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## **COMMISSION STAFF WORKING DOCUMENT**

### **2022 Rule of Law Report Country Chapter on the rule of law situation in Romania**

#### *Accompanying the document*

**Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions**

#### **2022 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 justice system is undergoing structural reforms aimed at addressing a number of long-standing issues. The Government adopted a new judicial strategy and related action plan for 2022-2025 and is implementing projects to improve the digitalisation of the justice system, as planned in Romania's Recovery and Resilience Plan. While the Section for the Investigation of Offences in the Judiciary (SIJ) was dismantled, some concerns related to the new system for the investigation and prosecution of criminal offences in the judiciary remain. The rules on disciplinary sanctions as well as the extensive powers and lack of accountability of the Chief Judicial Inspector continue generating concerns for judicial independence, which are expected to be addressed by the new draft justice laws under preparation. There has been no significant improvement as regards the shortage of magistrates. The efficiency in civil and commercial cases remains stable, while decreasing considerably for administrative courts.

The Anti-Corruption Strategy for 2021-2025 was adopted and its effective implementation relies on political support to implement important legislative reforms. The effectiveness of the investigation and sanctioning of corruption further improved, including by advancing on cases that had been pending for years. The National Anti-Corruption Directorate continued to improve its track record of results, but operational challenges, including the difficulty to recruit prosecutors, remain to be solved. As concerns the new system replacing the SIJ, its impact on investigating and prosecuting corruption offences remains to be seen. Steps have been taken to finalise the revised Criminal Codes. The legal framework on integrity remains fragmented, and there are no uniform provisions on revolving doors for public servants or lobbying rules for Members of Parliament. The transparency of political party financing is limited. The appointment of the President of the National Integrity Agency and the new mandatory electronic asset declaration platform allowed the Agency to work more efficiently.

Romania has not yet transposed the Audiovisual Media Services Directive, thus delaying necessary changes to improve the functioning and effectiveness of the media regulator. Reforms to the law on the public broadcasting and radio companies are under way aiming at a less politicised appointment process and more professionalised management. Transparency of media ownership could be strengthened. There is not enough transparency on the broadcasting of content paid for by political parties outside electoral campaigns, and access to information by journalists remains deficient. Instances of threats, harassment and physical violence against journalists are more concerning compared to last year.

Frequent changes of legislation, regular use of emergency ordinances and the limited practice of public consultations continue to raise concerns. There are efforts to improve the use of impact assessments. The Government made a clear commitment to the principle of primacy of EU law, but concerns remain regarding the challenge to this principle by the Constitutional Court. The state of alert related to the COVID-19 pandemic was lifted and the emergency measures were scrutinised. The Institute for Human Rights is seeking accreditation as National Human Rights Institution. While the civil society is facing challenges stemming from the impact of COVID-19-related restrictions and limited access to funding, there are plans to simplify registration procedures for non-governmental organisations.

## **RECOMMENDATIONS**

In addition to recalling the commitments made under the National Recovery and Resilience Plan relating to certain aspects of the justice system, the anti-corruption framework and the legislative process and the recommendations under the Cooperation and Verification Mechanism, it is recommended to Romania to:

- Ensure that the revision of the Justice Laws reinforces safeguards for judicial independence, including to reform the disciplinary regime for magistrates, and take measures to address remaining concerns about the investigation and prosecution of criminal offences in the judiciary, taking into account European standards and relevant Venice Commission opinions.
- Introduce rules on lobbying for Members of Parliament.
- Address the operational challenges of the National Anti-Corruption Directorate, including as regards recruitment of prosecutors, and closely monitor the impact of the new system on investigating and prosecuting corruption offences in the judiciary.
- Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account the European standards on public service media.
- Ensure effective public consultation before the adoption of draft legislation.
- Continue efforts to establish a National Human Rights Institution taking into account the UN Paris Principles.

The Cooperation and Verification Mechanism (CVM) was established at the accession to the European Union in 2007 as a transitional measure to facilitate Romania's continued efforts to reform its judiciary and step up the fight against corruption<sup>1</sup>. 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 10 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. Since then, the Commission has continued to track progress, including through the 2021 CVM report, which noted that there is progress across all the remaining CVM recommendations and many are on the path to being fulfilled if progress remains steady<sup>2</sup>. The analysis set out in this report will also inform the work to track the achievement of the benchmarks and the conclusion of the CVM.

## **I. JUSTICE SYSTEM**

The Romanian justice system is structured in four instances, both civil and military: the first instance county courts, the ordinary and specialised tribunals, the courts of appeal<sup>3</sup> and the High Court of Cassation and Justice. The High Court of Cassation and Justice judges first instance and appeal criminal cases for certain categories of persons<sup>4</sup>, as well as appeal cases for certain civil and administrative cases. A fundamental role of this Court is to ensure the uniform interpretation and application of the law by the other courts. The Superior Council of Magistracy, tasked with guaranteeing judicial independence, is divided into two sections, the section for judges and the section for prosecutors. Each section has exclusive competence for the recruitment and management of the career of judges and prosecutors respectively, and acts as a disciplinary court. The prosecution service is headed by the Prosecutor General of the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The Public Prosecutor's Office includes specialised structures with special jurisdiction and organisation, the National Anti-Corruption Directorate (DNA) and the Directorate for Investigation and Combating Organised Crime and Terrorism (DIICOT), led by chief prosecutors<sup>5</sup>. There are also military prosecutorial offices. The Prosecutor General and the Chief Prosecutors of the specialised structures, DNA and DIICOT, are appointed by the President of the Republic, upon a proposal of the Minister of Justice and after having received a non-binding opinion of the Superior Council of Magistracy. Romania participates

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<sup>1</sup> 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).

<sup>2</sup> 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.24.

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

<sup>4</sup> The Criminal Section of the High Court of Cassation and Justice hears, as a court of first instance, cases involving offences committed by senators, deputies, and Romanian members of the European Parliament, by members of the Government, by judges of the Constitutional Court, by members of the Superior Council of Magistracy, by judges of the High Court of Cassation and Justice, and by prosecutors of the Prosecutor's Office attached to the High Court of Cassation and Justice.

<sup>5</sup> Prosecutors' offices attached to the courts of appeal are headed by general prosecutors, and the ones attached to the tribunals and county courts are led by first prosecutors.

in the European Public Prosecutor's Office (EPPO). The Romanian National Union of Bar Associations is a legal entity of public interest, comprising all 41 bars in Romania.

## Independence

**The level of perceived judicial independence in Romania continues to be average among both the general public and companies.** Overall, 48% of the general population and 49% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022<sup>6</sup>. According to data in the 2022 EU Justice Scoreboard, no clear trend can be identified in the evolution of the perceived level of independence since 2016. The perceived judicial independence among the general public has decreased in comparison with 2021 (51%) and 2016 (51%). The perceived judicial independence among companies has increased in comparison with 2021 (45%), but it is lower than in 2016 (63%).

**A new version of the draft justice laws is under preparation.** In its Recovery and Resilience Plan (RRP), Romania committed to amend the justice laws<sup>7</sup> by 30 June 2023, as part of the reform aimed at ensuring the independence of the judiciary, enhancing its quality and efficiency<sup>8</sup>. The draft laws were initially put for public consultation in 2020 and again in 2021<sup>9</sup>, and some of the proposals received in this context were included in the new draft laws. The Ministry of Justice published the amended drafts on its website on 22 June 2022. These are intended to address long-standing concerns for the independence, quality and efficiency of the justice system, in particular by amending the provisions related to the civil and disciplinary liability of magistrates, competitions for admission to the judiciary, and rules on the status, appointment and removal of specialised and high-ranking prosecutors. Having regard that this is the first in-depth reform of the laws governing the judiciary since 2004, a comprehensive and transparent revision process is expected to take place. The new draft laws are still to be tabled in Parliament.

**The Section for the Investigation of Offences in the Judiciary (SIJ) was dismantled, but some concerns related to the investigation and prosecution of criminal offences in the judiciary remain.** On 11 March 2022<sup>10</sup>, the SIJ<sup>11</sup> was dismantled and the competence to investigate offences committed by magistrates was transferred to 'designated prosecutors'

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<sup>6</sup> Figures 50 and 52, 2022 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%).

<sup>7</sup> 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. These laws, which define the status of magistrates and organise the judicial system as well as the Superior Council of Magistracy, are central for the independence of magistrates and the good functioning of the judiciary. See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 3, and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 3-4.

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

<sup>9</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 4.

<sup>10</sup> Law No 49 of 11 March 2022 on the abolition of the Section for the Investigation of Offences in the Judiciary, as well as for the amendment of Law no. 135/2010 on the Code of Criminal Procedure, published in the Official Gazette No 244 of 11 March 2022.

<sup>11</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 4-5.

within the Prosecutor's Offices attached to the High Court of Cassation and Justice (HCCJ)<sup>12</sup> and the Courts of Appeal<sup>13</sup>. It thus maintains the competence *ratione personae* in place under the previous system<sup>14</sup>. While the new system is an improvement in terms of the number of prosecutors allocated to the new structure and its territorial distribution<sup>15</sup>, concerns remain that it could undermine judicial independence<sup>16</sup> and proper safeguards need to be put in place, in light of the case law of the Court of Justice of the European Union (CJEU)<sup>17</sup>. Such a system must be justified by objective and verifiable requirements relating to the sound administration of justice<sup>18</sup>. Additionally, the appointment process for the 'designated prosecutors' does not provide for a competitive procedure based on meritocratic criteria and does not involve the section for prosecutors of the Superior Council of Magistracy (SCM)<sup>19</sup>. This is contrary to the recommendations of the Venice Commission<sup>20</sup>. Furthermore, as concerns 'vexatious complaints', which could be used as a means of pressure against magistrates, the new system does not contain any specific safeguards to ensure that magistrates are not subject to undue prosecution. Finally, the new structure would need to

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<sup>12</sup> For offences committed by members of the SCM, judges and prosecutors attached to the High Court of Cassation, judges and prosecutors attached to the courts of appeal and the military court of appeal, as well as the judges of the Constitutional Court.

<sup>13</sup> For offences committed by judges and prosecutors attached to courts of first instance, tribunals and military tribunals.

<sup>14</sup> See the Venice Commission in its Opinion (CDL-AD(2022)003), '[a]ny special treatment of magistrates should be strictly limited to functional immunity for actions carried out in good faith in pursuance of their duties or in the exercise of their functions and should not extend to the commission of crimes'.

<sup>15</sup> According to Art. 10 of the Law dismantling the SIIJ, to operate the new structure, the Prosecutor General may designate up to 14 prosecutors within the Prosecutor's Office attached to the High Court of Cassation and Justice and up to three in each Prosecutor's Offices attached to the Courts of Appeal. The prosecutors are designated for a period of four years upon recommendation of the plenum of the SCM. They return to their initial position at the end of that term or upon decision of the Prosecutor General to end the designation.

<sup>16</sup> Statement by the Romanian Judges Forum Association, the Movement for the Defence of the Statute of Prosecutors Association and the 'Initiative for Justice' Association, of 24 January 2022.

<sup>17</sup> The new structure should be 'accompanied by specific guarantees such as, first, to prevent any risk of that section being used as an instrument of political control over the activity of those judges and prosecutors likely to undermine their independence and, secondly, to ensure that that exclusive competence may be exercised in respect of those judges and prosecutors in full compliance with the requirements arising from Articles 47 and 48 of the Charter'(Judgment of the Court of Justice of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' and Others*, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, ECLI:EU:C:2021:393, para. 223).

<sup>18</sup> Judgment of the Court of Justice of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' and Others*, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, ECLI:EU:C:2021:393, para. 223.

<sup>19</sup> On 3 May 2022, the plenary of the SCM held a meeting to appoint a maximum of 59 designated prosecutors. Out of 56 candidates, 35 were appointed (including all the prosecutors formerly pertaining to the SIIJ). Although for the remaining 21 candidates the decision was postponed without further motivation, on 23 May 2022, the SCM announced the start of a new selection procedure, for a maximum of eight prosecutors, without motivating the decision to reduce the number of positions initially announced and their allocation exclusively to the Prosecutor's Office attached to the High Court of Cassation and Justice (Information received from members of the SCM in the context of the country visit to Romania).

<sup>20</sup> The designation proposal is made to the Prosecutor by the plenary instead of the section for prosecutors of the SCM, which is the authority with competence for making recommendations and decisions on the career of prosecutors. As the Law does not provide for a competitive procedure based on meritocratic criteria, it is furthermore unclear how the SCM plenary is to evaluate and select the candidates to be proposed to the Prosecutor General for designation. The Venice Commission recommends to 'give the prosecutorial section of the SCM a stronger involvement in the initial selection of prosecutors' (Venice Commission Opinion (CDL-AD(2022)003), para. 28).

deal swiftly with the significant backlog pending before the SIIJ before its dismantlement<sup>21</sup>, notably cases stemming from ‘vexatious complaints’, in order to lift the pressure generated by protracted procedures on the magistrates involved<sup>22</sup>. As regards the process, under the current Government, the Ministry of Justice published a new draft law<sup>23</sup> on 21 January 2022 and, after a shortened ten-day public consultation and a positive opinion of the SCM, the Parliament adopted the law on 28 February 2022<sup>24</sup>. The Venice Commission, which was consulted on the new draft law, expressed in its opinion its regret with its hasty adoption<sup>25</sup>, which gave little opportunity to relevant stakeholders to assess the provisions and exchange constructively with the Romanian authorities on their content.

**The legal provisions on disciplinary sanctions and their implementation continue to raise concerns for the independence of the judiciary**<sup>26</sup>. Between 2021 and March 2022, the High Court of Cassation and Justice solved, in last instance, 22 cases on the disciplinary liability of judges and prosecutors, upholding the disciplinary sanctions decided by the SCM in 10 of these cases<sup>27</sup>. In several cases, judges who had expressed critical opinions as regards the justice reforms of 2017-2019 were sanctioned, following disciplinary actions initiated by the Judicial Inspection. In one case, five judges received various disciplinary sanctions on referral by the Judicial Inspection, for the offence of ‘unjustified non-compliance with other administrative obligations provided by law or regulations’<sup>28</sup>. In a second case, the SCM imposed the disciplinary sanction of exclusion from magistracy on a judge for ‘manifestations detrimental to the honour or professional probity or to the prestige of the justice system’<sup>29</sup>, for posting videos related to his private life on social media. The same

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<sup>21</sup> In December 2021, there were more than 7 000 cases pending before the SIIJ. Information received from the Prosecutor’s Office attached to the High Court of Cassation and Justice in the context of the country visit.

<sup>22</sup> See also Section 2 – Anti-corruption Framework.

<sup>23</sup> An initial draft law to dismantle the SIIJ, tabled in Parliament by the previous Government on 18 February 2021 and adopted by the Chamber of Deputies with amendments on 24 March 2021, was not adopted in Senate, despite of the favourable Venice Commission opinion on the principle of restoring the competence of DNA and DIICOT (Venice Commission opinion (CDL-AD(2021)019); see also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 4-5.

<sup>24</sup> The law was challenged before the Constitutional Court, which declared it constitutional by Decision No. 88, of 9 March 2022.

<sup>25</sup> Venice Commission, Opinion on the draft law dismantling the section for investigating criminal offences committed within the judiciary (CDL-AD(2022)003), paras. 15 and 36.

<sup>26</sup> As regards the disciplinary offence of failure to comply with the decisions of the Constitutional Court (Art. 99 §) of the Law on the status of judges and prosecutors), see Section 4.

<sup>27</sup> The High Court also lowered the sanction applied in three cases. Information received from the High Court of Cassation and Justice in the context of the country visit.

<sup>28</sup> The Decision of 14 December 2021 concerned five judges of the Constanța Court of Appeal, some of which had taken part in the sentencing of high-level corruption offences (Romanian Judges Forum Association, Movement for the Defence of the Statute of Prosecutors and ‘Initiative for Justice’ Association, joint statement of 24 January 2022). The concrete ground relied on was the contestation by the five magistrates of some decisions of the Management Board of this Court regarding the formation of the panels. The decision to sanction, adopted by a majority of votes, was accompanied with three dissenting opinions of members of the section for judges of the SCM calling to reject the disciplinary actions or to declare them null and void because of deficiency in the procedure followed by the Judicial Inspection, as well as on the basis of the 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-291/19, C-355/19 and C-397/19, EU:C:2021:393.

<sup>29</sup> Under Art. 99 a) of Law no. 303/2004 on the status of judges and prosecutors, by Decision of 14 December 2021. Whereas the sanction became effective from the moment of the notification of the disciplinary decision, the reasons were not communicated to the magistrate for several months within the legal deadline. Such a delay raises concerns as to the compliance with the right to an effective remedy, more particularly in view of Art. 6 of the European Convention on Human Rights (judgment of the European Court of Human Rights of 28 October 2020, *Camelia Bogdan v. Romania*, 36889/18, on the right to an effective remedy

judge was excluded from the magistracy a second time, on the grounds that he engaged in political activities<sup>30</sup>. As highlighted by the CJEU, in order to preserve the independence of the courts, it is necessary to prevent the disciplinary regime from being diverted from its legitimate purposes and being used to exert political control over judicial decisions or pressure on judges<sup>31</sup>. In terms of predictability of disciplinary case-law, the SCM took a step to increase its transparency by publishing, in anonymised format, the disciplinary decisions that have become final and breaches of the code of ethics on a portal accessible to magistrates only<sup>32</sup>.

**The extensive powers and lack of accountability of the Chief Judicial Inspector remain a cause for concern, which the new justice laws are expected to address.** The Judicial Inspection conducts the preliminary investigation in disciplinary proceedings and decides whether there are grounds to initiate a disciplinary investigation before the competent section of the SCM<sup>33</sup>. As referred to in the 2021 Rule of Law Report<sup>34</sup>, following the *ad interim* appointment of the Chief Judicial Inspector<sup>35</sup>, the CJEU laid out criteria to assess the legality of such *ad interim* appointment<sup>36</sup>. Lower courts implemented this judgment differently<sup>37</sup>. To remedy this diverging case-law, the High Court of Cassation and Justice was seized and upheld the legality of the interim appointment<sup>38</sup>. The concentration of power in the hands of

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against disciplinary sanctions). This case also highlights the vulnerabilities in the legal framework, since the definition of the offence ‘manifestations detrimental to the honour or professional probity or to the prestige of the justice system’ can be interpreted broadly.

<sup>30</sup> By decision of 25 May 2022, the section for judges of the SCM decided to exclude the judge concerned for the disciplinary offence provided by Art. 99 b) of Law no. 303/2004, which prohibits being part of political parties or organisations, on the grounds that he participated in the political activity of an NGO of which he was a member.

<sup>31</sup> Judgments of the Court of Justice of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, ECLI:EU:C:2021:596, para. 138, and of 21 December 2021, *Euro Box Promotion e.a.*, in joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, ECLI:EU:C:2021:1034, para. 239.

<sup>32</sup> The eMAP portal is accessible at the following address: <https://emap.csm1909.ro/>. See written input from Romania for the 2022 Rule of Law Report, p. 9.

<sup>33</sup> As the Court of Justice held, the prospect of opening a disciplinary investigation is, as such, liable to exert pressure on those who have the task of adjudicating in a dispute, it is essential that the body competent to conduct investigations and bring disciplinary proceedings should act objectively and impartially in the performance of its duties and, to that end, be free from any external influence. See 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-291/19, C-355/19 and C-397/19, EU:C:2021:393, para. 199.

<sup>34</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 6 and 7.

<sup>35</sup> By Emergency Ordinance No. 77/2018 of 5 September 2018, the Government had allowed for the *ad interim* extension of the mandate of the then incumbent Chief Inspector from 1 September 2018 to 14 May 2019, whereas the competence to appoint interim substitutes is normally vested in the SCM.

<sup>36</sup> Judgment of the Court of Justice of 18 May 2021, *Asociația ‘Forumul Judecătorilor Din România’ and Others*, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, ECLI:EU:C:2021:393, para. 207.

<sup>37</sup> Adjudicating on applications against disciplinary procedures or sanctions, some lower courts validated the acts performed by the Judicial Inspection, while others annulled them on the grounds that they had been ordered by an authority appointed illegally. In particular, some courts considered that, since Order No. 134/2018 of the Chief Inspector on the organisation and functioning of the Judicial Inspection had been signed during the *ad interim* mandate of the chief inspector, all acts on its basis were null and void.

<sup>38</sup> Decision of the Panel for the Resolution of Points of Law of the High Court of Cassation and Justice (HCCJ) of 14 February 2022 in Case 2.990/1/2021. In view of the judgment of the CJEU, the HCCJ held that the provisions of Emergency Ordinance No. 77/2018 did not confer on the Government a direct power to appoint the heads of the Judicial Inspection and did not give rise to legitimate doubts that the Judicial Inspection would be used as an instrument of pressure on judicial activity or of political control of that



the Chief Inspector and his deputy, as well as the limits to the oversight by the SCM<sup>39</sup>, remain an issue for the independence of justice<sup>40</sup>. On 7 September 2021, a commission set up by the SCM rejected the request of the section for prosecutors to seize the plenary of the SCM in view of deciding on the revocation of the Chief Inspector<sup>41</sup>. It is reported that magistrates expressing public views on rule of law issues are often targeted by disciplinary investigations opened by the Judicial Inspection<sup>42</sup>, either *ex officio* or at the request of the SCM<sup>43</sup>. The Judicial Inspection may also carry out thematic controls in all prosecution offices and request extensive information to this end<sup>44</sup>. A request for a preliminary ruling is pending before the CJEU on the question whether the extensive powers vested in the Chief Inspector are in accordance with the principle of judicial independence<sup>45</sup>. The draft justice laws are expected to amend the provisions of the law on the SCM, in particular by providing that the deputy chief inspector is to be appointed by the plenary of the SCM, and no longer by the Chief Inspector.

### **The new Strategy for the Development of the Judiciary 2022-2025 and its related Action Plan set clear objectives and a monitoring mechanism.** At the initiative of the Ministry of

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activity. Decisions of the Panel for the Resolution of Points of Law are binding on all courts from their publication in the Official Gazette.

<sup>39</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 6-7.

<sup>40</sup> The latest progress report for Romania under the CVM, (COM(2021) 370 final), notes that there remain cases where disciplinary investigations and heavy sanctions on magistrates critical of the efficiency and independence of the judiciary have raised concerns. More recently, the disciplinary proceedings initiated by the Judiciary Inspection against a judge of the Pitești Court of Appeal, in substance because he decided to disapply the legislation establishing the SIIJ in light of the judgment of the Court of Justice of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' and Others*, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, ECLI:EU:C:2021:393, generated such concerns. The SCM eventually rejected the disciplinary action by decision of 14 April 2022.

<sup>41</sup> In Decision No 230, of 23 March 2021, requesting the referral to the plenary of the SCM on this matter, the section for prosecutors noted the 'very low quality of the activity of the Judicial Inspection in the field of disciplinary liability', including the violation, by both the inspectors in charge of the cases and their management, of the legal provisions applicable to disciplinary investigations (Superior Council of the Magistracy, section for prosecutors, Decision No 230 of 23 March 2021).

<sup>42</sup> Information received from members of the SCM in the context of the country visit to Romania.

<sup>43</sup> On 20 October 2021, upon referral of the President of the SCM, the Judicial Inspection opened a disciplinary investigation against the three prosecutors leading the 'Initiative for Justice' Association, for a public statement urging to dismantle the SIIJ and to restore the competence of the specialised prosecution services. On 28 April 2022, the Judicial Inspection decided to exert the disciplinary action against one of those three prosecutors, on the basis of the offence of 'manifestations detrimental to the honour or professional probity or to the prestige of the justice system' foreseen in Art. 99 a) of Law no. 303/2004. As of May 2022, a total of 11 disciplinary actions were still pending against this same prosecutor. Information received from magistrates' associations in the context of the country visit to Romania.

<sup>44</sup> It did so in August 2021, requesting extensive data covering the past five years from the Prosecutors Office attached to the High Court of Cassation and Justice with deadlines overlapping with the judicial vacation, thus impacting the daily work of services already affected by a lack of human resources. See Annex 4 of the input of the Romanian authorities for the 2022 Rule of Law Report.

<sup>45</sup> In case C-817/21, *R.I. v Inspecția Judiciară, N.L.*, lodged on 21 December 2021, the Bucharest Court of Appeal asks whether Article 2 and the second subparagraph of Article 19(1) of the Treaty on European Union, Decision 2006/928 establishing the CVM and the guarantees of independence and impartiality imposed under EU law, preclude national legislation which allows the chief inspector of the Judicial Inspectorate to issue autonomously normative administrative acts and/or an individual acts laying out the organisation of the institutional framework of the Judicial Inspectorate for the selection of judicial inspectors and the assessment of their activity, the conduct of the inspection activities, and the appointment of the deputy chief inspector, where, under organic law, those persons alone may carry out, approve or reject acts of disciplinary investigation in respect of the chief inspector.

Justice, the Government approved the Strategy and its action plan on 30 March 2022<sup>46</sup>. The adoption and entry into force of the new Strategy is a milestone under Romania's RRP<sup>47</sup>. The Strategy identifies, as areas of action, the independence, quality and efficiency of justice, on the one hand, and access to justice, on the other hand. The Strategy includes the reform of the justice laws, the elimination of inequities in the magistrates' salaries and the award of service pensions, the modernisation of the status of judicial staff and related legal professions. The Government expects that the implementation of the Strategy will result in an increase of the perceived independence of justice<sup>48</sup>.

## Quality

**There has been no significant improvement as regards the shortage of magistrates.** Some steps have been taken in order to improve the human resources situation in the judicial system. As mentioned in the 2021 Rule of Law Report<sup>49</sup>, a law adopted in June 2021 allowed for the organisation of competitions for admission to the National Institute of Magistracy (INM). On 16 July 2021, the plenary of the SCM approved the Regulation for organising and carrying out the competition for admission in the magistracy<sup>50</sup>. In addition, in December 2021, the SCM appointed 139 graduates of the INM as junior judges and 70 graduates as junior prosecutors. However, due to the absence of competitions for admission in the magistracy during two years, and a number of retirements that still exceeds the newly recruited magistrates<sup>51</sup>, the lack of judicial staff continues posing a risk for the quality and efficiency of justice. As of 31 December 2021, 669 out of 5072 judge positions were vacant, while the overall occupancy rate for prosecutors remained low, at 79.51%<sup>52</sup>. The new judicial strategy 2022-2025 envisages a number of measures to remedy this issue, including the modernisation of the status of judicial and auxiliary staff in courts and prosecutors' offices to allow judges and prosecutors to concentrate on judicial work<sup>53</sup>. It also sets the quantitative objective to ensure an occupancy rate of 95% of the judge positions and 80-85% of the prosecutor positions by 2025.

**Several projects are being implemented to improve the digitalisation of the justice system, in particular with a new centralised case management system.** At the heart of the

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<sup>46</sup> The Strategy and its Action Plan are both annexed to Government Decision No 436 of 30 March 2022 on the approval of the Strategy for the Development of the Judiciary 2022-2025 and its related Action Plan.

<sup>47</sup> Milestone 421, 'Entry into force of the law approving the strategy for the development of the judiciary 2022-2025' (which had to be achieved by 31 March 2022). The progress in implementing the strategy will be monitored and assessed using a set of indicators based on sources such as the EU Justice Scoreboard and the Rule of Law Report, following deadlines set out in the action plan.

<sup>48</sup> To 55-60% by 2025, according to the performance indicator set out in the action plan.

<sup>49</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 8.

<sup>50</sup> Contribution from the Superior Council of Magistracy for the 2022 Rule of Law Report, p. 1. The competition, which took place between July 2021 and April 2022, covered 300 justice auditor positions (175 for judge positions and 125 for prosecutor positions), out of which 281 were filled.

<sup>51</sup> In 2021, 256 judges and 141 prosecutors retired from the magistracy (Contribution from the Superior Council of Magistracy for the 2022 Rule of Law Report, p. 4).

<sup>52</sup> The situation particularly critical for the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anti-corruption Directorate (DNA) and the Directorate for the Investigation of Organised Crime and Terrorism (DIICOT), whose occupancy rates stood respectively at 76.72% and 77.97%. By Government Decision no. 744/2021 of 8 July 2021, the personnel scheme within DIICOT was supplemented with 96 positions (11 prosecutors, 45 experts and 40 clerks and officials). Input from Romania for the 2022 Rule of Law Report, p. 11.

<sup>53</sup> As stated in the judicial strategy, an appropriate level of staff numbers reflects directly on the quality and efficiency of justice.

digital transformation of the justice system is the implementation of ECRIS V, a new case management system with a centralised architecture, which will facilitate the digital interaction between litigants and judicial entities, as well as between the judicial institutions and other relevant institutions. This tool is expected to provide key functionalities supporting the digital processing of cases in courts and prosecution offices, the collection of statistical data and the generation of certain pre-defined statistical reports, as well as the electronic transfer of data between different actors, including courts and prosecution offices. Investments under Romania's RRP aim to ensure the full operationalisation of ECRIS V<sup>54</sup>, as well as the implementation of the digital goals set out in the strategy for the development of the judiciary 2022-2025, whose second strategic objective is to increase the quality and efficiency of justice through the digital transformation of the justice system<sup>55</sup>.

**New online portals were made operational for the submission of court documents before the High Court of Cassation and Justice and for the publication of case-law.** Since 19 November 2021, an online portal allowing the submission of applications and other documents<sup>56</sup> is available for all sections and the five-judge panels of the High Court of Cassation and Justice. Users of the portal may opt for the electronic service of procedural documents, including summons, the submissions of the parties and the court decisions in full. As regards the online accessibility of court decisions, the *ReJust* portal<sup>57</sup> – developed and managed by the SCM – was made available with the intention to replace the ROLII portal<sup>58</sup>. The *ReJust* portal includes both final judgements and minutes of the proceedings of courts of first instance and appeal, as well as other court rulings in anonymized form<sup>59</sup>. Although the new portal was created to increase managerial stability by entrusting its operation fully to the SCM and to ensure full respect of data protection rules<sup>60</sup>, some shortcomings should be addressed for it to fulfil its function adequately<sup>61</sup>.

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<sup>54</sup> According to milestone 164 of its RRP, Romania committed to fully operationalize ECRIS V by 31 December 2025. Romania's RRP comprises investments to ensure among others the technical transition from local to a shared central server, the upgrade and finalisation of the technical infrastructure for teleworking and digitalisation of documents, the upgrade of cybersecurity capabilities and the implementation of a new secure videoconferencing system.

<sup>55</sup> Strategy for the Development of the Judiciary 2022-2025, pp. 9-11, and its annexed Action Plan. The Strategy foresees to update the legal framework to generalise the use of the electronic file, signatures and seals by judicial staff by December 2023, to implement IT governance development policies, to upgrade the IT infrastructure of the judicial institutions at the local level by 2024, to establish and operationalise an integrated data centre for the judiciary by 2026, and to elaborate a cross-judicial sector strategy for the digitisation of the physical archive by 2024.

<sup>56</sup> The service is available free of charge using an online form on the 'ICCJ Digital' portal: <https://www.iccj.ro/acasa/dosar-electronic/>. An online form allowing for the submission of applications for information of public interest, complaints and petitions before the High Court was made available on the same date: <https://www.iccj.ro/compartimentele/biroul-de-informare-si-relatii-publice/formular-de-depunere-a-documentelor-in-format-electronic/>.

<sup>57</sup> The portal is to be found at <https://rejust.ro>.

<sup>58</sup> The ROLII portal, which was operated by a foundation in collaboration with several professional organisations on behalf of the SCM, is to be found at <http://www.rolii.ro/>. On this portal, see Commission Staff Working Document (SWD(2017) 25 final), Technical Report accompanying the report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (COM(2017) 44 final), p. 19.

<sup>59</sup> It allows users to know the final outcome and the way in which procedural steps, such as certain exceptions, were resolved during the trial. Written input from the SCM for the 2022 Rule of Law Report, p. 10.

<sup>60</sup> Information received from the SCM in the context of the country visit.

<sup>61</sup> In particular, it is currently not possible to perform searches by keywords or case number, thus limiting the practical use of this application. Moreover, the level of anonymisation of the decisions made available is

**The territorial jurisdiction of the courts of first instance was redefined to even out their workload.** Following an analysis of the caseload in courts of first instance, the SCM redefined their territorial jurisdiction<sup>62</sup> in order to even out their workload and give prevalence to the principle of bringing justice closer to the citizens. The SCM will analyse the impact of this measure by the end of 2022 to assess the need to further readjust the territorial jurisdiction across counties<sup>63</sup>.

## Efficiency

**The overall efficiency in civil and commercial cases remains stable, but decreased considerably for administrative cases.** In 2020, the length of proceedings at first instance in civil and commercial cases increased slightly in comparison to 2019<sup>64</sup>, and so did the estimated time needed to resolve litigious civil and commercial cases at all court instances<sup>65</sup>, while the clearance rate for resolving civil, commercial, administrative cases at first instance somewhat decreased to 97%<sup>66</sup>. As regards the efficiency in administrative cases, all indicators worsened significantly from 2019 to 2020, as the disposition time in first instance increased from 138 days to 609 days<sup>67</sup>, while the clearance rate dropped from 100.3% to 48.4%<sup>68</sup> and the number of pending cases doubled, from 0.2 to 0.4 per 100 inhabitants<sup>69</sup>.

**The Tax and Administrative Litigation Chamber of the High Court of Cassation and Justice is facing workload challenges.** The current caseload of this Chamber, combined with the backlog already accumulated, is liable to jeopardise the observance of the reasonable length of proceedings requirement<sup>70</sup>. To overcome this challenge, upon proposal of the High Court of Cassation and Justice (HCCJ), the Ministry of Justice reduced the jurisdiction of the Tax and Administrative Litigation Chamber<sup>71</sup>. However, as the workload of the latter and, more generally, of the HCCJ remains high, the Judicial Strategy for 2022-2025<sup>72</sup> envisages the reorganisation of its jurisdiction and the adaptation of its personnel scheme<sup>73</sup>.

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currently excessive, as it notably covers the names of the parties, of the members of the court and of the ECLI number, making it impossible to integrate the case-law in the ECLI Search Engine Portal. Several technical issues, such as delays and timeouts, were also reported.

<sup>62</sup> Decision No. 102/2021 of the Plenary of the SCM, of 10 June 2021, on determining the localities assigned to the first instance courts in each county, further amended and supplemented by SCM Decision No. 148/2021, of 21 October 2021.

<sup>63</sup> Information received from the SCM in the context of the country visit to Romania.

<sup>64</sup> Figure 7, 2022 EU Justice Scoreboard.

<sup>65</sup> Figure 8, 2022 EU Justice Scoreboard.

<sup>66</sup> Figure 11, 2022 EU Justice Scoreboard.

<sup>67</sup> Figure 9, 2022 EU Justice Scoreboard.

<sup>68</sup> Figure 13, 2022 EU Justice Scoreboard.

<sup>69</sup> Figure 16, 2022 EU Justice Scoreboard.

<sup>70</sup> In 2021, 12 108 cases was pending before this Chamber. Though the number of adjudicated cases (6 355) exceeded the number of newly entered cases (4 772), the backlog as of the end of 2021 was still high (5 753 cases). Information received from the High Court of Cassation and Justice in the context of the country visit to Romania.

<sup>71</sup> By Government Emergency Ordinance No. 102/2021, of 22 September 2021, amending and supplementing Law No. 213/2015 on Policyholder Guarantee Fund, appeals in the area regulated by this law were excluded from the jurisdiction of the Tax and Administrative Litigation Chamber of the HCCJ.

<sup>72</sup> See Section I.

<sup>73</sup> Under the strategic objective ‘Strengthening institutional capacity of the HCCJ’, the Ministry of Justice is to propose amendments to the legislation regarding the jurisdiction of the HCCJ by December 2022, and the Government is to approve the draft normative act in this respect by March 2023. Moreover, the number of additional positions necessary within the HCCJ will be determined by July 2023, and those positions are to

**Romania remains under enhanced supervision by the Committee of Ministers of the Council of Europe for the excessive length of civil and criminal proceedings, and lack of effective remedy in this respect**<sup>74</sup>. While in 2016 the Committee of Ministers welcomed the wide-ranging general measures adopted to resolve the problem of excessive length of civil and criminal proceedings, it further invited the Romanian authorities to continue to closely monitor the impact of these measures and to provide complete statistical data enabling the Committee of Ministers to fully assess the situation<sup>75</sup>. The impact of these measures on the issues reflected in the leading case *Vlad v. Romania*<sup>76</sup> remains to be assessed.

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

The National Anti-Corruption Strategy for 2021-2025 was adopted in 2021 and coordination of its implementation is ensured by the Ministry of Justice. The specialised anti-corruption prosecution, the National Anti-Corruption Directorate (DNA), has the competence to investigate serious<sup>77</sup> 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 financial and economic crime. A specialised anti-corruption directorate (DGA) exists in the Ministry of Interior, competent for integrity and corruption issues within the staff employed by the Ministry, including the police. The National Integrity Agency (ANI) carries out administrative investigations regarding conflicts of interests, incompatibilities of activities and unjustified wealth, and is responsible for the monitoring and verification of declarations of assets, including of all elected officials. The National Agency for the Management of Seized Assets (ANABI) ensures the management of seized and confiscated criminal assets, and facilitates the tracing and identification of proceeds.

**The perception among experts and business executives is that the level of corruption in the public sector remains high.** In the 2021 Corruption Perceptions Index by Transparency International, Romania scores 45/100 and ranks 25<sup>th</sup> in the European Union and 66<sup>th</sup> globally<sup>78</sup>. This perception has been relatively stable<sup>79</sup> over the past five years<sup>80</sup>. The 2022 Special Eurobarometer on Corruption shows that 72% of respondents consider corruption widespread in their country (EU average 68%) and 46% of respondents feel personally

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be filled by December 2023. Finally, it is planned to provide the HCCJ with a new seat to perform its functions in optimal conditions by December 2025.

<sup>74</sup> Judgment of the European Court of Human Rights of 26 November 2013, *Vlad v. Romania*, 40756/06.

<sup>75</sup> Committee of Ministers, 1259th meeting (7-8 June 2016).

<sup>76</sup> Judgment of the European Court of Human Rights of 26 November 2013, *Vlad v. Romania*, 40756/06.

<sup>77</sup> Article 13 of Emergency Order No 43 of 4 April 2002 on the National Anti-Corruption Directorate states that the DNA is competent to prosecute offences as referred to in Law No 78 of 8 May 2002 on preventing, detecting and sanctioning corruption offences, committed under certain circumstances.

<sup>78</sup> Transparency International (2022), Corruption Perceptions Index 2021. 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).

<sup>79</sup> 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.

<sup>80</sup> 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).

affected by corruption in their daily lives (EU average 24%)<sup>81</sup>. As regards businesses, 88% of companies consider that corruption is widespread (EU average 63%) and 70% consider that that corruption is a problem when doing business (EU average 34%)<sup>82</sup>. Furthermore, 44% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>83</sup>, while 35% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>84</sup>.

**The National Anti-Corruption Strategy for 2021-2025 was adopted, and its effective implementation would require determined political support.** In 2022, the OECD evaluated the 2016-2020 National Anti-Corruption Strategy and acknowledged the significant steps that Romania took towards strengthening its anti-corruption and integrity policies. However, it also noted that the lack of political support to implement important legislative reforms was an important challenge<sup>85</sup>. The new National Anti-Corruption Strategy for 2021-2025 was approved by the Government in December 2021<sup>86</sup>. The strategy has five general objectives: increasing the implementation of integrity measures at organisational level; reducing the impact of corruption on citizens; strengthening institutional management and administrative capacity to prevent and combat corruption; strengthening integrity in priority areas, such as health care, public procurement, and local administration; and increasing the performance of the fight against corruption by criminal law and administrative means<sup>87</sup>.

**The effectiveness of the investigation and sanctioning of corruption continues to improve, including by taking forward cases that were discontinued for some years.** The number of complaints from citizens and institutions on alleged corruption further increased<sup>88</sup>. DNA continued the positive trend both as regards the number of indictments and the reduction of its backlog of cases<sup>89</sup>, referred to in the 2021 Rule of Law Report<sup>90</sup>. The General Prosecution Service also continued the effective prosecution of corruption and corruption-assimilated offences<sup>91</sup>. Some decisions of the Constitutional Court effectively led to the

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<sup>81</sup> Special Eurobarometer 523 on Corruption (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

<sup>82</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>83</sup> Special Eurobarometer 523 on Corruption (2022).

<sup>84</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022).

<sup>85</sup> OECD, Evaluation of the Romanian Anti-Corruption Strategy 2016-2020, p. 3.

<sup>86</sup> This is also set out in Romania's RRP, whose Milestone 426 required the 'Entry into force of the Government Decision approving new National Anti-Corruption Strategy'.

<sup>87</sup> OECD, Evaluation of the Romanian Anti-corruption Strategy 2016-2020, p. 69. 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. 23.

<sup>88</sup> National Anti-Corruption Directorate (DNA), 2021 Activity Report, summary. These went up from 1858 in 2020 to 2139 in 2021.

<sup>89</sup> National Anti-Corruption Directorate (DNA), 2021 Activity Report, p. 32, 118 and summary. Over 2021, a total of 317 (319 in 2020) cases concerning 730 (520 in 2020) defendants were sent to the court. Of these, 565 (370 in 2020) were prosecuted by indictment and 165 (150 in 2020) by plea agreement. The courts rendered 255 (269 in 2020) final judgements and 427 (491 in 2020) defendants were convicted. The number of pending cases was 6076 in 2021, compared to 6180 in 2020.

<sup>90</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 11-12.

<sup>91</sup> Over 2021, a total of 1 493 (1 895 in 2020) cases involving non-serious corruption offences were solved, of which 201 (316 in 2020) indictments and plea agreements were issued, by which 253 (414 in 2020) defendants were sent to trial. There were 142 (203 in 2020) final judgments, by which 151 (207 in 2020) individuals were convicted (input from Romania for the 2022 Rule of Law Report, p. 26).

termination of criminal procedures in corruption cases against national politicians, by rendering null and void court judgments based on the question of the composition of the court panels<sup>92</sup>. On 21 December 2021, the CJEU ruled that EU law precludes the application of national rules or a national practice similar to the case-law of the Constitutional Court if it is capable of giving rise to a systemic risk of impunity for corruption offences or acts of fraud affecting the financial interests of the Union<sup>93</sup>. Following the CJEU judgment, in April 2022, the HCCJ upheld prison sentences in a high-profile case from 2018, which had been suspended on the grounds of unlawful court composition<sup>94</sup>. In May 2022, the HCCJ ruled in another high-profile case, implementing the CJEU ruling to disregard the case-law of the Constitutional Court on the legality of the composition of judges' panels, and sentenced the main defendant to imprisonment for bribery<sup>95</sup>.

**Amendments to the Codes of Criminal Law and Criminal Procedure are being prepared.** Concrete steps were taken to take forward the revision of the Criminal Code and the Criminal Procedure Code<sup>96</sup> and bring them in line with the number of far-reaching decisions of the Constitutional Court since 2014<sup>97</sup>, including on the corruption related crime of abuse in office<sup>98</sup> and on technical supervision methods (wiretapping)<sup>99</sup>. An interinstitutional working group has been in place since 2019 to examine legislative initiatives to amend the codes, with a first publication on the Ministry of Justice website in summer 2021 and the government tabled its proposals in June 2022<sup>100</sup>. In particular, it is proposed to amend the offence of abuse of power in the Criminal Code to specify that a 'violation of a duty' should follow from a law, a Government Ordinance, a Government

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<sup>92</sup> Constitutional Court of Romania, Decisions no. 685/2018 and no. 417/2019. The Constitutional Court ruled that the practice of appointing de jure members in the composition of the five-judge panels of the HCCJ was contrary to the rule that required that all members be drawn by lot. It also ruled that, contrary to the applicable legislation, the HCCJ had failed to establish specialist three-judge panels to deal at first instance with corruption offences. For more details, see 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 10.

<sup>93</sup> Judgment of the Court of Justice of 21 December 2021, *Euro Box Promotion e.a.*, in joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, para. 213.

<sup>94</sup> Decision of the High Court of Cassation and Justice of 7 April 2022.

<sup>95</sup> Decision the High Court of Cassation and Justice of 10 May 2022 in case 105/1/2019.

<sup>96</sup> Milestone 424 of Romania's RRP, entitled 'Amendment of the Criminal Code and Criminal Procedure Code' states that those amendments must enter into force by 31 December 2022 and 'bring the provisions of the Criminal Code and the Criminal Procedure Code that entered into force in 2014 in line with the Constitutional provisions, in accordance with the relevant national Constitutional Court decisions on the constitutionality aspects of the recent changes made to the Criminal Code and Criminal procedure.'

<sup>97</sup> The absence of policy and legislative solutions to the rapid succession of far reaching Constitutional Court decisions has led to increased obstacles and legal uncertainty regarding the investigation, prosecution and sanctioning of high-level corruption cases. It has led to cases failing in court, legal uncertainty on the admissibility of evidence, as well as to the restart of investigations or trial. 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. 21 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 13.

<sup>98</sup> Constitutional Court of Romania, Decision of 2016. As a result of uncertainty in the definition of the crime of abuse of office, investigations were dropped or cases annulled in court. The legislator therefore needs to clarify the definition in the Criminal Code.

<sup>99</sup> A number of decisions were ruled in the period 2016-2020 regarding the use of wiretapping. Constitutional Court rulings meant that for any future cases, the prosecution should no longer use the technical and human capacity of the Intelligence Services to collect evidence to be used in criminal procedures and should rather establish its own capability.

<sup>100</sup> Amongst others, the amendments aim to ensure that the courts, together with the prosecutorial offices, should verify whether the evidence gathered in the context of the protocol had been administrated with full respect of the law, and decide on appropriate legal measures.

Emergency Ordinance, or another normative act which, at the date of its adoption, was assimilated into law. Lack of clarity on this offence had inhibited its prosecution and it is expected that the amendment will have a positive effect on the track record of convictions for this crime<sup>101</sup>. It is also proposed, in line with a Constitutional Court judgment<sup>102</sup> and a 2018 Opinion of the Venice Commission<sup>103</sup>, to adopt strengthened safeguards for the use of evidence obtained from electronic recordings. In May 2022, the civil society and magistrates associations deplored the lack of transparency and consultation on the final versions of the laws and asked the minister to make public the texts, before submitting them to the Government for adoption<sup>104</sup>. On 2 June 2022, the Ministry of Justice sent the draft laws to the Government for approval.

**The competences of the DNA have been reduced, which could have a negative impact on its work and the investigation of some cases.** As a result of law abolishing the SIIJ<sup>105</sup>, the DNA lost the competence to investigate corruption cases involving judges of the Constitutional Court. Moreover, the Ministry of Justice proposed in June to remove the legal possibility<sup>106</sup> for the DNA to prosecute serious criminal offences ancillary to corruption, such as fraud and money laundering, when the investigations into these offences are separated from the corruption case, thereby codifying a decision of the Constitutional Court<sup>107</sup>. This decision has a retroactive effect and consequently has an impact on those ongoing DNA investigations that can be separated, as they will need to be restarted, with the risk that cases will fall due to the statute of limitation.

**Given the remaining concerns as regards the new system replacing the SIIJ, its impact on investigating and prosecuting corruption offences remains to be seen.** The 2021 Rule of Law and CVM Reports listed a series of concerns as to the effective treatment of some high-level corruption cases by the SIIJ<sup>108</sup>. In the SIIJ's three years of existence, it only sent seven cases to court<sup>109</sup>. As explained in Section I above, in March 2022 the legislator transferred SIIJ' competences to the Prosecutor's Offices attached to the HCCJ. The Venice

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<sup>101</sup> This amendment of Article 297 of the Criminal Code responds to Decision No. 405/2016 of the Constitutional Court regarding the lack of clarity in the offence definition. Reportedly, 801 criminal proceedings regarding the offence of abuse of office were discontinued as an effect of this decision, according to Unio – EU law journal, 30 January 2021, amount to a total loss of EUR 426 million, according to G4 media on 28 May 2020.

<sup>102</sup> Decision No. 26/2019 of 16 January 2019.

<sup>103</sup> Venice Commission Opinion on amendments to the criminal code and the code of criminal procedure, Opinion 930/2018 of 20 October 2018, pp. 28-29.

<sup>104</sup> Romanian Judges Forum Association, press release of 4 May 2022, 'Magistrates' Associations and Civil Society: We urge the Minister of Justice to urgently publish draft justice laws and criminal codes and to submit them to the Venice Commission'.

<sup>105</sup> As a result of the law dismantling the Section for the Investigation of Offences in the Judiciary (see below; see also Section I – Justice System).

<sup>106</sup> Article 13(5) of the Government Emergency Ordinance no. 43/2002 on the National Anti-Corruption Directorate.

<sup>107</sup> Decision No. 231 of 6 April 2021.

<sup>108</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 12 and 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. 4.

<sup>109</sup> The SIIJ had a total of 9 651 cases to solve, of which it solved between 2018 and 2022 a total of 2 000 cases. From these cases, the SIIJ issued 7 indictments and sued 9 defendants, leaving the number of open cases at 7002 in March 2022 (information received from Prosecutor General in the context of the country visit to Romania).



Commission<sup>110</sup> and the Prosecutor General<sup>111</sup> consider it unlikely that the new structure will be better placed to conduct investigations into allegations of corruption by judges and prosecutors than the DNA as the specialised prosecution service<sup>112</sup>. The lack of expertise to conduct investigations into complex corruption cases, as well as insufficient human resources and heavy workload could also prevent cases from being heard within a reasonable time<sup>113</sup>. The strict criteria needed by prosecutors to be appointed in the new structure will also have resource consequences for the number of prosecutors authorised to take on corruption cases against magistrates<sup>114</sup>. The new law dismantling the SIIJ also maintains the rule according to which, if other persons are investigated for corruption together with judges and prosecutors, the whole corruption file would be transferred from DNA to the designated prosecutors, a point identified by CVM reports and the Venice Commission as one of the major reasons why the SIIJ was seen to damage the effectiveness of anti-corruption work<sup>115</sup>. However, the new law envisages that cases will now only be joined if ‘for reasons of good conduct of the prosecution, the case cannot be disjoined’<sup>116</sup>. Monitoring the practical implementation of this rule will be important to ensure that it does not create practical obstacles to anti-corruption investigations.

**Challenges remain in recruiting prosecutors within the DNA, in particular due to dissuasive seniority requirements.** In March 2021, the DNA had a 75% occupancy rate of prosecutors<sup>117</sup>, and in March 2022, this rate remained the same<sup>118</sup>. Under the RRP, Romania committed to increase it to 85% by 30 June 2023<sup>119</sup>. In order to be appointed to the DNA, the law currently states that prosecutors must have at least 10 years seniority. The seniority requirement has been identified as a major reason for the limited number of applications to fill in the existing vacancies<sup>120</sup>. Other factors include the high workload, relatively low

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<sup>110</sup> Venice Commission opinion on the draft law dismantling of the Section for the Investigation of Offences in the Judiciary (CDL-AD(2022)003), p. 8.

<sup>111</sup> Written submission received from the Prosecutor-General in the context of the country visit.

<sup>112</sup> In fact, the draft proposal of 2021 aimed to transfer the competence from the SIIJ to the DNA, see GRECO Fourth Evaluation Report - Second Interim Compliance Report, p. 10.

<sup>113</sup> As noted in the 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, EU:C:2021:393, para. 221-222.

<sup>114</sup> At least 12 years’ experience is required for those designated to work for the prosecutors’ offices attached to the courts of appeal and at least 15 years’ experience is required in respect of the Prosecutor’s Office attached to the High Court of Cassation and Justice, as opposed to requiring a more reduced but targeted experience relating to prosecuting economic and financial crime. In total a maximum of 59 prosecutors will be appointed for a renewable four-year term.

<sup>115</sup> Venice Commission, Opinion on the draft law dismantling of the Section for the Investigation of Offences in the Judiciary (CDL-AD(2022)003), p. 3-4.

<sup>116</sup> Article 3(5) of the new Law. In case of disagreement between two prosecutorial offices, the Prosecutor General decides if the cases remain joined.

<sup>117</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, 12.

<sup>118</sup> In March 2021, there were 145 prosecutor posts occupied out of 194 and in March 2022, 147 were occupied out of 195, as reported by the Romanian government in the context of the RRP. The total number of occupied posts in DNA in December 2021 was 733 posts occupied out of 862, see National Anti-Corruption Directorate (DNA), 2021 Activity Report, p. 96.

<sup>119</sup> Milestone 429 of Romania’s RRP requires an ‘Occupation rate of 85% of National Anti-Corruption Directorate prosecutor positions attained’ (by 30 June 2023). The data comes from the (March 2022) Interim report on Measure 429. ‘Occupancy rate of 85% of public prosecutor positions in the National Anti-Corruption Directorate’.

<sup>120</sup> As acknowledged in the input from Romania for the Rule of Law Report, p. 27 and National Anti-Corruption Directorate (DNA), 2021 Activity Report, p. 8.

salaries<sup>121</sup> and the oral examination that is broadcast (contrary to examinations in other prosecution departments)<sup>122</sup>. A competition to recruit 29 prosecutors was organised in the first half of 2022, but only 11 people applied, of which two have withdrawn their candidacy<sup>123</sup>. Given that on 14 July 2021, the Constitutional Court declared unconstitutional a law decreasing the seniority requirement to seven years<sup>124</sup>, the government intends to maintain the ten-year seniority requirement for appointment in DNA<sup>125</sup>. Finally, the possibility for magistrates to be delegated, seconded and transferred to the DNA are also limited. The DNA relies on a significant proportion of delegated prosecutors<sup>126</sup> and has requested that the seventeen prosecutors that ceased working in the Directorate would be replaced by prosecutors by delegation, but only judicial police officers were seconded<sup>127</sup>. Given the shortage of prosecutors in the DNA, delegation, secondment and transfer remain important tools.

### **The filling of the post of President of the National Integrity Agency (ANI) and setting up of a mandatory electronic asset declaration platform facilitated the work of the Agency.**

The ANI continues to investigate incompatibilities, conflicts of interest and unjustified wealth<sup>128</sup>. After more than one year and a half without a president, at the proposal of the National Integrity Council<sup>129</sup> a new president for the ANI was appointed<sup>130</sup>. A vice-president will be appointed. A system for electronic submissions of assets and interest disclosures became operational in May 2021. Since January 2022, it is mandatory for asset and interest declarations to be filled in electronically and the public can consult them online<sup>131</sup>. This

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<sup>121</sup> Input from the SCM and the National Integrity Agency (ANI) during the country visit carried out in the context of the 2022 Rule of Law Report.

<sup>122</sup> 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. 21.

<sup>123</sup> Written contribution from the SCM in the context of the country visit.

<sup>124</sup> Constitutional Court, Decision No. 514, of 14 July 2021, The Court argued that, as the DNA is a specialised department within the Prosecutor's Office attached to the High Court of Cassation and Justice, its prosecutors should have the same seniority as prosecutors at the Prosecutor's Office attached to the High Court of Cassation and Justice (12 years). DNA and DIICOT had sent to the Constitutional Court an Amicus Curiae Memorandum, in which they submit that the seniority required for the operation within a prosecutor's office structure is not provided for in constitutional law. They argued that the reduction to 7 years of seniority is necessary to address the lack of capacity and that without it, the effectiveness of the fight against corruption is at risk. See *Stiripesurse.ro* (2021), 'DNA and DIICOT make a common front and send a memorandum to the CCR: they support the reduction of seniority for prosecutors'.

<sup>125</sup> Article 86(2) in conjunction with article 94(2) of the Draft Law on the Judicial organisation.

<sup>126</sup> As mentioned in the 2021 Rule of Law report, Country Chapter on Romania, p. 12, DNA operated with 14 delegated prosecutors out of 145 filled positions, i.e. 10% of staff was delegated.

<sup>127</sup> National Anti-Corruption Directorate (DNA), 2021 Activity Report, p. 96. DNA reports that 17 prosecutors have ceased working in the Directorate, of which 6 by leaving the Directorate, 2 by termination of delegation and 9 by retirement. In order to ensure that the work is properly carried out, 72 delegations by prosecutor were requested. In the course of 2021, the Chief Prosecutor of the DNA appointed 31 judicial police officers and for 36 judicial police officers the secondment was extended for 6 years.

<sup>128</sup> In 2021, the National Integrity Agency finalised 1 329 cases and 224 cases have remained definitive and irrevocable. The same year, 950 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. In 2020, only 204 fines were applied. Numbers from Input from Romania for the 2021 Rule of Law Report, pp. 20-21.

<sup>129</sup> Out of 15 members, the Council functioned in 2021 with only 9 members, with the rest of the positions waiting for nominations.

<sup>130</sup> The new President had been Vice-President since 2017. Report of the Romanian Senate of 29 June 2021.

<sup>131</sup> In a dedicated website to be found at <http://declaratii.integritate.eu/>. This concerns submissions made since 2008.

increases transparency towards the public and facilitates ANI's work<sup>132</sup>. The ANI is developing its own technological capacity to identify by itself suspicious declarations of assets and interests, on the basis of risk indicators, and intends to work more closely with the National Agency for the Management of Seized Assets (ANABI)<sup>133</sup>.

**Increased focus on integrity of law enforcement led to positive results.** The highest proportion of petty corruption concerns road traffic offences, covering almost exclusively police officers<sup>134</sup>. The Anti-Corruption Directorate (DGA) in the Ministry of Interior carried out 59 professional integrity tests on its employees (including police officers) in 2021. In one of these cases, the employee received sums of money or benefits not to perform the duties of the service, and in three cases there were indications of violations of professional ethics<sup>135</sup>. In 2021, 50 integrity incidents were reported (compared to 47 in 2020), which concerned 111 of its employees (versus 185 in 2020). The DGA organised 883 education activities in 2021 to promote integrity, with 89 454 participants, including students of driving schools<sup>136</sup>.

**The legal framework on integrity remains fragmented.** As reported in the 2021 Rule of Law report, rulings of the High Court of Cassation and Justice undid some changes to the integrity laws that weakened the ability of the ANI to carry out its work<sup>137</sup>. In this respect, the ANI and other stakeholders have highlighted the need to further improve the stability and clarity of the legal framework for integrity<sup>138</sup>, and to modernise it<sup>139</sup>. Currently, six legislative proposals to amend the integrity framework are pending before the Parliament, and ANI delivered a positive opinion on only one of them<sup>140</sup>. In its national RRP, Romania committed to have a consolidated law on integrity in force by 2024<sup>141</sup>. ANI has partnered with Transparency International and the Ministry of Justice to carry this work forward<sup>142</sup>.

**The value of assets confiscated by the National Agency for the Management of Seized Assets (ANABI) has increased.** ANABI seized almost EUR 57 million in 2021 compared to almost EUR 34 million in 2020<sup>143</sup>. The national Asset Recovery Strategy 2021-2025 includes

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<sup>132</sup> According to ANI, the technological gains compensate for being formally understaffed (information received from ANI in the context of the country visit to Romania).

<sup>133</sup> Information received from ANI in the context of the country visit to Romania

<sup>134</sup> Information received from the Prosecutor General on the context of the country visit of Romania.

<sup>135</sup> Anti-Corruption Directorate, Ministry of Interior, Annual Report 2021, p. 11. There are no details available on these three cases as they are still in the stage of investigation.

<sup>136</sup> Anti-Corruption Directorate, Ministry of Interior, Annual Report 2021, p. 10.

<sup>137</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 14. 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.

<sup>138</sup> 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. 18.

<sup>139</sup> ANI mentions beneficial ownership and virtual (information received from ANI in the context of the country visit to Romania).

<sup>140</sup> Input from Romania for the 2021 Rule of Law Report, p. 21.

<sup>141</sup> Milestone no. 431 of Romania's RRP states: 'Consolidated laws on integrity shall enter into force. The update of the integrity legislation shall be realized based on a prior evaluation and analysis of the integrity laws, together with an initial clustering of the normative acts. Within the second phase of the project, the existing laws shall either be unified and updated, or new normative acts shall be proposed.'

<sup>142</sup> Information received from ANI, NIC and Ministry of Justice in the context of the country visit to Romania.

<sup>143</sup> Annual Activity Report 2021, National Agency for the Management of Seized Assets, p. 39.

an action plan with legislative measures for expanding the Agency’s mandate. The entry into force of such legislation by 30 June 2022 is a milestone in Romania’s RRP<sup>144</sup>. ANABI stressed that the extension of its mandate should be backed-up with an investment plan<sup>145</sup>.

**From the two parliamentary chambers, the Senate still has not defined objective criteria to decide on requests for lifting parliamentary immunities.** The lack of reasoning of decisions taken by the Parliament in the past – as well as the number of occasions when Parliament did not allow investigation to proceed – led to concerns about the objectivity of these decisions<sup>146</sup>. To remedy this, the Chamber of Deputies had amended its rules of procedure in 2019, in line with GRECO and the Venice Commission’s suggestions<sup>147</sup>. However, the Senate has not yet adopted such rules<sup>148</sup>. The Chamber of Deputies approved the request to authorise the investigation of a former Minister and Deputy, and the Senate approved the request to authorise the investigation of a former Minister and Senator, despite a first negative opinion from the Legal Committee<sup>149</sup>.

**Limited provisions on revolving doors are available in various pieces of legislation, even if there is no uniform regulation in this respect, which remains a concern.** As mentioned in the 2021 Rule of Law Report<sup>150</sup>, the rules on revolving doors are limited and scattered over different laws<sup>151</sup>. Apart from a rule for public servants who, in exercising their function, have carried out monitoring and control activities over state-owned enterprises, there are no regulations concerning cooling-off periods for key decision-makers. The National Anti-Corruption Strategy for 2021-2025 sets out the establishment, by 2024, of a uniform regulatory framework governing post-employment bans for public officials moving to the private sector, procedures for monitoring compliance with those prohibitions and penalties for their infringement, and the establishment of *a priori* verification procedures by private sector employers of compliance with employment bans.

**The enforcement of the Code of Conduct and the absence of rules on lobbying for parliamentarians remain a concern.** Since the adoption of the Code of Conduct for members of Parliament in 2017, concerns have been raised regarding various inconsistencies in the code as well as the lack of proper enforcement<sup>152</sup>. The Parliament has not addressed these concerns so far<sup>153</sup>. Despite being raised by GRECO on a number of occasions<sup>154</sup>, the absence of rules on how members of Parliament engage with lobbyists and other third parties

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<sup>144</sup> Milestone no. 422 of Romania’s RRP requires the ‘Entry into force of the law amending the powers of the National Agency for the Management of Seized Assets.’

<sup>145</sup> Information received Input from ANABI in the context of the country visit to Romania.

<sup>146</sup> GRECO Fourth Evaluation Round - Evaluation Report, pp. 25-26.

<sup>147</sup> GRECO Fourth Evaluation Round - Interim Compliance Report, p. 12.

<sup>148</sup> GRECO Fourth Evaluation Round - Second Interim Compliance Report, p. 4.

<sup>149</sup> 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. 23.

<sup>150</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 16.

<sup>151</sup> Law No. 161/2003 on certain steps for assuring transparency in performing high official positions, public and business positions, for prevention and sanctioning the corruption. Revolving doors are also regulated in Law No 98/2016 on public procurement, Law No 672/2002 on internal public audit, Emergency Ordinance. no. 66/2011 on the prevention, detection and sanctioning of irregularities in the obtaining and use of European funds and/or related national public funds and the Law on Competition No 21/1996.

<sup>152</sup> GRECO Fourth Evaluation Round - Interim Compliance Report, p. 4; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 16.

<sup>153</sup> GRECO Fourth Evaluation Round - Second Interim Compliance Report, p. 4.

<sup>154</sup> GRECO Fourth Evaluation Round - Evaluation Report, p. 20; GRECO Fourth Evaluation Round - Interim Compliance Report, p. 9; GRECO Fourth Evaluation Round - Second Interim Compliance Report, p. 3.

seeking to influence the legislative process remains a concern. It is a well established principle that countries should have in place lobbying regulations to ensure transparency and accountability of such activities in accordance with European standards<sup>155</sup>. Furthermore, while members of Parliament have to declare gifts, there are no rules that require these declarations to be made public or controlled. There are also no clear restrictions on gifts, hospitality, favours and other benefits<sup>156</sup>.

**A comprehensive protection of whistleblowers is still missing.** The Ministry of Justice announced at the end of 2020 a draft law on the protection of whistleblowers, which would aim to transpose Directive (EU) 2019/1937 on whistleblowers' protection. The draft law was adopted by the Senate in April 2022 and by the Chamber of Deputies with amendments in June 2022<sup>157</sup>. Some amendments raised concerns, notably from the European Chief Prosecutor<sup>158</sup>, and the government expressed its intention to adjust the draft law, as the legislative process is still ongoing. Romania's RRP provided for the adoption and entry into force of the law transposing the directive on whistleblowers' protection by 31 March 2022<sup>159</sup>.

**The transparency of political party financing and the enforcement of related rules are limited.** Political parties receive public funding on the basis of the number of seats in the Parliament and the State compensates all campaigning costs of any party receiving more than 3% of the votes. Since the law states that these public funds should consist of at least 0.01% of the gross domestic product, they have increased exponentially<sup>160</sup>. The Permanent Electoral Authority (PEA) publishes on its website information related to electoral campaigns, party funding, monthly subsidy reports, and the results of oversight. However, the data collected is limited because, contrary to good practice<sup>161</sup>, political parties only need to list categories of expenses. Moreover, the PEA can only publish information that was actually provided by the political parties and the rules are not systematically enforced. Although private donations only make up for a small part of the parties' finances, a non-profit organisation identified people who earn ten times less each year than they donated to a party<sup>162</sup>. The PEA's review is limited to verifying whether the declared expenditures match the donations and no thorough auditing and investigation of expenditures is undertaken, as would be advisable. Furthermore, the PEA can impose monetary sanctions for non-compliance with the legal provisions, but these are disproportionately low<sup>163</sup>.

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<sup>155</sup> Council of Europe Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making.

<sup>156</sup> GRECO Fourth Evaluation Round - Evaluation Report, p. 16-17; GRECO Fourth Evaluation Round - Interim Compliance Report, p. 6-7; GRECO Fourth Evaluation Round - Second Interim Compliance Report, p. 3.

<sup>157</sup> Draft Law 219/2022 on the protection of whistleblowers in the public interest.

<sup>158</sup> Statement from European Chief Prosecutor Laura Kövesi regarding the protection of whistleblowers in Romania, published on 30 June 2022.

<sup>159</sup> Milestone 430 states: 'Entry into force of the law on the whistle-blowers' protection. The law shall transpose Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law, and shall include additional provisions, specific to the national context, in order to efficiently address integrity policy issues.'

<sup>160</sup> In 2017 the total amounted to approximately EUR 6.6 million. When the law changed in 2018, it amounted to approximately EUR 33 million and in 2021 EUR 47 million.

<sup>161</sup> OSCE, Election Assessment Mission Final Report, Presidential Election 2019 Romania, p. 13.

<sup>162</sup> Expertforum, Political financing in 2020: transparency and irregularities report.

<sup>163</sup> OSCE, Election Assessment Mission Final Report, Presidential Election 2019 Romania, p. 14. Monetary fines range from RON 10 000 (EUR 2 094) to RON 25 000 (EUR 5 237) in cases, among others, of failure to submit the campaign expenditure report after the election. From RON 15 000 (EUR 3 142) to RON 50 000 (EUR 10 474) in cases, among others, of misuse of state subsidies and if the contributions exceed the limits set forth in the law; from RON 100 000 (EUR 20 949) to RON 200 000 (EUR 41 896) in cases, among

**Corruption risks related to the pandemic received more attention.** As referred in the 2021 Rule of Law report<sup>164</sup>, the Ministry of Justice noted that progress achieved in the fight against corruption has been uneven, in particular in vulnerable areas. In response, the new Anti-Corruption Strategy 2021-2025 contains measures addressing high-risk areas, such as health<sup>165</sup> and public procurement<sup>166</sup>. These risk factors were evident during the pandemic. Since March 2020, the DNA registered 175 cases related to the pandemic and at the end of 2021, there were 89 criminal cases relating to that matter<sup>167</sup>. Most cases involve protective medical equipment and irregularities with certificates<sup>168</sup>. The number of integrity warnings issued by the electronic system to prevent conflicts of interests in public procurement has decreased since its launch. With the launch of the ‘PREVENT’ system in 2018, there were 69 integrity warnings, followed by 40 in 2019, 20 in 2020 and of the 26 integrity warnings in 2021, 16 concerned the same procurement procedure<sup>169</sup>.

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

The right to freedom of expression as well as the right of access to any information of public interest is enshrined in the Constitution. The mission and composition of the media regulator are set out in the Audiovisual Law<sup>170</sup>. The organisation and functioning of the Romanian Broadcasting Society and the Romanian Television Society are regulated by Law 41/1994<sup>171</sup>.

**Concerns about the functioning and budget of the National Audiovisual Council (CNA) persist.** Romania has not yet transposed the Audiovisual Media Services Directive as revised by Directive (EU) 2018/1808 (AVMSD), and this has delayed important changes necessary to improve the functioning and effectiveness of the media regulator. One year after the election of the members of the CNA, the regulatory authority does not have a President yet. In this context, the powers of the President were taken over by the Vice-President. The draft law<sup>172</sup> transposing the AVMSD requires that the activity of the Council is financed from the state budget to perform its functions effectively. The new provisions would extend the scope of the law to providers of video sharing platforms under Romanian jurisdiction, jurisdiction of other EU Member States or of third States whose content can be accessed in Romania. The draft law was approved by the Senate on 7 June 2022. The absence of a President did not

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others, of violation of provision related to the use of the donation money earmarked for headquarters of political parties.

<sup>164</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 12.

<sup>165</sup> One measure (no. 8) is ‘Reviewing and optimising the assessment of corruption risks and conflicts of interest in health authorities and institutions and whistleblower protection (as per Directive 2019/1937 on the protection of persons who report breaches of Union law) in order to detect, prevent, reduce or eliminate risks to public health’.

<sup>166</sup> One measure (no. 2) is ‘The development of a national risk map aimed at identifying procurement functions that are vulnerable to corruption, areas where public procurement is more prone to corruption and the stages of procurement procedures where signs of corruption occur’.

<sup>167</sup> National Anti-corruption Directorate (DNA), 2021 Activity Report, p. 17.

<sup>168</sup> Information received from the Secretariat of the National Anti-Corruption Strategy in the context of the country visit.

<sup>169</sup> Information received from ANI in the context of the country visit to Romania. ANI considers that there is room for technical development and updates of the system after five years.

<sup>170</sup> Law No. 504/2002.

<sup>171</sup> Romania ranks 56th in the 2022 Reporters without Borders World Press Freedom Index compared to 48th in the previous year.

<sup>172</sup> PL-x nr. 430/2021 - Draft Law for the amendment and completion of the Audiovisual Law no. 504/2002, as well as for the amendment and completion of the Government Ordinance no. 39/2005 on cinematography.

block the functioning of the CNA, but its budgetary restrictions remain a concern, notably in view of the funds required to improve its IT systems<sup>173</sup>.

**Transparency of media ownership continues to be incomplete<sup>174</sup>.** In accordance with the law, the CNA must ensure the transparency of the organisation, functioning and financing of the mass media in the audiovisual sector. Information on audiovisual media ownership is available in the company registry and some of these data is also published on the annual activity report<sup>175</sup>, although this information is not always complete<sup>176</sup>. Media companies not operating in the audiovisual field are only subject to the (less extensive) requirements any other company in Romania must abide by<sup>177</sup>. They have to communicate information on ownership structures, including shareholders, to the National Trade Register Office. However, it is still possible for a media company to be owned by another company, owned in turn by an entity registered abroad. Moreover, information about the ownership structure of media companies is not publicly accessible without prior registration process (with the National Trade Register Office or a private company) and the payment of a fee<sup>178</sup>.

**There is not enough transparency with regard to audiovisual media and elections.** Although political competitors have guaranteed and equitable access to airtime on audiovisual media during electoral campaigns, television channels are not compelled to clearly explain the distinction between different types of content produced during campaigns - especially between their own editorial content and airtime bought by the parties - and to signal who is paying for the content. Furthermore, there is not enough transparency about how much various parties paid to which channels and for what content<sup>179</sup>. Attempts by journalists to investigate how these funds were used by the media to broadcast political content faced resistance by some political parties. The CNA is competent to monitor the content that is broadcasted.

**A bill to reform the law on the public broadcasting and radio companies<sup>180</sup> is being discussed by the legislator with a view to have a more independent and professionalised management.** The mechanism for appointing and especially for dismissing the Board of Directors of the public service broadcaster is considered politicised, since the Parliament only needs to reject its activity report for the previous year to dismiss the Board and the Chairs with no discussion on performance targets. The Annual Reports for 2017 through 2019 were rejected in May 2021, triggering the dismissals of the boards of the radio and broadcaster company<sup>181</sup>. In 2021, the position of Chair of the Board of Directors was split into two, one for the radio (SRR) and another one for the television companies (SRTv), although arguably this solution does not address the actual problem, which is that the institutional design of public service media does not incentivize independence and does not consider performance

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<sup>173</sup> Information received from CNA in the context of the country visit to Romania.

<sup>174</sup> 2022 Media Pluralism Monitor, country report for Romania, pp. 16 and 17.

<sup>175</sup> For operators in the audio-visual field, ownership information has to be reported to the CNA. The CNA also has to be informed about stockholders with 10% or more of the company's shares and / or with voting rights, and information must be public regarding holders of more than 20% of stocks.

<sup>176</sup> Information received from the CNA in the context of the country visit.

<sup>177</sup> Pursuant to the Law on Societies (Law No. 31/1990).

<sup>178</sup> 2022 Media Pluralism Monitor, country report for Romania, p. 17.

<sup>179</sup> 2022 Media Pluralism Monitor, country report for Romania, p. 19.

<sup>180</sup> Law No. 41, of 17 June 1994, on the organization and functioning of the Romanian Broadcasting Company and the Romanian Television Company.

<sup>181</sup> 2022 Media Pluralism Monitor, country report for Romania, p. 20.

targets<sup>182</sup>. The Board of Directors of SRR and SRTv, tasked with the administration of the companies, were appointed on 15 November 2021 by the Parliament for a period of four years, following a number of interim appointments that the Constitutional Court considered unconstitutional<sup>183</sup>. The Steering Committees of SRR and SRTv, tasked with the content and editorial policy and the management of operations, are also chaired by the respective Presidents of the Board of Directors.

**Concerns remain<sup>184</sup> regarding the implementation of the legal framework for access to information.** A bill intended to update the freedom of information act (Law 544/2001) failed to be approved in 2021 and remains pending in the Chamber of Deputies. If approved, the law would, among other things, oblige public institutions to provide public interest information in an open (machine readable) format, create a publicly accessible register of the requests for information received and clarify what institutions and organisations are obliged to answer requests. Insufficient and inconsistent responsiveness of authorities to freedom of information requests represent an ongoing problem<sup>185</sup>, including on urgent decisions taken on e.g. the COVID-19 pandemic or the Ukrainian refugees crisis<sup>186</sup>. Data protection laws or the transfer of information requests to different institutions are often invoked to refuse to release public interest information<sup>187</sup>.

**The situation regarding threats, instances of harassment and violence against journalists is more concerning compared to last year<sup>188</sup>.** In September 2021, two journalists and an environmental activist were attacked while filming a documentary about illegal deforestation<sup>189</sup>. All their footage was deleted and the equipment was destroyed by the attackers. While the then Prime Minister condemned this attack and an investigation was launched, a public petition requesting the General Prosecutor to take over the investigation was not accepted<sup>190</sup>. In September 2021, two women journalists were attacked at a congress of the National Liberal Party by party members<sup>191</sup>. The Council of Europe has two active alerts concerning intimidation of journalists in Romania<sup>192</sup>. One of these cases led ten

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<sup>182</sup> 2022 Media Pluralism Monitor, country report for Romania, pp. 11 and 20.

<sup>183</sup> 2022 Media Pluralism Monitor, country report for Romania, footnote 29.

<sup>184</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 14.

<sup>185</sup> 2022 Media Pluralism Monitor, country report for Romania, p. 14.

<sup>186</sup> Information received from Funky Citizens in the context of the country visit to Romania.

<sup>187</sup> 2022 Media Pluralism Monitor, country report for Romania, p. 14.

<sup>188</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 19, referred to lawsuits for defamation against investigative journalists but did not report any physical attack against journalists.

<sup>189</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Romania.

<sup>190</sup> Written contribution from Declic, 6 December 2021.

<sup>191</sup> Information received from Active Watch in the context of the country visit to Romania. See also joint statement of several associations of 28 September 2021, 'We ask the PNL leadership to take measures to protect the integrity of the press'.

<sup>192</sup> Council of Europe Platform for the protection of journalism and safety of journalists, Romania. On 13 January 2022, the Direction of Investigation of Organised Crime and Terrorism Crimes (DIICOT) raided the home of Alin Cristea, Editor-in-Chief of the online news outlet debrăila.ro and confiscated journalistic equipment allegedly over suspicions of child pornography. The Romanian authorities reacted to this alert on 25 March informing that prosecutors acted in the child's best interest and that all actions and measures taken by the judiciary had followed a proportionate approach considering the crime committed and the respect for media freedom and for the rights of the journalists. The second alert concerns journalist Emilia Sercan, who on 4 April 2022 announced that she had been the victim of harassment, intimidation and threats over the course of three months since 19 January 2022. Following the publication of an investigation in which she described that the then Romanian Prime Minister had plagiarised his doctoral thesis, she received threatening messages and was subject to a smear campaign. The Romanian authorities reacted to this alert on 22 June,



European and international press freedom and freedom of expression organisations to send an open letter to the Romanian authorities calling for swift and independent investigations, recalling a background of undue pressure against journalists and media workers in Romania coming from politicians, prosecutors, police, and military officers<sup>193</sup>. No specific safeguards or cooperation mechanisms between different stakeholders exist to protect journalists from this type of attacks. On 15 June 2021, the Bucharest Court rejected the strategic lawsuit against public participation referred to in the last Report<sup>194</sup>.

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

Romania is a semi-presidential representative democratic republic. The Romanian Parliament is bicameral, comprising the Senate (the upper house), and the Chamber of Deputies (the lower house). The Government, Deputies, Senators, or a group of no less than 100.000 citizens have the right of legislative initiative<sup>195</sup>. The Constitutional Court is competent to review the constitutionality of laws and to settle conflicts of constitutional nature between public authorities<sup>196</sup>.

**Frequent changes of legislation and the regular use of emergency ordinances continue to raise concerns regarding the stability and predictability of legislation.** As referred in the 2020 and 2021 Rule of Law Reports<sup>197</sup>, whereas the ordinary process for preparing and enacting laws is well regulated, there are concerns regarding the frequent amendments to legislation<sup>198</sup>, and the extensive use of fast-track procedures and government emergency ordinances (GEOs). Data show that in 2021 the number of new GEOs decreased in terms of the percentage of the total legislation adopted<sup>199</sup>. However, the Legislative Council continues to highlight that not all draft emergency ordinances presented substantiated reasons to justify an extraordinary situation, the regulation of which could not be postponed<sup>200</sup>. Moreover, there

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condemning all attempts to intimidate or influence the work of Romanian journalists and media outlets and informing that the case is currently under investigation. In a separate case, on 13 December 2021, a media crew of the Italian public broadcaster RAI were detained in a Bucharest police station after a Romanian Senator kept them locked up inside her office during an interview. The journalists were released following the intervention of the Italian embassy. The Romanian Government issued statements, strongly condemning ‘any act of intimidation of journalists or obstruction of the right to free information of citizens and asking for the matters to be duly investigated’.

<sup>193</sup> Media Freedom Rapid Response (MFRR) (2022), ‘Open letter calling for swift and independent investigation concerning publication of stolen pictures of Emilia Șercan and leak from criminal investigation’.

<sup>194</sup> Investigative journalists were sued for over EUR 488 000 in relation to an article on sale of masks considered faulty.

<sup>195</sup> 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.

<sup>196</sup> Constitution of Romania, Art. 146. A partial renewal of CCR members will take place this year, with two judges already proposed by the political parties and endorsed by the Parliament. The selection procedure was challenged at the Constitutional Court.

<sup>197</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 15; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 20.

<sup>198</sup> The quality of law-making is an important factor for investor confidence and a reason for concern about effectiveness of investment protection for 32.1% of companies in Romania as shown in Figure 55 of the 2022 EU Justice Scoreboard.

<sup>199</sup> In 2021, GEOs represented 8.6% of the total of legislation adopted, and 13.77% in 2020. In 2021, out of a total of 1685 draft normative acts adopted by the Government, 145 were GEOs (Input from Romania for the 2022 Rule of Law Report, p. 34).

<sup>200</sup> Input from Romania for the 2022 Rule of Law Report, p. 34.

is no strict deadline for completing the adoption procedure of emergency ordinances by the Parliament<sup>201</sup>. This procedure also does not envisage the obligation to submit the draft to the Legislative Council for its opinion<sup>202</sup>. In addition, such ordinances may not be submitted to a preliminary control of constitutionality<sup>203</sup> nor challenged before the Constitutional Court except by a limited number of institutional actors<sup>204</sup>. According to an independent study, of 474 legislative initiatives analysed, 140 (30%) were aimed at approving such ordinances<sup>205</sup>, and 174 of the 474 legislative acts (37%) went through a fast-track procedure<sup>206</sup>. Situations of frequent successive changes of normative acts also continue to occur<sup>207</sup>. These issues are addressed in Romania's RRP, which provides for the establishment of a specialised structure with the role of overseeing the quality of legislation and the compulsory republication of consolidated versions of laws whenever they are amended<sup>208</sup>. The RRP moreover envisages the adoption of a methodology for the use of GEOs<sup>209</sup>.

**Efforts are under way to improve the use of impact assessments but concerns regarding the effectiveness of public consultations remain.** The Secretariat General of the Government conducted an analysis of the quality of the rationale for legislation adopted by the Government in 2020, which shows an increase of 14-percentage point of satisfactory impact assessments and a 21-percentage point decrease of the unsatisfactory impact assessment compared to 2019<sup>210</sup>. A new legislative proposal to ensure that the grounds for regulatory acts must be based on an assessment of the impact on public health is pending before the Senate<sup>211</sup>. The Romanian RRP includes measures aimed at strengthening the capacity of ministries to develop impact assessments<sup>212</sup>. To that end, on 30 March 2022, the Government adopted a decision defining the methodology for *ex ante* and *ex post* impact assessment of draft normative acts and setting up of the Advisory Board for the Impact Assessment of Regulatory Acts<sup>213</sup>. Regarding public consultations, it is reported that, despite

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<sup>201</sup> Out of the 145 emergency ordinances adopted in 2021, only 40 have been made law by Parliament so far, and 104 have not been debated in Parliament yet. Information received from the Legislative Council in the context of the country visit to Romania.

<sup>202</sup> Input from Romania for the 2022 Rule of Law Report, p. 34.

<sup>203</sup> The absence of *ex ante* control of constitutionality of the GEOs is additionally problematic since GEOs come into force immediately, may create rights and obligations, impose sanctions or exonerate from liability (Venice Commission, (CDL-AD(2019)014), para 17).

<sup>204</sup> Article 146 (a) of the Romanian Constitution.

<sup>205</sup> In particular, regarding draft legislation in the field of finance, 25 of the 51 draft laws concern the approval of a GEO (contribution from Funky Citizens for the 2022 Rule of Law Report, p. 24).

<sup>206</sup> Contribution from Funky Citizens for the 2022 Rule of Law Report, p. 24.

<sup>207</sup> For instance, in 2021, the National Education Law (Law No. 1/2011) was subject to 14 legislative interventions, seven of which through GEO, and the Fiscal Code (Law No. 227/2015), was amended 11 times, four of which by emergency ordinance (Input from Romania for the 2022 Rule of Law Report, p. 33).

<sup>208</sup> Under Milestone 404, Romania committed to establish and operationalise 'a structure to ensure the implementation of an effective regulatory quality control mechanism' by 31 March 2022. . Under milestone 412, Romania committed to amend Law 24/2000 by 30 September 2022 to require the republication of consolidated version of laws whenever they are amended.

<sup>209</sup> Milestone 411, to be achieved by 30 September 2022.

<sup>210</sup> Input from Romania for the 2022 Rule of Law Report, p. 33.

<sup>211</sup> Committee on Legal Affairs, Appointments, Discipline, Immunities and Validations. The draft law aims to complete Law No. 24/2000, on legislative technique.

<sup>212</sup> Milestone 401, 'Entry into force of the methodologies and procedures to improve public policy rationale and planning and administrative simplification'.

<sup>213</sup> Decision no. 443 of 30 March 2022 approving the content of the presentation and motivation tool, the structure of the report on the implementation of normative acts, the methodological instructions for conducting the impact assessment, and setting up the Advisory Board for the impact assessment of normative acts.

the legal obligation thereto<sup>214</sup>, public authorities do not submit written reasoning for not considering the proposals submitted by the civil society during the legislative procedure<sup>215</sup>. Moreover, a new GEO came into force in March 2022<sup>216</sup>, which allows the derogation from the minimum 30-day public consultation period for normative acts in case of emergency. The Ombudsperson challenged this GEO before the Constitutional Court<sup>217</sup> on the grounds that the emergency situations allowing derogation from the 30-day period should be more precisely defined.

**The Romanian Government has made a clear commitment to the principle of primacy of EU law, but concerns remain regarding the challenge to this principle by the Constitutional Court.** As referred in the 2021 Rule of Law Report<sup>218</sup>, in a judgment of 8 June 2021<sup>219</sup>, the Constitutional Court rejected the findings of the European Court of Justice in its preliminary ruling of 18 May 2021<sup>220</sup> and questioned the principle of primacy of EU law. The Commission expressed serious concerns that this judgment of the Constitutional Court goes against the principle of primacy of EU law<sup>221</sup>. The Romanian government highlighted its commitment of ensuring, in line with its constitutional powers, respect for the primacy of EU law<sup>222</sup>. Following this judgment, in the context of new requests for a preliminary ruling submitted by Romanian courts, the Court of Justice declared that, by virtue of the primacy of EU law, national courts should not be prevented by a risk of disciplinary sanctions from disapplying decisions of the Constitutional Court, which are contrary to EU law<sup>223</sup>. Subsequently, on 23 December 2021, the Constitutional Court issued a public statement recalling the binding nature of its decisions and declared that the Court of Justice's judgment could not be implemented without amending the Romanian Constitution<sup>224</sup>. In light of the case-law of the Constitutional Court, and in particular due to the fact that non-

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<sup>214</sup> Article 12(3), Law No 52/2003.

<sup>215</sup> Contribution from Civil Liberties Union for Europe - Romania for the 2022 Rule of Law Report, p. 13.

<sup>216</sup> Government emergency ordinance No. 16/2022, of 2 March.

<sup>217</sup> Exception of unconstitutionality lodged on 24 March 2022 and registered under case No. 2688.

<sup>218</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 22 and 23.

<sup>219</sup> 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.

<sup>220</sup> 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.

<sup>221</sup> Letter of 18 October 2021 to the Romanian authorities.

<sup>222</sup> Letters of 12 November 2021 and 15 January 2022 to the Commission.

<sup>223</sup> Judgment of the Court of Justice of 21 December 2021, *Euro Box Promotion e.a.*, in joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19.

<sup>224</sup> Constitutional Court, Press release of 23 December 2021. As recalled by the Court of Justice, by virtue of the principle of the primacy of EU law, a Member State's reliance on rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of EU law. The effects of the principle of the primacy of EU law are binding on all the bodies of a Member State, without, *inter alia*, provisions of domestic law relating to the attribution of jurisdiction, including constitutional provisions, being able to prevent that. (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. 245 and case-law cited). It is also in the light of the primacy principle that, where it is unable to interpret national law in compliance with the requirements of EU law, the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for that court to request or await the prior setting aside of such provision by legislative or other constitutional means (*Ibid.*, para. 247 and case-law cited).

compliance with the decisions of the Constitutional Court constitutes a disciplinary offence under national law<sup>225</sup>, a Romanian court submitted a preliminary reference to the CJEU, in which context the Court of Justice ruled that the national courts must be able to examine the conformity of national provisions with EU law, regardless of whether they have been held constitutional by a decision of the national Constitutional Court<sup>226</sup>. The Court also made clear that EU law precludes any national rule or practice that would give rise to disciplinary liability for national judges' failure to comply with decisions of the Constitutional Court that are contrary to EU law<sup>227</sup>. Steps were taken to address these concerns by proposing, in the context of the legislative procedure for the preparation of the new justice laws, that the disciplinary offence of disregarding a judgment of the Constitutional Court is suppressed<sup>228</sup>. Moreover, the HCCJ gave several judgments<sup>229</sup> setting aside the case-law of the Constitutional Court on the composition of judges' panels to give effect to the judgment of the CJEU of 21 December 2021<sup>230</sup>, thus giving precedence to the principle of primacy of EU law.

**The state of alert declared in the context of the COVID-19 pandemic was lifted, while the emergency measures adopted have been subject to scrutiny.** The state of alert<sup>231</sup> was extended, each time for 30 days, by successive Government decisions and was lifted on 9 March 2022<sup>232</sup>. Some of the emergency measures adopted in this context have been subject to judicial review. In particular, in line with the legal provisions on the judicial review of the administrative acts issued based on the law establishing public health measures in situations of epidemiological and biological risk<sup>233</sup>, the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice solved, as last instance, 21 cases concerning such administrative acts<sup>234</sup>. By decision of 20 October 2021, the Constitutional Court upheld a referral of unconstitutionality brought by 50 parliamentarians and declared that the Parliament's decision approving the state of alert<sup>235</sup> and the related measures introduced by the Government<sup>236</sup> to prevent and combat the effects of the COVID-19 pandemic were unconstitutional<sup>237</sup>. Moreover, the Constitutional Court found that the state of alert can be

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<sup>225</sup> Art. 99(§), Law No. 303/2004.

<sup>226</sup> Judgment of the Court of Justice of 22 February 2022, *RS*, in case C-430/21, para. 78.

<sup>227</sup> Judgment of the Court of Justice of 22 February 2022, *RS*, in case C-430/21, para. 87, and case-law cited.

<sup>228</sup> A draft Law (PI-x nr. 89/2022) proposing the suppression of Art. 99 §) of the Law on the status of judges and prosecutors was tabled in Parliament on 8 March 2022. However, on 25 May 2022, the Chamber of Deputies rejected the draft law after it received a negative opinion from its Committee on Legal Affairs, Discipline and Immunities. On 2 June 2022, the plenary of the SCM also issued a negative opinion on the same draft law.

<sup>229</sup> In its judgments of 7 April 2022 in case 3089/1/2018 and 10 May 2022 in case 105/1/2019, the HCCJ considered that reopening the trials in accordance with the case-law of the Constitutional Court on the legality of the composition of judges' panels would create a systemic risk of impunity for serious crimes of fraud affecting the financial interests of the Union or corruption in general.

<sup>230</sup> Judgment of the Court of Justice of 21 December 2021, *Euro Box Promotion e.a.*, in joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19.

<sup>231</sup> The state of alert followed the state of emergency, which was lifted in May 2020. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, pp. 21 and 22.

<sup>232</sup> The state of alert was extended for 30 days from 9 December by Government Decision No.1242 of 8 December 2021, from 8 January by Government Decision No. 34 of 6 January 2022 and, lastly, from 7 February 2022 by Government Decision No. 171 of 3 February 2022.

<sup>233</sup> Art. 15, Law No. 136/2020.

<sup>234</sup> Input from Romania for the 2022 Rule of Law Report, p. 35.

<sup>235</sup> Decision No 5/2020.

<sup>236</sup> Decision No 394/2020 on the declaration of the state of alert.

<sup>237</sup> Input from Romania for the 2022 Rule of Law Report, p. 36.

declared for a limited period of time, which may not exceed 30 days, and may be extended for a maximum of 30 days, based on an analysis of the risk factors<sup>238</sup>.

**On 1 January 2022, Romania had 106 leading judgments of the European Court of Human Rights pending implementation<sup>239</sup>.** At that time, Romania's rate of leading judgments from the past ten years that remained pending was at 57% and the average time that the judgments had been pending implementation was over four years and two months<sup>240</sup>. The oldest leading judgment, pending implementation for 17 years, concerns the right to protection of property due expropriations and nationalisations<sup>241</sup>. On 1 July 2022, the number of leading judgments pending implementation has increased to 109<sup>242</sup>.

**The Romanian Institute for Human Rights is taking steps to obtain accreditation as National Human Rights Institution.** While both the Institute for Human Rights (RIHR) and the Ombudsperson applied for accreditation before the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation in 2020<sup>243</sup>, Romania currently does not have an institution accredited as a National Human Rights Institution<sup>244</sup>. In 2021, the Senate rejected a legislative proposal on the merger of the RIHR into the National Council for Combating Discrimination<sup>245</sup>. Following this rejection, the procedure for appointing the members of RIHR's General Council was resumed<sup>246</sup>. RIHR has also carried discussions with representatives of Senate committees regarding the amendment of its legislative framework and the need to strengthen its body of experts and ensure the necessary resources to carry out its tasks. RIHR received the support of the Senate's Committee on Human Rights to draft a new legislative proposal to reform RIHR, strengthening its institutional capacity in accordance with the recommendations made by the Sub-Committee of Accreditation (GANHRI) to comply with the Paris Principles<sup>247</sup>.

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<sup>238</sup> Decision No 416 of 10 June 2021, published in Official Gazette No 814 of 25 August 2021.

<sup>239</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>240</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 66.

<sup>241</sup> Judgment of the European Court of Human Rights of 21 July 2005, *Strain and Others v. Romania*, 57001/00, pending implementation since 2005.

<sup>242</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>243</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 17.

<sup>244</sup> The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of the European Network on National Human Rights Institutions (contribution from the European Network on National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 438).

<sup>245</sup> Contribution from the European Network on National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 438. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 23.

<sup>246</sup> The General Council consists of representatives of parliamentary parties, civil society and academia.

<sup>247</sup> Contribution from the European Network on National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 437. The Paris principles require NHRIs to be independent in law, membership, operations, policy and control of resources; to have a broad mandate; pluralism in membership; broad functions; adequate powers; adequate resources; cooperative methods; and engage with international bodies

**Civil society is facing both legal and practical challenges.** The civil society space continued to be assessed as narrowed<sup>248</sup>. Whereas, following a campaign led by a group of human rights and civil society organisations (CSOs), steps were taken to modernise and improve the legislative framework regulating the right to freedom of peaceful assembly, the Parliament did not complete the procedures to adopt the new legislation<sup>249</sup>. The bill remains pending in Parliament<sup>250</sup>. There are concerns as regards the impact that the measures adopted in the context of the COVID-19 pandemic had on the freedom of assembly<sup>251</sup>. In particular, during 2021, marches, protests and political gatherings were limited to 50 persons indoors and 100 persons outdoors, under the condition that all participants wear face masks and observe social distancing measures<sup>252</sup>, while the restrictions for other types of public gatherings were gradually relaxed<sup>253</sup>. CSOs criticised these measures, considering them disproportionate<sup>254</sup>. Instances of smear attacks against civil society have also been reported<sup>255</sup>. CSOs also experienced difficulties in participating in the consultation process during the legislative procedure<sup>256</sup>. In addition, CSOs expressed concerns regarding difficulties in access to funding, which constraints their activity<sup>257</sup>. No additional support has been provided to CSOs in the context of the COVID-19 pandemic<sup>258</sup>.

**There are plans to simplify registration procedures for non-governmental organisations.** There have been improvements regarding the strict procedural requirements imposed on non-governmental organisations (NGOs)<sup>259</sup>. The General Secretariat of the Government publishes and permanently updates the register of associations and foundations, and manages the catalogue of NGOs<sup>260</sup>. The Government has also initiated a reform of the legal framework for NGOs, with the purpose of simplifying registration procedures. However, concerns have been raised that while the envisaged transfer of the NGO Registry from courts to the Commercial Registry would simplify procedures for registration and amendments, it may lower the guarantees of independence that are ensured by courts<sup>261</sup>.

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<sup>248</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>249</sup> Legislative proposal for the amendment and completion of the Law on the organisation and conduct of public assemblies.

<sup>250</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Romania, p. 3.

<sup>251</sup> Contribution from the European Network on National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 440; contribution from Civil Society Europe for the 2022 Rule of Law Report, p. 11.

<sup>252</sup> Government Decision on the prolongation of a state of alert starting with 15 August 2020 and the measures to be taken during it to prevent and combat the effects of the COVID-19 pandemic, 14 September 2020.

<sup>253</sup> Such as cultural, sports, and religious events. Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Romania, p. 4.

<sup>254</sup> Coalition NGOs for Citizens (2021), 'Relaxation measures continue to ignore the conditions for the organization and conduct of public meetings'.

<sup>255</sup> Contribution from Civil Society Europe for the 2022 Rule of Law Report, p. 6.

<sup>256</sup> NGO Expert Council, The legal space for non-governmental organisations in Europe, p. 32.

<sup>257</sup> Contribution from Funky Citizens for the 2022 Rule of Law Report, p. 9.

<sup>258</sup> NGO Expert Council, The legal space for non-governmental organisations in Europe, p. 38.

<sup>259</sup> Contribution from Civil Society Europe for the 2022 Rule of Law Report, p. 8.

<sup>260</sup> Input from Romania for the 2022 Rule of Law Report, p. 44.

<sup>261</sup> Contribution from Expert Forum for the 2022 Rule of Law Report, p. 20.

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

\* The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).

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

The Commission services held virtual meetings in April 2022 with:

- Active Watch
- Association of Romanian Judges
- Association “Mișcarea pentru apărarea statutului procurorilor”
- Bar Association
- Center for independent journalism
- Constitutional Court
- 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
- Ministry of Culture
- National Agency for the Management of Seized Assets
- National Anti-corruption Directorate
- National Anti-corruption Strategy
- National Audiovisual Council
- National Integrity Agency
- National Integrity Council
- National Union of the Romanian Judges
- Ombudsperson
- Prosecutor’s Office attached to the High Court of Cassation and Justice
- Radio Romania
- Romanian Judges’ Forum
- Romanian Television Society
- Secretariat General of the Government
- Superior Council for the Magistracy

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

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe

- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute ( OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe