that bypassed PREVENT scrutiny. By the end of January 2021, with the help of a risk matrix, ANI has verified 580 direct procurement procedures carried out in the first semester of 2020 and has identified 64 potential integrity incidents (11% of the procedures), which will be further analysed and the ex-officio procedure of evaluating these cases could be triggered.

The National Agency for the Management of Seized Assets (ANABI) remains 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. In 2021, ANABI entered into its fifth year of activity and is further developing its activity. Based on the lessons learned, the Agency with support from the Ministry of Justice opened a public debate to promote a National Strategy for Strengthening the Asset Recovery System. This strategy and action plan covers 2021-2025 and includes objectives regarding increased capacities for tracing assets both nationally and internationally, enhanced cooperation mechanisms among all stakeholders involved, as well as provisions regarding setting up a National Fund for

⁹⁵ From the total of 103 candidates to the local elections under interdiction: 65 candidates have been elected, according to information available from official sources: 15 elected officials have been denied to hold the elected office, while 49 elected officials have been allowed to hold the elected office.

⁹⁶ The Statute of Deputies and Senators stipulates that a Member of Parliament has a term of 15 days to disclose their state of incompatibility and another 30 days to resign from one of the offices that generated the incompatibility.

Crime Prevention. This fund shall support measures for victim protection, crime prevention and education⁹⁷.

Limited provisions on revolving doors exist for public servants in Law 161/200360 and in the successive National Anticorruption Strategies. The public servants who, in exercising their function, have carried out monitoring and control activities over State Owned Enterprises (SOE), cannot be employed or provide specialised consultancy to these companies for three years after leaving the public service. However, there are no regulations concerning cooling-off periods for key decision-makers.

The enforcement of Code of conduct and the absence of rules on lobbying for parliamentarians remain a challenge. As regards codes of conduct for members of the Parliament, the lack of enforcement of the rules has been recently highlighted by GRECO, as well as the lack of rules on how members of Parliament engage with lobbyists, along with clearly defined restrictions concerning gifts, hospitality, favours and other benefits⁹⁸. In order to compensate for the disparate legal regime concerning revolving doors, a model procedure, which can be applied by all relevant public institutions, was developed in the framework of an EU-funded project⁹⁹.

In Romania, there has been a law on whistleblower protection since 2004, however its implementation in practice is relatively limited. The Ministry of Justice announced at the end of 2020 that a draft of the law transposing the directive on whistleblowers' protection is being prepared. On 5 March, 2021, the draft law and its explanatory memorandum have been submitted to public debate on the Ministry of Justice website.

Despite the COVID-19 pandemic, prosecution of corruption remained effective. The general prosecution services and the DNA were particularly attentive to possible corruption related problems with regard to public procurement during the COVID-19 pandemic. The patterns identified in DNA concern cases on the breach of public tendering rules, bribery offered to public officials involved in tendering procedures, as well as purchase of counterfeited products.

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. The mission and composition of the media regulator

⁹⁷ Similar provisions were in place before December 2018 but were repealed via Emergency Ordinance no 114/2018. The action plan attached to the strategy includes legislative measures for expanding the Agency's mandate as well as provisions for new tools necessary for police and prosecutors in order to better conduct financial investigations. These measures are backed with an investment plan for new storage capacities for judiciary and ANABI as well as training programs and transparency measures. The legislative package for implementing the main provisions of the Strategy is expected to be presented publicly in the second half of 2021.

⁹⁸ GRECO Fourth Evaluation Round – Second interim compliance report including Follow-up to the ad hoc (rule 34) Report.

⁹⁹ This model was uploaded on the website of the National Anticorruption Strategy on 18 March 2021. The implementation of this model by the public institutions will be assessed in 2022.

are set out in the Audiovisual Law. The authorities are considering changes to this law in the context of the transposition of the Audiovisual Media Services Directive¹⁰⁰.

