

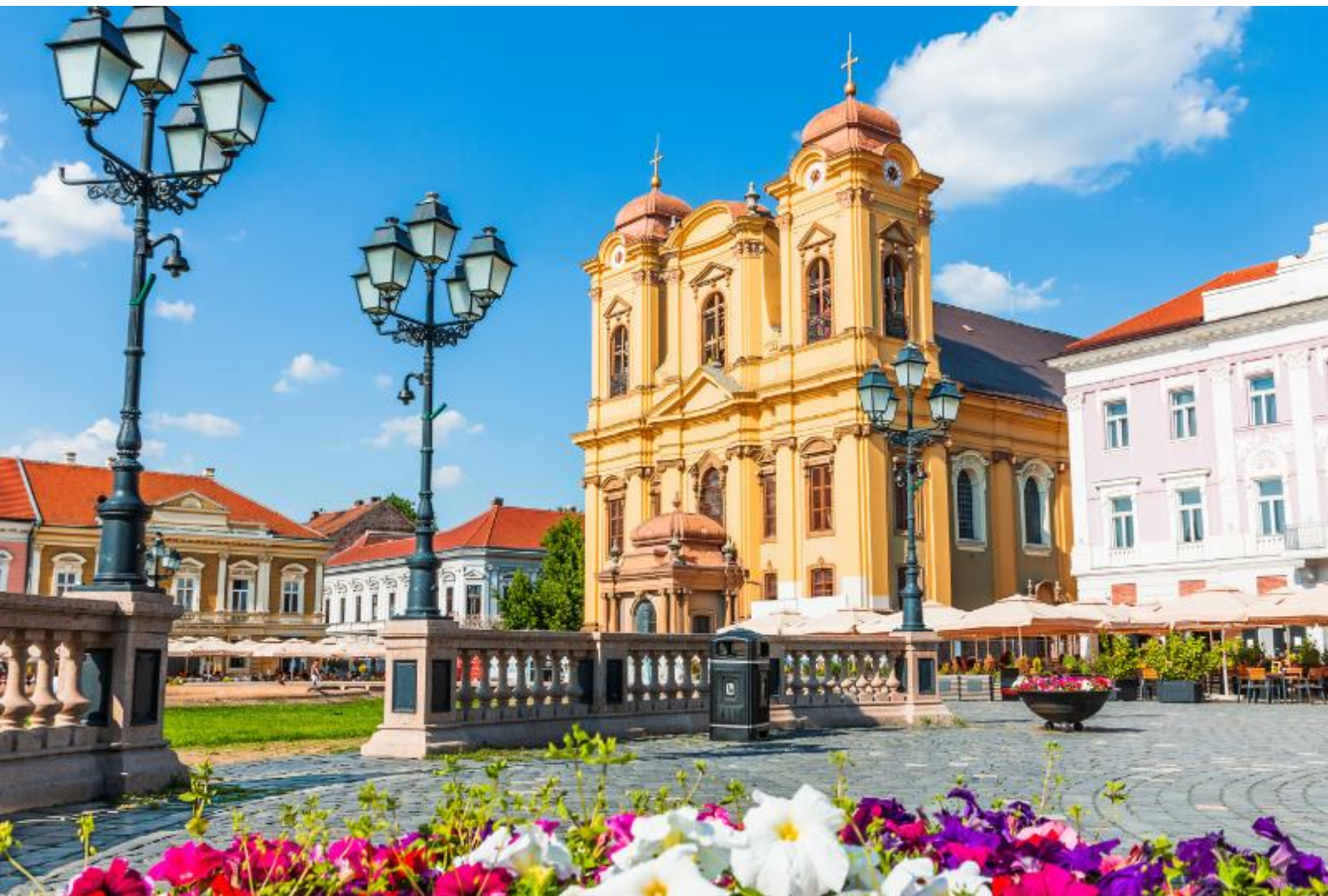


# Annual Civic Space Report - 2022

## Romania

*By Civil Society Development Foundation*

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## Summary

### Key developments

- 🔗 New amendment limits CSOs ability to challenge administrative acts in courts
- 🔗 Lack of adequate consultation in policymaking a concern
- 🔗 Smear campaigns, raids, and SLAPPs against journalists

Civic space is rated as narrowed by the CIVICUS Monitor<sup>1</sup>. In its 2022 Rule of Law report on Romania<sup>2</sup>, the European Commission recommended that the government “Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media” and “ensure effective public consultation before the adoption of draft legislation.” However, the government has failed to implement these recommendations. Rather, major concerns have been expressed by civil society over the limited timeframes and lack of consultation in policy-making processes, which continued in 2022. In addition, some MPs proposed amendments which would negatively impact CSOs ability to challenge any administrative acts in courts. Meanwhile, the Roma minority, women, LGBTQI+ and other excluded groups remain disproportionately targeted by discrimination, hate speech, and violent attacks. There are worrying cases of journalists facing harassment and other obstructions to their work, while some environmental rights CSOs have been forced to close due to SLAPPs.

## Institutional, political and socio-economic landscape

In 2022, one of the most affected pillars of the rule of law in Romania was the justice system. Renewed discussions about changing the pension schemes for judges coupled with worsening working conditions lead to an unprecedented number of judges and prosecutors leaving the Romanian judiciary, which has sparked widespread concern about how this may affect the justice system and access to courts.<sup>3</sup>

One of the more widely known Romanian judges, Cristi Danileț was sanctioned three times and excluded from the justice system.<sup>4</sup> One of these exclusions is particularly worrisome as it seems to be due to his activity in two NGOs that deal with rule of law issues. The Council of Magistrates

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<sup>1</sup> <https://monitor.civicus.org/country/romania/>

<sup>2</sup> [https://commission.europa.eu/system/files/2022-07/52\\_1\\_194026\\_coun\\_chap\\_romania\\_en.pdf](https://commission.europa.eu/system/files/2022-07/52_1_194026_coun_chap_romania_en.pdf)

<sup>3</sup> According to a Hotnews article from 3.11.2022, available in Romanian at <https://www.hotnews.ro/stiri-esential-25882142-situatie-fara-precedent-60-cereri-pensionare-ale-judecatorilor-aprobate-intr-singura-sedinta-gabriela-baltag-nu-dorm-cateva-nopti.htm>

<sup>4</sup> According to a G4media new article from 20.07.2022, available in Romanian at <https://www.g4media.ro/judecatorul-cristi-danilet-exclus-pentru-a-treia-oara-din-magistratura-de-catre-sectia-pentru-judecatori-a-csm-pentru-o-eroare-materiala-decizia-luata-de-catre-gruparea-savonea-cu-majoritate-de-5.html>

considered that this activity constitutes political activity which is forbidden to judges and decided to exclude him from the profession.<sup>5</sup>

Concerningly, the main legal instruments of the justice system were modified in 2022 in an expedient manner, with little public consultation, a procedure which was criticised by the Venice Commission which was asked for an urgent opinion on these laws, but they were passed before the opinion was adopted.<sup>6</sup> The amendments also implement a CJEU decision from February 2022 which reinforces the supremacy of EU law and establishes that national judges who apply EU law to the detriment of Constitutional Court decisions should not be subject to disciplinary sanctions.<sup>7</sup>

Romanian civil society also contested the increased militarisation of the state and contested in particular one proposal that would offer increased powers to the Secret Services, narrow parliamentary control over them, and allow them to own and operate companies.<sup>8</sup>

As the 2022 EU Commission rule of Law report shows, civil society space continues to be assessed as narrowed, with NGOs facing significant struggles. Civil Society Organisations (CSOs) have limited access to funding, which constraints their activity, and are experiencing difficulties in participating in the consultation process during the legislative procedure.<sup>9</sup>

## The regulatory environment for and implementation of civic freedoms

### Proposed amendments threaten freedom of association

The main law on associations and foundations is Government Ordinance no 26/2000 which prescribes how an NGO is set up, how it functions, and what its main rights and obligations are.<sup>10</sup> There are calls to modify this law. NGOs themselves have consistently been asking for less bureaucracy in the process to set up, run and even close an NGO.<sup>11</sup> Although legislation has improved, it is still difficult, particularly for smaller NGOs to comply with bureaucratic needs because there is a lot of inconsistency and uncertainty in existing procedures. The law itself has

<sup>5</sup> According to a G4media new article from 25.05.2022, available in Romanian at <https://www.g4media.ro/breaking-csm-l-a-exclus-din-nou-pe-judecatorul-cristi-danilet-din-magistratura-pe-motiv-ca-a-activat-in-ong-uri-care-ar-fi-facut-politica.html>

<sup>6</sup> Venice Commission, Urgent Opinion on three Laws concerning the justice system, issued on 18 November 2022 available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)045-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)045-e)

<sup>7</sup> CJEU, Judgment of the Court (Grand Chamber) from 22 February 2022, In Case C-430/21.

<sup>8</sup> According to an open letter signed by several NGOs, from 31.05.2022, available at <https://www.stareademocratiei.ro/2022/05/31/republica-militara-romania-impunitate-si-puteri-sporite-pentru-sri/>

<sup>9</sup> European Commission, 2022 Rule of Law Report , Country Chapter on the rule of law situation in Romania, available at [https://commission.europa.eu/document/download/bf52b443-7a64-4a54-8584-533c866bf902\\_en?filename=52\\_1\\_194026\\_coun\\_chap\\_romania\\_en.pdf](https://commission.europa.eu/document/download/bf52b443-7a64-4a54-8584-533c866bf902_en?filename=52_1_194026_coun_chap_romania_en.pdf)

<sup>10</sup> Romania, Government Ordinance 26 from 30 January 2000 on associations and foundations, *Ordonanță nr. 26 din 30 ianuarie 2000 cu privire la asociații și fundații*, available in Romanian at <https://legislatie.just.ro/Public/DetaliiDocument/20740>

<sup>11</sup> According to an open letter from July 23, 2020, signed on behalf of 209 NGOs, available in Romanian at [http://www.fdsc.ro/library/files/pozitie\\_pre\\_consultare\\_og\\_26\\_2000\\_iulie\\_2020.pdf](http://www.fdsc.ro/library/files/pozitie_pre_consultare_og_26_2000_iulie_2020.pdf)



already been modified 14 times and there are wide discrepancies in how it is applied across the country.

In 2022 there were three new law proposals that sought to modify existing legislation, one of which would bring minor amendments only for national minority organisations.<sup>12</sup> The second looks at NGOs that have public utility status and would enshrine an obligation for them to publish any public good they were given and also would establish an obligation on behalf of the Government to verify every three years if the NGO still has public utility.<sup>13</sup> The public utility topic is critical in itself and should be clarified in legislative terms and procedures, but the proposal on the table is insufficient. For instance, it would be more important to clarify the access to local public resources (i.e. according to the Administrative Code issued in 2019, the public local and county councils decide upon allowing the free use of public goods for public utility institutions) as several local administrations were reluctant in 2022 to offer free functioning space for community services CSOs, which do not have formal public utility status.

The third law proposal is however worrisome, since it would impose severe restrictions on the ability of NGOs to challenge any administrative acts in courts.<sup>14</sup> Basically, if an NGO would like to challenge an administrative act in court, it would need its members to vote on it and the members in favor would be held liable if they lose the case. The NGO would also need to have two years of proven activity in the area affected by the administrative act in question and would need to put forward a court bond, in order to challenge administrative acts. This proposal is heavily opposed by NGOs who argue that it would limit their right to access the courts and would limit the ability of environmental NGOs in particular to challenge development projects.<sup>15</sup>

## Outdated legislation on freedom of peaceful assembly receives criticism from the ECHR

The freedom of assembly is regulated by law 60/1991, a law adopted soon after Romania became a democracy.<sup>16</sup> Many civil society groups would argue that this law is outdated and needs to be amended to reflect current needs and to effectively ensure the right to freedom of assembly.<sup>17</sup> The main modifications requested by NGOs are:<sup>18</sup>

<sup>12</sup> Law proposal no 620/2022 which can be tracked here:

[https://www.senat.ro/legis/lista.aspx?nr\\_cls=L620&an\\_cls=2022](https://www.senat.ro/legis/lista.aspx?nr_cls=L620&an_cls=2022)

<sup>13</sup> Law proposal 847/2022 which can be tracked here:

[https://www.senat.ro/legis/lista.aspx?nr\\_cls=L847&an\\_cls=2022](https://www.senat.ro/legis/lista.aspx?nr_cls=L847&an_cls=2022)

<sup>14</sup> Law proposal 857/2022 which can be tracked here

[https://www.senat.ro/legis/lista.aspx?nr\\_cls=L857&an\\_cls=2022](https://www.senat.ro/legis/lista.aspx?nr_cls=L857&an_cls=2022)

<sup>15</sup> According to an open letter from November 29, 2022, signed by tens of NGOs and available in Romanian at: <https://www.stareademocratiei.ro/2022/11/29/parlamentul-romaniei-manifesta-tendinte-iliberale-dreptul-ong-urilor-la-litigare-strategica-limitat-drastic/>

<sup>16</sup> Romania, Law 60 of 23 September 1991 of organizing public gatherings *Lege nr. 60 din 23 septembrie 1991 privind organizarea și desfășurarea adunărilor publice*, available in Romanian at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/156395>

<sup>17</sup> See for example a press-release released by a group of NGOs working on rule of law, on 12 October 2022, available in Romanian at <https://www.stareademocratiei.ro/2022/10/12/de-ce-vrem-schimarea-legii-adunarilor-publice/>

<sup>18</sup> Please find all of the requested modification, in Romanian, at [https://www.stareademocratiei.ro/wp-content/uploads/2020/06/Propunere-de-modificare-a-legii-adunarilor-publice\\_11iunie.pdf](https://www.stareademocratiei.ro/wp-content/uploads/2020/06/Propunere-de-modificare-a-legii-adunarilor-publice_11iunie.pdf)

- ✎ Removing excessive restrictions and prohibitions – the law includes a lot of limitations on when and where you can protest and it imposes heavy burdens on organisers who bear a lot of responsibilities for the protests and participants, which are difficult to observe
- ✎ The law requires organisers to notify authorities of the protest before it happens. However, this notification in practice is more of an authorisation procedure and authorities routinely deny protests that occur at certain times, or certain places or deny them altogether. NGOs are asking for these notifications to be more of an exception than a rule.
- ✎ The current law does not allow for spontaneous protests, for example when people react to a current event and express their concern through a protest.
- ✎ The sanctions prescribed should be proportional to the acts committed – for example, participation in an undeclared assembly should not be punishable, as long as the participant was not obliged to declare it.

Some of the practices were also subject to criticism from the European Court of Human Rights (ECHR) which in 2022 condemned Romania in the case of *Bumbes v. Romania* (Application no. 18079/15)<sup>19</sup> where the applicant was fined for organising a spontaneous protest with three other people in front of the Government, in response to a law adopted that day. He was fined because he did not declare the protest three days in advance, which the ECHR ruled to be in breach of the applicant's rights to freedom of peaceful assembly and expression.

## New threats against online privacy rights

At the beginning of 2022 civil society actors raised concerns about a proposed mechanism of fake news<sup>20</sup> which would establish an automated platform that would identify fake news based on algorithms. This raised concerns of censorship. NGOs have already condemned the fact that several websites have been closed down without warning and reasoning by the Romanian National Cyber Security Agency, also based on fake news provisions.<sup>21</sup>

A new Emergency Ordinance was adopted by the Romanian Government on cloud services.<sup>22</sup> The law has been criticised by the Romanian civil society which argues that there is a lack of clear

<sup>19</sup> *Bumbes v. Romania*, Application no. 18079/15, available at [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-216937%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-216937%22]})

<sup>20</sup> As shown in a press release issued by APADOR-CH (human rights NGO) on 11.03.2022, available in Romanian at <https://apador.org/en/opinia-apador-ch-privind-intentia-guvern-ong-uri-de-a-infiinta-ministerul-adevarului/>

<sup>21</sup> As shown in a press release issued by ACTIVEWATCH (freedom of speech NGO) on 15.03.2022, available in Romanian at <https://activewatch.ro/blog/roskomnadzor-ul-romanesesc-in-actiune-noile-victime-ale-dnsc-un-blog-de-carti-un-site-al-unui-magazin-din-beius-doua-subdomenii-google-firebase-si-un-subdomeniu-al-unui-furnizor-de-publicitate-din/>

<sup>22</sup> Romania, Emergency Ordinance no. 89 from 27 June 2022 regarding the establishment, administration and development of cloud infrastructures and IT services used by public authorities and bodies (*Ordonanța de Urgență nr. 89 din 27 iunie 2022 privind înființarea, administrarea și dezvoltarea infrastructurilor și serviciilor*

safeguards protecting the private data of citizens and concerns about the involvement of the Romanian Secret Services.<sup>23</sup>

In August 2022, the Romanian public broadcaster aired an investigation, revealing that the personal data of millions of Romanians (more than 3 million) who were infected with COVID or tested were available to any doctor that had access to the database Coronaforms (more than 10,000 people had access to that database).<sup>24</sup>

## Safe space

### A worrying trend of smear campaigns, raids, and SLAPPs

A well-known Romanian investigative journalist, Emilia Sercan was targeted by a smear campaign, with several of her intimate pictures posted without consent on several adult websites. She filed a criminal complaint about this and part of the evidence she submitted to the police was also leaked into the media and used in the smear campaign against her. The investigation into who stole and shared her pictures and who leaked evidence from her case is at a standstill, with authorities having no clear suspect, albeit this case has stirred a significant outcry.<sup>25</sup> The campaign started soon after she published an article showing that the current Romanian Prime minister plagiarised his PhD thesis. In the past, she exposed several high-profile politicians of plagiarism.<sup>26</sup>

Prosecutors raided the house of a local journalist, searched his parent's house, and the office of the publication and they seized phones and computers. The journalist and the publication were accused of child pornography because the publication wrote an article about a local case of aggression against a minor. Media freedom NGOs claimed that the raid and criminal charges were a means of intimidation against the journalist who a few days prior to the raid wrote a series of damaging articles about the head of local police.<sup>27</sup> The charges were dropped later in the year and a court confirmed that the journalist and the publication did not commit any crime, but media

*informatice de tip cloud utilizate de autoritățile și instituțiile publice)* available in Romanian at

<https://legislatie.just.ro/Public/DetaliiDocument/256832>

<sup>23</sup> Romania, NGOs for Citizens (2022) 'We request the Ombudsman to evaluate the constitutionality of the GEO regarding the Government Cloud' (*Solicităm Avocatului Poporului să evalueze constituționalitatea OUG-ului privind Cloud-ul guvernamental*) 30 June 2022, available at

<https://www.stareademocratiei.ro/2022/06/30/solicitam-avocatului-poporului-sa-evalueze-constitucionalitatea-oug-ului-privind-cloud-ul-guvernamental/>

<sup>24</sup> TVR (2022), 'Personal data on millions of Romanians can be easily viewed in the Coronaforms platform.

The representatives of patients and doctors demand urgent measures, the Ministry of Health says it respects all legal provisions' 23.08.2022 ('Date personale privind milioane de români pot fi văzute ușor în platforma Coronaforms. Reprezentanții pacienților și medicilor cer măsuri urgente, Ministerul Sănătății spune că respectă toate prevederile legale') available in Romanian at [http://stiri.tvr.ro/date-personale-privind-milioane-de-romani-pot-fi-vazute-u--or-in-platforma-coronaforms--reprezentan--ii-pacien--ilor---i-medicilor-cer-masuri-urgente--ministerul-sanata--ii-spune-ca-respecta-toate-prevederile-legale\\_912538.html#view](http://stiri.tvr.ro/date-personale-privind-milioane-de-romani-pot-fi-vazute-u--or-in-platforma-coronaforms--reprezentan--ii-pacien--ilor---i-medicilor-cer-masuri-urgente--ministerul-sanata--ii-spune-ca-respecta-toate-prevederile-legale_912538.html#view)

<sup>25</sup> Updates on the investigation are resumed here: <https://context.ro/dosarele-sercan-zece-plangeri-noua-luni-de-ancheta-niciun-rezultat/?fbclid=IwAR2asAkQ9l8yRGEPINvbPBs4vcLDnaEyZdfm9YvzkdKFj8fY6zp9DxirSpl>

<sup>26</sup> As shown in an article published on 8 April 2022 by the Committee to Protect Journalists, available at <https://cpj.org/2022/04/romanian-investigative-journalist-emilia-sercan-targeted-by-smear-campaign/>

<sup>27</sup> As shown in a press release issued by ACTIVEWATCH (freedom of speech NGO) on 19.01.2022, available in Romanian at <https://activewatch.ro/blog/diicot-recidiveaza-in-hartuirea-jurnalistilor/>

freedom NGOs are calling for an inquiry into how it was possible for the journalist to be harassed for almost a year for just doing his job.<sup>28</sup>

Worryingly, environmental NGOs are targeted by real estate developers in a series of SLAPP cases by which they seek their closure. This year two NGOs have been closed at the request of real estate developers, due to cases where NGOs contested real estate projects before national courts, but lost, and had to pay legal fees of the real estate investors. Because they did not have the means to pay for these costs, the investors asked for and obtained their closure.<sup>29</sup>

## Media freedoms in decline

According to the 2022 World Press Freedom Index published by Reporters Without Borders (RSF), Romanian media freedom dropped down eight spots from 2021 when it ranked 48th<sup>30</sup>. One particular issue of concern with the media is financing coming from political parties. An investigation from an independent media outlet showed that large sums of money are spent by political parties on favorable media reports and coverage, mostly through various intermediaries.<sup>31</sup> A report by anticorruption NGOs shows that although political parties receive large sums of money from the state, there is very little transparency with respect to how and on what these sums of money are spent.<sup>32</sup>

## Minorities, Women's rights, and LBGTQI+ groups especially targeted

Specific groups have been targeted. The USA Country Reports on Human Rights Practices show that Roma people face widespread societal exclusion, police violence, and forced eviction. The report also shows that other particularly affected groups are people with disabilities who face obstacles in accessing the education system, basic services, and even the justice system.<sup>33</sup>

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<sup>28</sup> As shown in a press release issued by ACTIVEWATCH (freedom of speech NGO) on 29.11.2022, available in Romanian at <https://activewatch.ro/articole/instanta-de-judecata-confirma-abuzul-diicot-braila-impotriva-jurnalistului-alin-cristea-si-a-publicatiei-debrailaro/>

<sup>29</sup> The first case is against an NGO from Bucharest called Militia Spirituala closed down by a decision from 28.09.2022 (available in Romanian here: [https://portal.just.ro/301/SitePages/Dosar.aspx?id\\_dosar=30100000000718787&id\\_inst=301](https://portal.just.ro/301/SitePages/Dosar.aspx?id_dosar=30100000000718787&id_inst=301)) upheld by the appeal court on 12.12.2022 ([https://portal.just.ro/3/SitePages/Dosar.aspx?id\\_dosar=30100000000718787&id\\_inst=3](https://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=30100000000718787&id_inst=3)). The second one is an NGO from Cluj Napoca, called SOS ORASUL closed down on the 18.11.2022 ([https://portal.just.ro/211/SitePages/Dosar.aspx?id\\_dosar=21100000000488256&id\\_inst=211](https://portal.just.ro/211/SitePages/Dosar.aspx?id_dosar=21100000000488256&id_inst=211)) decision which is now contested before the appeal court.

<sup>30</sup> 2022 World Press Freedom Index published by Reporters Without Borders (RSF), available at <https://rsf.org/en/country/romania>

<sup>31</sup> According to an investigation from Recorder from 14.10.2022, available in Romanian at <https://recorder.ro/pretul-tacerii-o-investigatie-in-contabilitatea-presei-de-partid/>

<sup>32</sup> ExpertForum analysis from 22.06.2022, available in Romanian at <https://expertforum.ro/raport-finantarea-partidelor-2021/>

<sup>33</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, 2021 Country Reports on Human Rights Practices: Romania, available at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/romania/>



Women's rights groups have shown that there is widespread violence against women, including domestic violence. In the first half of 2022, there were over 40,000 cases of domestic violence in which the police intervened, of which over 9,400 were situations of imminent risk, whilst women who have been sexually assaulted have nowhere to go to seek help and receive the much-needed support after such violence.<sup>34</sup> NGOs have also shown that women's access to reproductive services is also severely restricted in practice, with more and more public hospitals refusing to perform pregnancy termination procedures, whilst sexual education is non-existent in Romanian schools and teen pregnancies continue to be a huge problem.<sup>35</sup>

There has also been an increasing trend of violence against members of the LGBTQI+ community, including physical assaults, and threats that contribute to an increasingly hostile environment.<sup>36</sup> NGOs have also criticised a proposed law that would basically ban any information or communication about sex changes or homosexuality, claiming it is a clearly homophobic proposal.<sup>37</sup>

## The framework for civic organisations' financial viability and sustainability

According to the Index on Civil Society Organisations Sustainability for 2021 there is a wide variation between NGOs, with smaller NGOs relying mostly on volunteer work and individual donations and larger NGOs managing to obtain national and international funds for their work.<sup>38</sup> The index shows that financial resources for NGOs vary, they may consist of individual donations, public funding, international funds, or funds distributed by corporations and individuals as part of a tax deduction scheme.

The Global Philanthropy Indices for 2022 rate Romania as having a favorable philanthropic environment, with an overall score of 4.03 out of 5, the highest score of the Central European countries, largely due to its ease of operation and political environment, which measures the relationship between Government and philanthropic organisations as well as public policies and practices regarding philanthropy.<sup>39</sup>

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<sup>34</sup> According to a press release from Feminism Romania, from 7.10.2022, available in Romanian at <https://www.feminism-romania.ro/activism/1349-marsul-impreuna-pentru-siguranta-femeilor-editia-2022>

<sup>35</sup> According to a press-release from Filia Center, from 16.11.2022, available in Romanian at <https://centrulfilia.ro/peste-250-de-organizatii-ale-societatii-civile-din-romania-si-internationale-cer-ministrului-sanatatii-si-cnas-decontarea-procedurii-de-avort-la-cerere-asigurati-accesul-gratuit-la-servicii-medicale/>

<sup>36</sup> As shown in a press release issued by MOZAIQ, on 10.08.2022, available in Romanian at <https://www.mozaiqlgbt.ro/2022/08/comunicat-de-presa-violenta-si-discurs-al-urii-impotriva-lgbtq/>

<sup>37</sup> As shown in a press release issued by MOZAIQ, on 10.06.2022, available in Romanian at <https://www.mozaiqlgbt.ro/2022/06/urgent-trimite-e-mail-pentru-respingerea/>

<sup>38</sup> Civil Society Development Foundation (FDSC) Index for Civil Society Sustainability 2021, issued on 22.11.2022, available in Romanian at <https://www.fdsc.ro/library/files/index-usaid-romnia-fdscro-1669107244.pdf>

<sup>39</sup> Global Philanthropy Indices 2022, available at <https://globalindices.iupui.edu/environment-index/regions/central-europe/index.html>

In Romania existing legislation allows citizens to divert 3.5 percent of their income tax to NGOs or faith groups. This year we have had two new law proposals which would include also public libraries<sup>40</sup> and schools<sup>41</sup> among the entities eligible to receive this 3.5 per cent. Both proposals would go against the spirit of the 3.5 per cent mechanism that is meant to encourage people to increase their public participation through choosing an NGO they consider the most appropriate to represent their interests. It would also create a parallel mechanism of funding for public entities thus legalising the incompetence and incapacity of state in ensuring the functioning of public schools and public libraries. Following the reactions of several NGOs and discussions with civil society representatives, the initiators of the second proposal withdrew it from the official track in Parliament on 12th December 2022.

## The right to participation and dialogue between the sector and governing bodies

### Participation exists in law, not in practice

In terms of access to information and participation of citizens and organisations in policy-making there are two main legal instruments. Law 544/2001 is the main legal instrument that ensures access to public information.<sup>42</sup> In theory, this law allows citizens and NGOs to ask for and obtain access to public information but in practice there are many instances where authorities are reluctant to share this information, invoking either General Data Protection Regulation (GDPR) rules or other excuses to hinder access to public information. For example, feminist NGOs have been asking for a national strategy for equality between men and women for 2021-2027 which was put in public debate on the 9th March 2022 and adopted only recently in December 2022 because of opposition from the Ministry of European Projects. NGOs have been asking what exactly the Ministry of European projects opposed, and what was the position they expressed, but the Ministry has consistently refused to share its opinion with the public, albeit it was shared internally in a written document which they have failed to share with the public.<sup>43</sup>

In terms of consultations with citizens and civil society in policy-making, the main legal instrument is Law 52/2003 on transparency in public administration.<sup>44</sup> This law prescribes the obligations of

<sup>40</sup> As explained in this article from 16.06.2022 <https://www.juridice.ro/787934/propunere-legislativa-procentul-de-3-5-din-impozitul-pe-venit-poate-fi-directionat-si-catre-biblioteci.html>

<sup>41</sup> As explained by the authors of this proposal on 14.10.2022 <https://www.usr.ro/2022/10/14/mai-multi-bani-pentru-scoli-usr-a-depus-o-initiativa-legislativa-pentru-redirectionarea-a-35-din-impozitul-venit-pentru-scoli/>

<sup>42</sup> Romania, Law 544 from 12 October 2001 on free access to public information (*Lege nr. 544 din 12 octombrie 2001*

*privind liberul acces la informațiile de interes public*) available in Romanian at:

<https://legislatie.just.ro/Public/DetaliiDocument/31413>

<sup>43</sup> According to a article from 22 July 2022, available in Romanian at <https://ongen.ro/2022/07/22/cum-blocheaza-ministerul-investitiilor-si-proiectelor-europene-avizarea-strategiei-nationale-privind-egalitatea-de-sanse-intre-femei-si-barbati/?fbclid=IwAR0CMaTfQsXNWNONMMTqeE7zNgshlq7ddXqxYn7z4UVVgrQ--U4v-lmuE3Y>

<sup>44</sup> Romania, Law no. 52 from 21 January 2003 on transparency in in public administration (*Lege nr. 52 din 21 ianuarie 2003 privind transparența decizională în administrația publică*) available in Romanian at

public administration to consult with citizens and civil society when developing public policies and laws. It also establishes how public consultations are to be organised. One of the obligations enshrined by this law is that proposed laws be published thirty days in advance, before being subjected to formal approval procedures, to give an opportunity to citizens and interested parties to send feedback and suggestions on the proposed law.<sup>45</sup>

However, in 2022 an exception was introduced to this rule and now, in exceptional and urgent cases, laws can be adopted even before the thirty-day time limit in which citizens can send their feedback on the proposed law.<sup>46</sup> This modification was criticised by NGOs, including the untransparent manner in which these modifications were made, which show that Romanian authorities have developed a practice of avoiding public consultations by citing urgent needs to pass specific legislation.<sup>47</sup> Transparency is a major issue when dealing with local governance. For example, NGOs have shown that from October 2021 to October 2022, the City of Bucharest's local governance put up only 3,23 percent of the acts it adopted for public debate.<sup>48</sup>

This year, after much debate the Whistleblower directive was transposed into law. The process of transposition was contested by civil society groups which managed to block an early version but have still expressed discontent with the adopted version, particularly with the provision of anonymous complaints.<sup>49</sup> As opposed to the former law where the whistleblower was allowed to use the information disclosure option directly to the press or CSOs without any additional procedure, the adopted law imposes prior internal reporting to the institution concerned or to the National Integrity Agency, along with fulfillment of some conditions<sup>50</sup> such as imminent or immediate danger to the public interest. As the language used to define the conditions is vague and open to interpretation, the whistleblowers will have difficulties in reasonably assessing their compliance with the law thus being discouraged from acting.

## Civil society's resilience to challenges to democracy, the rule of law and fundamental rights

### Widespread distrust of the authorities and decision-makers

The Romanian civil society sector is generally marked by mistrust between organisations and the public. There is also a general mistrust of Romanian citizens in their institutions and elected

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<sup>45</sup> According to art 7 (2) of Law 52/2003 cited above

<sup>46</sup> According to art 7 (13) of Law 52/2003 cited above

<sup>47</sup> According to a press-release signed by 31 NGOs on 4.03.2022, available in Romanian at <https://expertforum.ro/avp-oug-transparenta-decizionala/>

<sup>48</sup> According to a press-release from CeRe (NGO), from 20.12.2022, available in Romanian at <https://cere.org/2022/12/20/bucuresti-al-cui-esti-selectie-2-2/>

<sup>49</sup> According to a letter signed by several NGOs from 13.12.2022, available in Romanian at <https://activewatch.ro/articole/legea-avertizorilor-de-integritate-adoptata-psd-si-pnl-au-aratat-inca-o-data-ca-nu-doresc-o-protectie-reala-a-acestora/>

<sup>50</sup> The breach may constitute an imminent or manifest danger to the public interest or a risk of damage which cannot be remedied OR, in the case of external reporting (i.e. to the National Integrity Agency), there is a risk of retaliation or a reduced likelihood that the breach will be effectively remedied given the specific circumstances of the reporting.

officials. According to a recent poll, 33,7 percent declare they only have little faith in political parties.<sup>51</sup> Another poll shows that the situation is even worse among youth: more than 60 percent of young Romanians believe that Romania is going in the wrong direction. They do not trust the Parliament, the Government or the Presidency, and the number of young people who permanently leave Romania has doubled in the last ten years.<sup>52</sup>

There is no publicly available recent survey on the trust in CSOS in general but one recent survey, looking at just environmental organisations, shows that 66 percent of the participants in the study have a good or very good opinion about environmental NGOs while the level of trust in Governmental agencies with responsibilities for the environment score significantly worst. For example, the Ministry of Environment, Water and Forests enjoys a positive image only among 14 percent of respondents, while 43 percent have neither a good nor a bad opinion of the Ministry, and 34 per cent have a bad or very bad opinion.<sup>53</sup>

## Recommendations

### The regulatory environment for and implementation of civic freedoms

- ✎ Scrap the amendment to the law on associations and foundations (Government Ordinance no 26/2000), which would impose severe restrictions on the ability of NGOs to challenge any administrative acts in courts.
- ✎ Modify the law 60/1991, regulating freedom of peaceful assembly in thorough, open and transparent consultation with civil society organisations and in line with the CJEU ruling.
- ✎ Scrap the proposed law (PL-x no. 243/2022 for the amendment and completion of law 272/2004 on the protection and promotion of children's rights which discriminates against LGBTQI+ people

### Safe Space

- ✎ Urgently investigate the case of investigative journalist, Emilia Sercan, who was subjected to a smear campaign, and ensure that perpetrators are held to account

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<sup>51</sup> According to a news articles published by Hotnews on 14.12.2022, available in Romanian at <https://www.hotnews.ro/stiri-esential-25965380-romanii-cea-mai-mica-incredere-partide-parlament-guvern-biserica-armata-continua-topul-increderii-sondaj.htm>

<sup>52</sup> According to a news articles published by G4Media on 2.10.2022, available in Romanian at <https://www.g4media.ro/fenomen-ingrijorator-pestre-60-din-tinerii-romani-considera-ca-romania-merge-intr-o-directie-gresita-si-nu-au-incredere-in-parlament-guvern-si-presedintie-numarul-tinerilor-care-parasesc-definitiv-r.html>

<sup>53</sup> According to a press-release issued by Nature 2000 coalition, on 16.05.2022, available in Romanian at <http://natura2000.ro/sondaj-incredere-minima-in-institutiile-de-mediu-arata-un-studiu-realizat-de-coalitia-natura-2000-si-ires/>

- ⑩ Refrain from harassing and obstructing the work of journalists, and ensure an enabling environment for press and media freedoms
- ⑩ Prevent the discouragement of the whistle blower to act through effective administrative procedures at the level of institutions that will embrace the spirit of the law. Public institutions should be encouraged to consult on their procedures in this area with civil society, and report publicly on the substance of the consultations.
- ⑩ Provide guidance and training for public institutions for internalising the beneficial role of whistle blowers and ensure that systematic monitoring on the functionality of the procedures in place should be undertaken and publicly available.
- ⑩ Ensure that monitoring of the implementation of the adopted law is publicly available and, if needed, consider corrections to the adopted law.

### **The framework for civic organisations' financial viability and sustainability**

- ⑩ Withdraw the proposal on including the public libraries in the list of recipients of the 3.5 per cent of citizens' income tax.
- ⑩ Address constructively and clarify in legislative terms and procedures the public utility status and the corresponding issues related to access to local public resources for NGOs (i.e. free functioning space for community services CSOs not having formal public utility status).

### **The right to participation and dialogue between the sector and governing bodies**

- ⑩ In order to build trust the Government should increase its transparency and engage in honest consultation with citizens and the civil society sector when developing policies and legislation.
- ⑩ Input's and feedback from the sector should be appropriately considered, including as part of the numerous consultative structures set up at different levels of policy making. In particular, both the Parliament and the Government should respect the role assigned by law to the Social and Economic Council (it should provide opinions on new legislative proposals, but too often it results in a mere formality for the initiator, as long as proposals are provided to SEC very late, with too little time to react and, in case of negative opinions issued by SEC, they are seldomly really considered by the initiator).
- ⑩ ensure greater predictability in policymaking and a clear, transparent and predictable legal framework for policymaking that would allow citizens and NGOs to engage in consultation
- ⑩ Respect and implement laws which promote access to information and participation, including Law 544/2001 which ensures access to public information and Law 52/2003 on transparency in public administration and clarify effective enforcing mechanisms in particular related to access to information.



*\*About the contributor:*

*Civil society Development Foundation (FDSC) is a non-governmental, independent organisation, founded in 1994, promotes a strong and sustainable civil society that contributes to defending democratic values by supporting civil society actors, mobilizing resources, fostering an enabling environment, and strengthening co-operation with other sectors.*