Concerns about the functioning and budget for the National Audiovisual Council persist¹⁰¹. The National Audiovisual Council (CNA) is the authority tasked to safeguard public interest in the field of audiovisual programmes, and is established by law as autonomous public authority under parliamentary control. The activity of the CNA has been interrupted from February 2021, when the mandates of four out of eleven members expired¹⁰², until the 11th of May, when the new members were voted by the Parliament¹⁰³. It appears that the budgetary issues, referred to in the 2020 Rule of Law Report, persist¹⁰⁴. A draft law transposing the Directive (EU) 2018/1808 on Audiovisual Media Services, which requires adequate financial and budgetary resources, was published for public consultation in March 2021. The draft law foresees that the authority should have the necessary budget.

The lack of specific safeguards for editorial independence and editorial norms continue to raise concerns. In terms of self-regulation in the press sector, no changes occurred since the 2020 Rule of Law Report, where concerns were raised about the lack of specific safeguards for editorial independence and professional norms, either through legislation or self-regulation. The COVID-19 pandemic worsened the economic situation of already struggling print and local press¹⁰⁵, and made the enforcing of standards of quality a low priority¹⁰⁶. The MPM 2021 indicates as a major ongoing problem “the precarity and poor working conditions of journalists” and assesses commercial and owner influence over editorial content as a very high risk area¹⁰⁷.

Transparency of media ownership continues to be incomplete¹⁰⁸. As mentioned in the 2020 Rule of Law report, the Audiovisual Law provides that the Council shall be required to ensure the transparency of the organisation, functioning and financing of the mass media in audiovisual sector. No media specific rules apply to print and digital, which are subject to general rules governing transparency of ownership included in the company law. The MPM furthermore reports the existence of loopholes¹⁰⁹. In addition, data protection rules are invoked to avoid making public certain media ownership information that has previously been disclosed by CNA¹¹⁰. The news media concentration is reported in the MPM 2021 as

¹⁰⁰ Romania is at the 48th place worldwide in the World Press Freedom Index and at the 21st place in the EU. Over the last years, the situation is relatively unchanged, its ranking varying between 44th and 49th place since 2016.

¹⁰¹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 13.

¹⁰² In a public statement of 10 February 2021 it is announced that the public séances of the Council will be resumed after the nomination of members by the Parliament for the four vacant mandates; see National Audiovisual Council (CNA), Press briefing on CNA public meetings, 10 February 2021.

¹⁰³ Pagina de media, “Official. Parliament voted for new CNA members: Mircea Toma, one of them”, 11 May 2021.

¹⁰⁴ Information received in the context of the country visit to Romania. The 2021 Media Pluralism Monitor, country report for Romania, p. 13, also notes that CNA has limited funding.

¹⁰⁵ The Center for Independent Journalism (2020), Fundamental Rights under Siege 2020, p. 18.

¹⁰⁶ Information received in the context of the country visit to Romania.

¹⁰⁷ 2021 Media Pluralism Monitor, country report for Romania, p. 15; see also Reporters without Borders – Romania.

¹⁰⁸ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 14.

¹⁰⁹ 2021 Media Pluralism Monitor, country report for Romania, p. 14, mentioned as an example that “a digital media company can be owned by another company that is in turn owned by an entity abroad with undisclosed owners”.

¹¹⁰ Reporters without Borders – Romania.

being high, especially in the print news market sector, which is very small in terms of both demand and number of titles¹¹¹.

State advertising continues to be an important source of financing for the media sector.

The decrease in commercial advertising has resulted in revenue losses for media houses, while contracts for state advertising appear to raise concerns as regards editorial autonomy¹¹². Stakeholders report further concerns about the allocation of funds, and mention for instance advertising contracts for events during the COVID-19 pandemic, when presumably such events could not take place¹¹³.

State information campaign funds have been an important means of support to the media during the COVID-19 pandemic.

The Emergency Ordinance No. 63 of 7 May 2020¹¹⁴ allocated approximately EUR 50 million for governmental media campaigns aimed at the prevention of the spread of COVID-19. The majority of the budget (53%) was reserved by law for TV campaigns. In total 364 applicants benefitted from the scheme¹¹⁵. The scheme received criticism from some media outlets and other stakeholders that considered the application criteria to favour large media and be conducive to clickbait. They also pointed to the risk of citizens' decreasing trust in media as well as risks of political pressure and self-censorship¹¹⁶.

Concerns remain regarding the implementation of the legal framework for access to information.

The law¹¹⁷ guarantees the access of mass media to public interest information, including through press conferences that have to be regularly organised by public authorities¹¹⁸. However, lack of access to information continues to be indicated as an important challenge for journalists. The issues that continue to be reported, also in the context of the COVID-19 pandemic, include delays or refusals to provide information, lack of press conferences¹¹⁹ and use of data protection rules to limit access to information¹²⁰. Furthermore, where the decisions of authorities refusing to provide information are challenged in court,

¹¹¹ The 2021Media Pluralism Monitor, country report for Romania, p. 14, notes that the print news market is very small in readership and titles, and that it is characterised by “virtually 100% concentration of the top four titles”. It furthermore indicates that “the digital news market is highly fragmented (37% concentration), while concentration is more moderate in television and radio, where the top four owners command 65% and 59% of the audience respectively”. The MPM warns that lack of data continues to be an obstacle for assessing market shares in the online environment, noting however that most Romanians still use television as their main source of news.

¹¹² The Center for Independent Journalism (2020), *Fundamental Rights under Siege*, pp. 17-18.

¹¹³ *Ibid.*, p. 19.

¹¹⁴ Emergency Ordinance for organizing and conducting public information campaigns in the context of the epidemiological situation caused by the spread of COVID-19, no. 63 of 7 May 2020.

¹¹⁵ Information published by the General Secretariat of Government on 6 July 2020 (<https://sgg.gov.ro/new/06-07-2020-anunt/>).

¹¹⁶ The Center for Independent Journalism (2020), *Fundamental Rights under Siege*, p. 21; Contribution from Funky Citizens for the 2021 Rule of Law Report and Contribution from Expert Forum for the 2021 Rule of Law Report; Dumitrita Holdis (2020), ReportIt: When state funding discredits the press – The Romanian media is facing a financial and moral dilemma.

¹¹⁷ Law on Access to information, no 544/2001, Article 17.

¹¹⁸ Decree instituting the state of emergency in the territory of Romania, no. 195 of 16 March 2020.

¹¹⁹ The Center for Independent Journalism (2020), *Fundamental Rights under Siege*, p. 10; Liberties (2021) EU 2020: Demanding on Democracy; Contribution from Funky Citizens to the 2021 Rule of Law Report; difficulties to obtain information on spokespersons were also mentioned during country visits.

¹²⁰ Liberties (2021), EU 2020: Demanding on Democracy, pp. 157-158; Contribution from Funky Citizens to the 2021 Rule of Law Report.

divergent interpretations are applied to similar situations¹²¹. In addition to general statistics, from March 2021, raw data concerning the COVID-19 pandemic was made available¹²² and updated by the authorities on a daily basis. Despite this effort, access to information still seems to have been rendered more difficult during the COVID-19 pandemic, prompting appeals by the civil society and journalists for greater transparency¹²³. Regular monitoring by the Romanian authorities reveals divergent application of the legal framework by the administration, as well as an insufficient prioritisation of the transparency measures by public bodies, with compliance levels lowest for local authorities¹²⁴. The MPM 2021 indicates as risk factors the level of responsiveness of authorities, which remains inconsistent, and the fact that access to court for redress is onerous¹²⁵. Amendments to the implementing rules of the legal framework were proposed in August 2020 to address some of the challenges. However, some of the proposed provisions have been criticized as possibly rendering the access to certain information more difficult¹²⁶. A project for a Strategy for the management of the governmental communications was launched in March 2021¹²⁷.

Lawsuits for defamation against investigative journalists continue to be reported. Two recent alerts on the Council of Europe Platform for the protection of journalism and safety of journalists concern harassment and intimidation of journalists¹²⁸. Another lawsuit for defamation against investigative journalists, concerning articles on the global football industry, has been dismissed by the relevant Romanian court in early 2021. In a recent judgment, following a lawsuit for defamation filed by the mayor of a Bucharest district against a major newspaper, the court of first instance decided the removal of several articles published by that newspaper¹²⁹. It is reported that the mayor has also filed a criminal complaint, investigated by the Directorate for Investigating Organized Crime and Terrorism, against journalists from several publications for constituting an organised criminal group as well as for extortion¹³⁰. Civil society further reported cases of SLAPP (strategic lawsuit

¹²¹ According to the contribution from Expert Forum association to 2021 Rule of Law Report, actions in court against 42 police counties concerning data on fines and sanctions applicable during the COVID-19 pandemic received divergent adjudications in first instance (where 21 found for the applicant and 20 for the police) and in appeal.

¹²² Ministry of Health, COVID-19 Transparency, <https://data.gov.ro/dataset/transparenta-covid>.

¹²³ Contribution from Funky Citizens to the 2021 Rule of Law Report; see also Reporters without Borders – Romania.

¹²⁴ Information received in the context of the country visit to Romania.

¹²⁵ 2021 Media Pluralism Monitor, country report for Romania, p.12

¹²⁶ Contribution from Funky Citizens to the 2021 Rule of Law Report.

¹²⁷ General Secretariat of the Government, 22 March 2021, Opening conference of the project ‘Strategy for the management of the governmental communication of Romania’.

¹²⁸ The first alert concerns a lawsuit filed in November 2020, claiming damages of over EUR 488 000 from investigative journalists, in relation to an article on sale of masks considered faulty. The second alert concerns a lawsuit filed in March 2021 against journalists and media outlets, following articles alleging sexual abuses and rape at an Orthodox Christian high school. The Romanian authorities’ reply for the latter case, available also on the platform Council of Europe – Romania, specifies that the case mentioned is currently awaiting trial under the Civil Code and that it was introduced by the plaintiff in his personal capacity.

¹²⁹ Libertatea, ‘*In the civil trial, the District Court 2 ruled in favour of Mayor Baluta and also decided to delete the articles about Goleac! The decision is not final*’ of 24 May 2021.

¹³⁰ Agerpres, ‘*Journalist Cătălin Tolontan, heard by DIICOT following a complaint filed by the mayor of Sector 4*’ of 20 May 2021; Reporters without Borders and Active Watch sent an open letter to the Romanian authorities asking for an investigation on how the criminal claim was handled and report that ‘an internal investigation has been opened by the Direction of Investigation of Organized Crime and Terrorism Crimes (DIICOT) in Romania’.

against public participation) against journalists, media or civil society by public institutions or businesspersons¹³¹.

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 initiative¹³². The Constitutional Court is the guarantor for the supremacy of the Constitution and is responsible for the review of laws¹³³.

Concerns remain on the stability and predictability of legislation. The ordinary process for preparing and enacting laws is well regulated, including an extended institutional set-up of checks and balances. However, as set out in the 2020 Rule of Law Report¹³⁴ legislation is changed too often, while the objective of the amendments is often unclear and the resulting laws can be contradictory. In various policy fields, numerous legislative amendments of the same laws, including contradictory changes, have been initiated and adopted by Parliament. The Legislative Council¹³⁵ reports that repeated amendments lacking coherence, combined with the lack of codification of laws amended numerous times, made it difficult to know the state of positive law even for legal practitioners. Companies refer that the lack of stable and predictable legislation constitutes a challenge¹³⁶. Therefore, the Legislative Council now insists on introducing the obligation to publish a consolidated version of a law each time it is amended. Law no. 24 on legislative technique allows the initiator of a law to decide on its republication in a consolidated form, but this possibility is seldom used. The Legislative Council has also initiated a project on codification of legislation¹³⁷. However, the parliamentary procedure whereby amendments remain tabled until specifically removed means that several long-standing amendments and procedures remain open before Parliament. The definitive rejection by Parliament, in the first months of the new legislature, of problematic amendments in key areas that remained pending from the previous legislature was seen as a positive step¹³⁸.

No significant Government Emergency Ordinances were adopted since the last report in the field of justice. In a consultative referendum held in May 2019, a majority of citizens voted in support of banning the use of Government Emergency Ordinances (GEO) in the area

¹³¹ Information received in the context of the country visit to Romania. At least 5 cases where public money was used to cover the costs of the lawsuits were also reported. The MPM notes that there are '*occasional cases that could be considered examples of this [i.e. SLAPP] phenomenon*'.

¹³² 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.

¹³³ Constitution of Romania, Art. 142.

¹³⁴ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 16-17.

¹³⁵ The Legislative Council is an advisory expert body of Parliament which provides an opinion on all new draft legislation and ensures the systematic unification and co-ordination of the whole body of laws.

¹³⁶ Contribution from the Austrian Federal Economic Chamber for the 2021 Rule of Law Report, p. 24. The lack of legal certainty has been also underlined in the context of the European Semester; European Semester Country Report Romania 2020, SWD(2020) 522 final. Romania ranks below the EU average as regards the stability and accessibility of the legislation, and stakeholders report that the uncertainty over policy and legislative decisions has led to the overall perception of unpredictability.

¹³⁷ Information received in the context of the country visit to Romania.

¹³⁸ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2021) 370 final.

of justice¹³⁹. This illustrated the concern about the excessive use of GEOs in this area, of which there have been few cases since November 2019¹⁴⁰. Beyond the justice area, in 2020, the large majority of the GEOs were issued in the context of the COVID-19 pandemic¹⁴¹. As regards procedures in Parliament, the number of emergency procedures concerning key justice and anti-corruption matters has significantly decreased in 2020. In February 2021, Parliament rejected a proposal to examine the draft law to abolish the SIIJ through an emergency parliamentary procedure.

The number of impact assessments and public consultations prior to the adoption of legislation remains limited. Despite the efforts made by the General Secretariat of the Government to strengthen the capacity of central and local authorities to substantiate the public decisions¹⁴², the use of evidence-based instruments in the policy-making remains uneven and many regulatory impact assessments are superficial¹⁴³. The civil society reported that many bills subject to public consultation do not have a budgetary impact. In 2020, 65 normative acts were adopted at the level of the General Secretariat of the Government, out of which only 12 were publicly announced. Out of 47 recommendations received, only one was accepted. Eleven out of 12 published normative acts remained unchanged¹⁴⁴. The participation of the non-governmental sector and media representatives in the policy-making process is sporadic¹⁴⁵, although the online infrastructure is in place. The number of users of the online consultation platform remains limited¹⁴⁶. The General Secretariat of the Government is working on a catalogue of NGOs interested in participating in the decision-making process.

A state of alert succeeded to the state of emergency declared in the context of the COVID-19 pandemic, and emergency measures were subject to judicial review. The state of emergency declared in the context of the COVID-19 pandemic was lifted on 14 May 2020. Following the end of the state of emergency, a state of alert was declared on 15 May¹⁴⁷ and confirmed by Government on 18 May¹⁴⁸, initially for 30 days. It was then extended by successive Government decisions, each time for a duration of 30 days. The state of alert remains in place. Following rulings from the Constitutional Court questioning the legal basis

¹³⁹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 16.

¹⁴⁰ Exceptions include (i) steps taken to ensure the functioning of the justice system during the COVID-19 pandemic; (ii) an act of February 2020 on public acquisitions which introduced a potential new disciplinary procedure for judges, and which was declared unconstitutional; (iii) the GEO of 30 December 2020 delaying the entry into force of provisions increasing the number of judges required in certain court panels, which are expected to be abolished as part of the ongoing revision of the Justice laws.

¹⁴¹ 159 GEOs were issued in the context of the COVID-19 pandemic, the remaining 68 being adopted for the regulation of other measures.

¹⁴² Law 24/2000 on drafting legal acts set out an initial obligation to identify the impacts of draft regulations, and the requirements for regulatory impact assessments have been further refined in Government Decision no. 1361 issued in 2006. According to these provisions, all regulations are required to be accompanied by an explanatory note, describing the rationale and assessing the impacts of the draft proposal.

¹⁴³ See Sustainable Governance Indicators 2020, Romania Report, pp. 28-29.

¹⁴⁴ Annual report on decisional transparency (1 January 2020 – 31 December 2020), Annex no. 20 – PS 14/2019 at the level of the General Secretariat of the Government (Annex I).

¹⁴⁵ European Commission, Public administration characteristics and performance in EU28, April 2018.

¹⁴⁶ There were 202 users of the consultare.gov.ro platform in 2020.

¹⁴⁷ Decision no. 24 of the National Committee for Emergency Situations approving the establishment of a national state of alert and infection prevention and control measures in the context of the epidemiological situation arising from the SARS-CoV-2 virus.

¹⁴⁸ Government Decision no. 394 of 18 May 2020 on the declaration of the state of alert and on measures applying for its duration to prevent and combat the effects of the COVID-19 pandemic.

of the state of emergency, Parliament approved the state of alert declared by Government¹⁴⁹. In 2020 and 2021, the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice decided in last instance, by final decision, on 12 cases concerning administrative acts issued based on Article 15 from the Law no. 136/2020 establishing public health measures in situations of epidemiological and biological risk, applicable in the context of the COVID-19 pandemic. In two cases, the court ordered the annulment of administrative acts¹⁵⁰.

The measures intended to address the issue of implementation of court decisions and application of jurisprudence of the courts by public administration remain unimplemented. 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 decisions¹⁵¹, Romania remains under enhanced supervision from the Council of Europe Committee of Ministers for the execution of this judgment¹⁵². In this context, in 2019, Romania proposed an action plan to the Council of Europe’s Committee of Ministers and approved the list of measures to fulfil the action plan¹⁵³. However, these measures have not been implemented¹⁵⁴. In a Memorandum of 27 November 2020, the Government decided to task a working group to propose new legal solutions to fulfil all the requirements of the action plan, including with regard to the implementation of judgments imposing an obligation to perform a specific act (non-pecuniary obligation) on the State or on legal entities under the responsibility of the State.

A judgment of the Constitutional Court of 8 June 2021 raises serious concerns, as it questions the principle of primacy of EU law. In this judgment¹⁵⁵, the Constitutional Court did not accept the findings of the Court of Justice of the EU in its preliminary ruling of 18 May 2021 and questioned, more generally, the principle of primacy of EU law¹⁵⁶. It found

¹⁴⁹ Law no. 55/2020 of 15 May 2020 on measures applying to prevent and combat the effects of the COVID-19 pandemic.

¹⁵⁰ Input from Romania for the 2021 Rule of Law Report, pp. 44-45.

¹⁵¹ Judgment of the European Court of Human Rights of 6 September 2005, *Săcăleanu group v. Romania* (Application No. 73970/01).

¹⁵² Department for the Execution of Judgments of the European Court of Human Rights, decision CM/Del/Dec(2021)1398/H46-23 of 11 March 2021.

¹⁵³ These measures included amendments to the legal framework in order to guarantee timely execution and a mechanism to supervise and prevent late execution of judgements for which the State is a debtor, to be set up under the auspices of the Ministry of Justice.

¹⁵⁴ The Committee of Ministers of the Council of Europe “called again upon the authorities to provide, by 15 June 2021 at the latest, their analysis regarding a possible conflict between the avenues explored to ensure implementation of pecuniary awards when the debtor is a State-controlled company and the State’s other international obligations and requested them also to inform the Committee about any further progress in their consideration of the measures required in this area” and “expressed deep concern at the prolonged absence of tangible progress and urged the authorities to redouble their efforts to ensure that this process is rapidly completed”. See CM/Del/Dec(2021)1398/H46-23, paras. 6-7.

¹⁵⁵ Decision no. 390 of the Constitutional Court of 8 June 2021 concerning the exception of unconstitutionality of provisions of articles 881-889 of Law no. 304/2004 on judicial organisation and of Government Emergency Ordinance no. 90/2018 concerning certain measures for the operation of the Section for the Investigation of Offences in the Judiciary.

¹⁵⁶ At paras. 251 and 252 of its Judgment 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, the Court of Justice of the EU recalled that “the principle of the primacy of EU law [requires] the referring court to disapply the provisions at issue, whether they are of a legislative or constitutional origin” and that it “must be interpreted as precluding legislation of a Member State having constitutional status, as interpreted by the

that national courts are not empowered to examine the conformity with EU law of national provisions declared constitutional by the Constitutional Court and that the obligations deriving from the CVM decision are not incumbent upon national courts¹⁵⁷. This may constitute a significant obstacle for courts called upon to apply the EU law requirements set out in the abovementioned preliminary ruling when adjudicating on cases, in particular concerning the SIIJ.

Independent authorities continued being active throughout the COVID-19 pandemic. In 2020, the Ombudsperson¹⁵⁸ raised a total of 18 referrals of unconstitutionality (objections and exceptions), eleven of which were admitted in total or in part, while two were rejected and four are still pending. Six exceptions of unconstitutionality referred to the Constitutional Court concerned measures taken in the context of the state of emergency and the state of alert. The Ombudsperson also addressed a total of 65 letters and recommendations to various ministers regarding their decisions on the state of emergency and the state of alert. On 16 June 2021, after rejecting the activity reports of the Ombudsperson for the last three years, the Parliament dismissed the Ombudsperson from her functions. On 29 June 2021, the Constitutional Court ruled that the dismissal of the Ombudsperson by the Parliament was unconstitutional, as the law governing the dismissal did not provide with certainty the cases for this sanction nor a right of appeal before an independent and impartial court. The dismissal decision was therefore struck down and the Ombudsperson was reinstated in her functions.

A proposal to merge the Romanian Institute for Human Rights and the National Council for Combating Discrimination is under discussion in Parliament. Following the adoption of the law amending the mandate and attributions of the Romanian Institute for Human Rights (RIHR)¹⁵⁹, the Romanian President raised an unconstitutionality objection. In this context, the Constitutional Court declared the law was unconstitutional as a whole. A legislative proposal on the merger of the RIHR into the National Council for Combating Discrimination (NCCD) is under debate in the Senate. However, major differences in the

constitutional court of that Member State, according to which a lower court is not permitted to disapply of its own motion a national provision falling within the scope of Decision 2006/928, which it considers, in the light of a judgment of the Court, to be contrary to that decision or to the second subparagraph of Article 19(1) TEU”.

¹⁵⁷ In its judgment of 18 May 2021, the Court of Justice of the EU made clear that Romania must take the appropriate measures for the purposes of meeting the CVM benchmarks, “taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that decision, and in particular the recommendations made in those reports”, such obligation being owed “by every organ of the Member State concerned”. *Ibid.*, paras. 176-178.

¹⁵⁸ The request for accreditation of the Ombudsperson submitted to the European Network of National Human Rights Institutions (ENNHRI) in 2020 is still being examined.

¹⁵⁹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 17.

legal status, mission, and mandate of these two institutions¹⁶⁰ generate uncertainty as to the proposed merger¹⁶¹.

New amendments to ease the establishment of associations and foundations came into force in 2020. The amendments to Government Ordinance 26/2000 aim at facilitating the right of association and lowering the bureaucratic burden on NGOs¹⁶². In particular, the new provisions privilege the use of electronic documents and streamlining of procedures and registration rules. While these changes were considered a progress by several civil society organisations, there are also instances of criticism, in particular related to the lack of coherence of the amendments¹⁶³. Stakeholders report that civil society organisations were negatively affected by the limitations to the right to freedom of assembly and association imposed in the context of the COVID-19 pandemic¹⁶⁴. The civil society space continues to be considered as narrowed¹⁶⁵.

¹⁶⁰ RIHR has the status of independent body with legal personality, whereas NCCD was established as a state authority with legal personality; RIHR's mission is to ensure a better knowledge by public bodies, NGOs and Romanian citizens, of human rights issues, whereas NCCD's mission is to implement the principle of equality between citizens, provided by the Romanian Constitution, in the national and international legislation; finally, RIHR has a general mandate to provide research, information, training and education activities in the field of human rights; NCCD exercises a mandate limited to the field of implementing the principles of equality and non-discrimination.

¹⁶¹ Contribution from the European Network on National Human Rights Institutions for the 2021 Rule of Law Report, p. 272-273.

¹⁶² Contribution from the Fundamental Rights Agency for the 2021 Rule of Law Report, p. 7; Contribution from APADOR – Helsinki Committee for the 2021 Rule of Law Report, p. 20.

¹⁶³ Contribution from Funky Citizens for the 2021 Rule of Law Report, p. 30, and information received in the context of the country visit to Romania.

¹⁶⁴ Contribution from APADOR – Helsinki Committee for the 2021 Rule of Law Report, p. 20.

¹⁶⁵ Ratings given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>.

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Annex II: Country visit to Romania

The Commission services held virtual meetings in April 2021 with:

- Association of Romanian Judges
- Association “Mișcarea 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
- Ombudsperson
- 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
- Center for Reproductive Rights
- CIVICUS
- 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
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)

- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU