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Date: 04/03/2021 10:45:07

2021 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The first annual Rule of Law Report was published on 30 September 2020. It is the core of the new European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues.

In the preparation of the first annual Rule of Law Report, the Commission relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through a targeted stakeholder consultation[1]. The information provided has informed the Member State-specific assessments of the Commission in preparing the Report. Building on the positive experience from the first Rule of Law Report, the Commission is inviting stakeholders to provide written contributions for the preparation of the 2021 Rule of Law Report through this targeted consultation.

The contributions should cover in particular (1) feedback and developments with regard to the points raised in the country chapters of the 2020 Rule of Law Report and (2) any other significant developments since January 2020[2] falling under the 'type of information' outlined in next section. This would also include significant rule of law developments in relation to the COVID-19 pandemic falling under the scope of the four pillars covered by the report.

The input should be short and concise, if possible in English, and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published.

Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

Please provide your contribution by 8 March. Should you have any requests for clarifications, you can contact the Commission at the following email address: rule-of-law-network@ec.europa.eu.

[1] https://ec.europa.eu/info/publications/2020-rule-law-report-targeted-stakeholder-consultation_en

[2] Unless the information was already submitted in the consultation for the 2020 Rule of Law Report.

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms and nominations for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the request for input[1])

Any other relevant developments

- National authorities are free to add any further information, which they deem relevant; however, this should be short and to the point.

Please include, where relevant, information related to measures taken in the context of the COVID-19 pandemic under the relevant topics.
If there are no changes, it is sufficient to indicate this and the information covered in the 2020 Rule of Law Report should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions and supreme audit institutions.

About you

* I am giving my contribution as

Civil society organisation/NGO

* Organisation name

250 character(s) maximum

The Association for the Defence of Human Rights in Romania – the Helsinki Committee (APADOR-CH)

* Main Areas of Work

- [x] Justice System
- [ ] Anti-corruption
- [ ] Media Pluralism
- [x] Other

If "Other", please specify

human rights, transparency and good governance

* Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

https://apador.org/en/

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

* Country of origin

Please add the country of origin of your organisation

Romania

* First Name

Georgiana

* Surname

Gheorghe

* Email Adress of the organisation (this information will not be published)

ggheorghe@apador.org

* Publication of your contribution and privacy settings

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ( ) Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation an be identified in the rest of your contribution.**
- (•) Public - Your personal details (name, organisation name, transparency register number, country of origin will be published with your contribution.
- ( ) No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

[x] I agree with the personal data protection provisions.

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

overview_topics_for_contribution.pdf

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

Questions on developments in Member States

The following four pillars are sub-divided into topics and sub-topics. You are invited to provide concrete information on significant developments, focusing primarily on developments since January 2020, for each of the sub-topics which are relevant for your work. Please feel free to provide a link to and reference relevant legislation/documents. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices (as outlined under “type of information”).
If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Please note that, due to the size of the questionnaire, certain elements may be slow to load, especially if selecting many Member States at once. In such cases, it is recommended to wait a few minutes to let the page load correctly.

Member States covered in contribution [several choices possible]

Please select all Member States for which you wish to contribute information. For each Member State, a separate template for providing information will open. This may take several minutes to fully load.

- [ ] Austria
- [ ] Belgium
- [ ] Bulgaria
- [ ] Croatia
- [ ] Cyprus
- [ ] Czechia
- [ ] Denmark
- [ ] Estonia
- [ ] Finland
- [ ] France
- [ ] Germany
- [ ] Greece
- [ ] Hungary
- [ ] Ireland
- [ ] Italy
- [ ] Latvia
- [ ] Lithuania
- [ ] Luxembourg
- [ ] Malta
- [ ] Netherlands
- [ ] Poland
- [ ] Portugal
- [x] Romania
- [ ] Slovak Republic
- [ ] Slovenia
- [ ] Spain
- [ ] Sweden

Justice System - Romania

Independence

Appointment and selection of judges, prosecutors and court presidents

(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

3000 character(s) maximum

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

3000 character(s) maximum

Promotion of judges and prosecutors

3000 character(s) maximum

Allocation of cases in courts

3000 character(s) maximum

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

3000 character(s) maximum

Starting with 30 September 2020, the Ministry of Justice put up for public debate, until 31 March 2021, 3 draft laws that can be grouped under the title of "justice laws", respectively: the draft Law on the statute of judges and prosecutors in Romania; the draft Law on judicial organization; the draft Law on the Superior Council of Magistracy. It should be mentioned that the proposed new laws replace (they do not modify) the current "justice laws", which are to be repealed: Law no. 303/2004, Law no. 304/2004 and Law no. 317 /2004.

As a general assessment, the draft laws return, in many respects, to the regulations prior to those introduced in 2018 and transpose decisions of the Constitutional Court, judgments of the European Court of Human Rights (ECtHR) and recommendations of several international bodies. They contain positive developments such as:

-redefining the principle of impartiality, by including the obligation for judges and prosecutors to ensure, in addition to impartiality, the appearance of impartiality (art. 4 para. 3 of the draft law on the status of magistrates);

- the removal from the draft Law on the statute of judges and prosecutors of the obligation provided for magistrates in the current regulation (art. 9 para. 3 of Law 303/2004), according to which one must refrain from defamation against other state authorities, by any means it can be expressed. This obligation can restrict the freedom of expression of magistrates and can be a source of pressure on them. The removal of this provision corresponds to a recommendation in the 2018 MCV Report.

-article 91 of the draft Law on the Superior Council of Magistracy establishes the principle of non-permanent activity of SCM members, who, between SCM sessions, will carry out their current professional activity in courts and prosecutor's offices, except for the SCM president and vice president, who have permanent activity within the SCM.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

3000 character(s) maximum

A draft law on the statute of judges and prosecutors (no. 303/2004) is part of the “justice laws” opened for consultation at the end of September 2020 by the Ministry of Justice. The public consultation will last until 31st March 2021.
The new regime regulating the patrimonial liability of magistrates (art. 270 of the draft law) poses some concerns.
On a positive note, the draft law establishes that the plenum of the Superior Council of Magistracy (SCM) will be the decision-making body regarding the recourse action against magistrates. In other words, a professional body, SCM, will decide on the quality of the magistrates’ activity. It will no longer be the Ministry of Finance, part of the executive branch with no special abilities in evaluating complex legal issues.
However, the draft law also has certain deficiencies which can make the mechanism inefficient.
1.The draft law does not provide for a deadline for the Ministry of Finance to notify the SCM plenum in case the state is obliged to pay compensation for a judicial error. By contrast, the current legislation does provide for a 2 months’ term. The absence of a deadline can lead to a very long delay in initiating the verification procedure that precedes the formulation of the recourse action and there is a risk that the recourse action will be formulated late.
2. The draft law does not provide for the possibility of initiating recourse action against magistrates who, in civil cases, acted in bad faith or gross negligence leading to ECHR judgments obliging the state to pay compensation. For criminal cases such a regulation exists and it is provided in the Code of Criminal Procedure.
3. The draft law provides for a 6-month period (from the payment of compensations) for the state to exercise the recourse action against the magistrate who acted in bad faith or gross negligence. This period is too short and should be increased to at least 1 year from the payment of compensation.
The solution offered in the draft law- that of indirect increase of the term of 6 months by another 6 months through the possibility given to the state to postpone by 6 months the payment of due compensation- is not reasonable. A victim of a judicial error must receive compensation as soon as possible, a delay of 6 months from the moment when the state is able to pay is not justified. Moreover, even the Civil Code stipulates that the derogations made by parties from the general limitation period (which is 3 years) cannot lead to the establishment of limitation periods of less than 1 year, precisely in order for the holder of the action to have a reasonable time to act. So, the reasonable term estimated by the Civil Code for exercising an action is at least 1 year (not 6 months) from the date of birth of the right to act.

Remuneration/bonuses for judges and prosecutors

3000 character(s) maximum

Independence/autonomy of the prosecution service

3000 character(s) maximum

A draft law on judicial organization (no. 304/2004) (http://www.just.ro/in-temeiul-dispozitiilor-art-7-din-legea-nr-52-2003-privind-transparenta-decizionala-in-administratia-publica-republicata-ministerul-justitiei-supune-dezbaterii) is part of the “justice laws” opened for consultation at the end of September 2020 by the Ministry of Justice. Article 68 (3) of the draft law provides for the possibility of the hierarchically superior prosecutor to overturn a prosecutors’ decision only for reasons of illegality “the decisions adopted by the prosecutor may be refuted, with a motivation, by the hierarchically superior prosecutor, when they are considered illegal."
This change followed a recommendation from the GRECO Report of July 9, 2019 and returned to the regulation prior to 2018, eliminating the possibility of overturning the prosecutors’ solutions for reasons that they are unfounded. Currently, until the adoption of the new law on judicial organization, the law on judicial organization provides in article 64 (3) for the possibility of refuting the prosecutors’ solutions on grounds that they are unfounded.
Article 156 of the draft law on judicial organization (subject to public debate until 31 march 2021) provides for the abolition of the Special Section for the investigation of offences committed by magistrates (SIIJ) within the Prosecutor's Office attached to the High Court of Cassation and Justice.
In addition to this draft law amending Law no. 304/2004, which contains in articles 156-158 provisions regarding the abolition of SIIJ, there is also a draft law aimed exclusively at the abolition of the SIIJ, which was initiated by the Ministry of Justice in February 2020. The amended form of this draft law was sent back to the Superior Council of Magistracy (SCM) for an opinion. In essence, the December 2020 version of the draft law contains provisions similar to those in articles 156-158 of the draft law for amending law no. 304 /2004.
During the meeting of 11 February 2021, the SCM plenum gave a negative opinion (11 votes out of 19) this draft law. It was justified by the fact that „the proposed normative solution is not accompanied by guarantees meant to give efficiency to the principle of independence of the judiciary, by ensuring adequate protection of judges and prosecutors against possible pressures on them."
After receiving the negative opinion from SCM (an advisory opinion only), the Minister of Justice stated publicly that he will nonetheless send the draft law to the Parliament, for adoption.
APADOR-CH considers that a greater importance should be given to SCM’s opinion as an institution representing the constitutional guarantor of the independence of justice. The fact that the negative opinion was adopted with a majority vote at the limit indicates that this matter is one subject to debates among magistrates and any solution adopted should try to harmonize the requirements of the SCM opinion with the abolishment initiative.

Independence of the Bar (chamber/association of lawyers) and of lawyers

3000 character(s) maximum

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

3000 character(s) maximum

The Robert Rosu case polarized the Romanian justice society, stirred controversy and protests among attorneys. A Romanian attorney, Robert Rosu is partner at one of the most renowned law firms in Romania, Tuca, Zbarcea&Associates (“TZA”).

In 2005, TZA through Mr. Rosu represented a buyer of litigation rights before Romanian authorities for the completion of the procedures for the restitution of several land plots. In 2015, the prosecutors of the Romanian National Anticorruption Directorate (DNA) began an investigation and accused him of organizing a crime group with the beneficiaries of the restitution, based on his activities as an attorney.

The first court acquitted Mr. Rosu, motivating that his activities were professional ones, specific to an attorney. This decision was appealed by the DNA. On 18.12.2020, the High Court of Cassation and Justice condemned him to 5 years prison.

The legal issues deriving from this final decision are related to the huge discrepancy between the initial acquittal solution and the condemnation of the second court, for the same activities qualified by the first court as activities specific to the lawyer’s profession. Several voices raised awareness on the fact that during the DNA’s investigation, judges were heard and retracted their final civil rulings within their testimony, under pressure.

The case led to a wave of protests from attorneys within all Romanian bars arguing for the need to defend the lawyer’s profession independence from undue associations between the lawyer’s defence and the activities of the client. Other actors also reacted: the Superior Council of Magistracy publicly condemned the protests and the Prosecutors' association supported the DNA’s point of view.

The fact that the Supreme Court solution was diametrically opposed to the 1st instance court one (went from acquittal to prison sentence) has created in a part of the public opinion a perception which may affect the appearance of impartiality of justice. The ruling against Mr. Rosu is perceived by some as an example of intimidation against a lawyer. This perception has been also fed by the fact that although the common 30-day motivation term lapsed, the Court did not yet deliver its motivation. According to the law, where good reasons exist, this term can be extended by 30 days, for a maximum of two times. Currently, Mr. Rosu is executing his sentence in prison and cannot file any extraordinary means of recourse. This case has led to public discussions regarding the necessity for the motivation to be delivered in the same time as the court ruling.

It is worth emphasizing that the appearance of impartiality is of similar importance to impartiality itself. Not only is this particular case but in all cases, the motivation of the solution should be very clear and convincing, based on arguments beyond any doubt and, if it cannot be communicated together with the solution itself, it must be drafted shortly after pronouncing the solution.

Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

Accessibility of courts (e.g. court fees, legal aid, language)

3000 character(s) maximum

The issue regarding the low value of legal aid fees for legal aid lawyers remains an unsolved one and continues to affect the quality of legal assistance and subsequently, the accessibility to effective legal representation by the lawyer.
A Protocol between the Ministry of Justice, the Public Ministry and the National Association of the Romanian Bar establishing the legal aid fees has been adopted in February 2019. Although the adoption of this instrument was a welcome step, in practice the matter of the low value of the fees is yet to be resolved, since in some cases, the courts do not even take into consideration the fees mentioned in the Protocol, lowering them even further. Procedural laws allow judges to modify these fees, without having to observe the minimal thresholds set out through the Protocol, since such Protocol is not binding and opposable to magistrates as a law would be. In addition, in practice, it is also common for prosecutors to challenges the amount of the legal fee requested by the legal aid lawyers.
Another matter related to the legal aid fees is the fact that they are usually paid with a certain delay which can also lead to disruptions in the quality of the legal representation. One solution would be to enforce mandatory legal provisions establishing minimum legal aid fees which are paid within 30 days from the date when the legal services were performed.

Resources of the judiciary (human/financial/material)

Material resources refer e.g. to court buildings and other facilities.

3000 character(s) maximum

Considering the concerns of judges and prosecutors with respect to the potential abrogation of their service pensions (see the country submission on Romania in Liberties report 2020), a large number of magistrates filed requests for early retirement. In the near future, this circumstance will lead to a reduced number of magistrates per court, while the number of cases will remain the same, thus leading to an overload of cases per magistrate.
In December 2019, the Romanian Parliament voted for the anticipated retirement to be postponed until January 2022, in order to prevent the judicial system being overwhelmed due to the lack of magistrates. This measure alone, however, will not suffice. Competitions to fill in positions as judges and prosecutors should be organised urgently so that human resources at the courts' level are ensured once the magistrates are allowed to enter early retirement. Moreover, 2020 was the first year in which the Superior Council of Magistracy did not organize any type of competitions for the positions of judges or prosecutors, which increases the need for new resources to fill open positions within the judicial system and share magistrates' caseload.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

3000 character(s) maximum

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

(Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, does not need to be repeated)

3000 character(s) maximum

In September 2020, the Ministry of Justice announced a draft law regarding remote justice during the pandemic that will provide for the possibility to hold video-conference hearings (see http://www.just.ro/proiect-de-lege-privind-unele-masuri-in-domeniul-justitiei-in-contextul-pandemiei-de-covid-19). The draft law provides the possibility for persons deprived of liberty (pre-trial detention, serving a custodial sentence or an educational measure of deprivation of liberty) to be heard by videoconference at the place of detention without their consent if the court considers that this means is without prejudice to the proper conduct of the proceedings or to the rights and interests of the parties. The draft law is currently still in the legislative process.
The draft law also provides for the possibility for persons, other than those deprived of their liberty, to be heard by videoconference, but only with their consent, which will be brought to their attention either at the first hearing or by a notice communicated by telephone, e-mail or other such means, the person concerned being asked whether he agrees.
Although the majority of courts were provided with video systems for hearings, their usage is extremely limited during the state of alert, since judges prefer to organize in person sessions, while implementing other social distancing methods such as scheduling case files at different hours, allowing only a limited number of people in the court room, providing limited access to physical files and others similar.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

3000 character(s) maximum

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization

3000 character(s) maximum

Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

Length of proceedings

3000 character(s) maximum

Through the adoption of the New Romanian Civil Procedure Code in February 2013 and through the adoption of the New Romanian Criminal Procedural Code in February 2014, the length of proceedings has been substantially reduced and should be, at least in theory, somewhat predictable. However, in practice, the length of proceedings in certain types of trials remains more than excessive. For example, in April 2020 the High Court of Cassation and Justice established a first hearing in a recourse against a public administrations' decision in March 2022, approximately 2 years after the date of submission of the recourse. The extensive length of these proceedings is explained by magistrates as being caused by insufficient personal, a high burden of cases per magistrate and scarce court resources, such as rooms for trials and for hearings. Therefore, a solution for limiting the situations when the length of proceedings is excessive is to increase the number of judges and to allocate proper locative resource to courts, including ICT equipment for long distance hearings.
Due to the measures implemented for the prevention of Covid-19, the length of the trial proceedings has suffered an increase. As of May 15th, 2020 courts are scheduling hearings per hour, as opposed to previous times, when all hearings were scheduled at the same time (e.g. if the court hearing commenced at 09.00 am, all participants to the trials were summoned at 09.00 am). This circumstance, coupled with the absence of sufficient court spaces where the hearings may take place, is leading to an increase of the time between the hearings, which in turn, leads to a significant increase in the entire trial duration. This situation also stems from the fact that starting from May 15th 2020 when the State of alert was adopted, courts turned bak the possibility to hold remote hearings almost unanimously.

Other - please specify

3000 character(s) maximum

The extensive time for motivating courts' decisions is a problem which affect a great number of cases in practice. The delay in motivating and communicating the ruling impacts the enforcement of judgements, since a ruling can only be enforced once its motivation is drafted and duly communicated to the trial parties. A solution would be increasing the number of judges and/or reducing the load of cases for each judge. However, in practice, this solution is difficult to implement. An alternative solution would be to introduce elements for the standardization of the judgements form. This would help to have more concise motivations that would lead to shorter times and diminished efforts. The standardization could be achieved by introducing a standard form for the motivation, depending on the specifics of certain categories of cases, starting with those in civil or criminal matters that raise the most frequent problems regarding motivation time. The forms could be prepared by the Superior Council of Magistracy and could also contain limitations on the number of pages.
One of the models that could be considered is the current complaint form used by the European Court of Human Rights (ECtHR), which, through the mandatory fields and limitations, obliges the parties to be concise, to describe exactly and objectively the situation, its classification and the arguments on which the violation of rights relies on.
Another problem that is worth mentioning is related to the implementation of the ECtHR judgements. Of the "leading" ECtHR judgments handed down against EU states over the last 10 years – i.e. those that identify serious or structural problems - 38% remain pending implementation. For a number of EU states, this figure is almost 50%. This is also the case of Romania for the last 10 years (see https://www.einnetwork.org /romania-echr). In 2020, there were 346 pending cases (out of which 85 leading cases) under the supervision of the Department for the execution of judgments of the Committee of Ministers, while only 10 cases (out of which no leading case) were closed by final resolution (see https://rm.coe.int/168070975f). While the ECtHR is not an EU body, countries have to accept the ECtHR's jurisdiction in order to become members of the European Union. However, countries can refuse to implement ECtHR judgments, and face no negative consequences at the EU level – the issue being not even mentioned, for example, in the European Commission's report on rule of law in the EU. Against this background, it would be important for the EU's rule of law review mechanisms to take into consideration widespread non-implementation of ECtHR judgments and the reasons for non-implementation. This would strengthen both the EU's rule of law mechanisms and the Council of Europe's process for implementing judgments of the ECtHR.

Anti-Corruption Framework - Romania

The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).

3000 character(s) maximum

Prevention

Integrity framework including incompatibility rules (e.g.: revolving doors)

3000 character(s) maximum

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

3000 character(s) maximum

Rules on preventing conflict of interests in the public sector.

3000 character(s) maximum

Measures in place to ensure whistleblower protection and encourage reporting of corruption.

3000 character(s) maximum

List the sectors with high-risks of corruption in your Member State and relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).

3000 character(s) maximum

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

3000 character(s) maximum

Measures taken to address corruption risks in the context of the COVID-19 pandemic

3000 character(s) maximum

Any other relevant measures to prevent corruption in public and private sector.

3000 character(s) maximum

Repressive measures

Criminalisation of corruption and related offences.

3000 character(s) maximum

Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards the implementation of EU funds

3000 character(s) maximum

Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation).

3000 character(s) maximum

Other – please specify

3000 character(s) maximum

Media Pluralism - Romania

Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies.

3000 character(s) maximum

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

3000 character(s) maximum

Existence and functions of media councils or other self-regulatory bodies

3000 character(s) maximum

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

3000 character(s) maximum

Rules governing transparency of media ownership and public availability of media ownership information

3000 character(s) maximum

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

Access to information and public documents

3000 character(s) maximum

Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

Legislation adopted during the state of emergency expressly set out the measure of taking down websites which shared fake news. The measure was implemented by the National Authority for Management and Regulation in Communications (ANCOM). Since the provision didn't state any means of appeal, the decision regarding this could be appealed at the administrative court, according to the procedures of the ordinary law, which might take 1-2 years. Another problem was that the notion of "fake news" was not clearly defined, thus the classification was quite arbitrary.
During 15 March-15 May, ANCOM blocked 15 news websites. The access to these websites were restored after the state of emergency was lifted. Meanwhile, most of these websites were still accessible, since all the content was moved to other domains, according to information provided by the media. There are some accusations that some blocked websites didn't show any fake content and that the blocking thereof was used as a method to censor those with a critical view. Some civil society and media voices accused that the blocking of websites was decided and implemented by a group whose members were not known (the Group

for Strategic Communication) and that these decisions can't be appealed effectively.
Unofficially many journalists complained about the obstruction of the right of information, with authorities employing different mechanisms or covert threats. Officially no journalist has filed a complaint, there is no information that any coercive measures have been taken against journalists. Examples of incidents: the removal by the Focsani County Hospital of the publication Ziarul de Vrancea from their media communications WhatsApp Group, after the paper published articles criticizing the hospital spokesperson who is also the spouse of the hospital director; the coordinator of all Ringier Group publications, was threatened with a criminal investigation after publishing in the newspaper Libertatea a working document concerning the declaration of the state of emergency prepared by the National Committee for Emergency Situations.
There have been some cases of limitations of freedom of expression but they were a consequence of poor implementation of the law (not the law itself). Such was the case of a student who was fined by the local police for having criticized in a civilized manner the town mayor, who failed to adopt the necessary measures during the crisis (https://apador.org/en/cerem-ministrului-de-interne-o-ancheta-in-cazul-amenzii-pentru-o-postare-critica-facebook/). The fine was totally disproportionate and unfounded and the student had to challenge it in court. The court annulled the fine. During the same period, there was also a case of a whistle-blower police officer who was disproportionately sanctioned for speaking to the press about abuses in the police. Meantime, the sanctions have been withdrawn (https://apador.org/en/ce-se-intampla-cand-un-politist-spune-ca-politia-greseste/).

Other institutional issues related to checks and balances - Romania

The process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms) and transparency and quality of the legislative process

3000 character(s) maximum

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

In 2020, there was a legislative inconsistency of the authorities in some matters of principle regarding the rule of law. For example, the Government has chosen at least twice to violate the national Referendum on Justice, validated in 2019. The Referendum established that no emergency ordinance can be adopted "in the field of crime, punishment and judicial organization". A regulation adopted in violation of a Referendum can be declared unconstitutional. However, the Government issued the following emergency ordinances: EO 28 /2020 for amending and supplementing the Criminal Code, which introduced new crimes in the Criminal Code, in connection with the measures for combating the Covid-19 epidemic (March 2020); EO 215/2020 on the adoption of measures regarding the composition of the judicial panels in appeal (December 2020).
The opportunity to introduce such regulations was reasonably motivated by the Government, but the adoption procedure contradicted the prohibitions established by the 2019 Referendum, which has to be respected in a state governed by the rule of law.
Besides this, the expedited manner in which laws have been adopted during the state of emergency had impact on their quality, creating a legislative chaos. Later, many of them have been declared unconstitutional

by the Constitutional Court.
For example, following the Ombudsman's notification, the Constitutional Court decided in May 2020 that the provisions related to fines during the state of emergency were unconstitutional due to the lack of predictability and clarity of the law and therefore all the fines imposed during the state of emergency had no constitutional basis. However, people still had to challenge the fines in court in order to cancel them. This situation created a great inequity between the persons that were fined. Some of them could challenge the fine, others maybe didn't have the possibility and they had to pay a fine that was imposed on the basis of an unconstitutional provision. For this reason and in order to avoid the burdening of courts with almost 300.000 files, APADOR-CH asked the Government to adopt fiscal amnesty. It never happened.
This legislative chaos was also due to the fact that during the state of emergency the provisions concerning the decisional transparency and the social dialogue were suspended for the draft normative acts which establish the measures taken during the pandemic or which are a consequence thereof.
The justification of this exception is that during a state of emergency, immediate measures are needed, which must be implemented without any delay. For this reason, during the state of emergency civil society impact on law and policy has been limited. During the state of emergency, all 13 military ordinances issued by the Ministry of Internal Affairs were passed without public consultation. The state of alert was also instituted and prolonged though 8 Government's decision which were also adopted without public consultation.

Regime for constitutional review of laws.

3000 character(s) maximum

COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- measures taken to ensure the continued activity of Parliament (including possible best practices)

3000 character(s) maximum

The Ombudsman has been very active in monitoring rights and freedoms restrictions in the COVID context. Its initiatives have generated controversy among politicians who have requested its revocation. This happened especially after the Ombudsman notified the Romanian Constitutional Court ('RCC') regarding the pandemic measures. The notifications were admitted, which means that the Ombudsman acted accordingly to the law.
The Ombudsman notified RCC with 18 exceptions and objections of unconstitutionality, issued 26 legal opinions, conducted 76 visits on the torture prevention mechanism.
During the lockdown, the Ombudsman challenged the law on the establishment of the state of emergency that restricted many fundamental rights and freedoms. The RCC decided the state of emergency was established in accordance with the Constitution, however it noted that the concrete measures taken exceeded the limit provided by law in which the president could act. Parliament could have sanctioned the president's overstepping of legal powers, but it did not. At the same time, the provisions related to fines during the state of emergency were declared unconstitutional due to the lack of predictability and clarity of the law.
Moreover, the Ombudsman challenged the legislation on quarantine and forced hospitalization of infected persons which was also declared unconstitutional and the Parliament was forced to adopt a law that

guarantees human rights. As part of its watchdog role, APADOR-CH issued recommendations regarding the law and participated in the public consultation organized by the Chamber of Deputies. Most of the recommendations were taken into consideration but the adopted law still lacked many of the criteria imposed by the RCC Decision. On 7 August the Ombudsman challenged again the law for constitutional reasons, without success this time.
COVID-19 had a great impact on the justice system activity also. During the state of emergency, only urgent cases were judged and the courts set shorter deadlines. Most courts used videoconference and remote means of communication for the procedural documents. The procedural time limits of were suspended.
The criminal justice lawyers encountered many challenges during this period: the lack of confidentiality of remote hearings, logistic matters, violation of the right of defence due to the impossibility to physically study the file, delayed hearings, lack of court spaces, delays in publishing of the court ruling motivation, the lack of a prior consultation between the SCM and the bars regarding the administrative measures that involve lawyers. The National Union of the Bar Association awarded postponements of the payment of the lawyers' monthly taxes, as a support measure.
The activity of the courts was resumed starting with 15 May and is currently characterized by transition measures, which involve the return of the in person court hearings, as well as a reassessment of the concept of scheduling the hearings.

Independent authorities

Independence, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

Cf. the website of the European Court of Auditors:https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#

3000 character(s) maximum

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

3000 character(s) maximum

Implementation by the public administration and State institutions of final court decisions

3000 character(s) maximum

The enabling framework for civil society

Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

3000 character(s) maximum

In 2020, GO 26/2000 on associations and foundations was amended. The amendments included beneficial measures meant to facilitate the right of association and to make the life of NGOs less bureaucratic. These changes are also a consequence of civil society pressure. Some changes worth mentioning:
-the registration request of an association in the Register of Associations and Foundations ('RAF') will be accompanied by fewer documents; the associations' by-law will no longer need to be authenticated, it will be submitted in a single copy certified for conformity with the original by the person empowered by the associates;
-when applying for registration in the RAF, in the case of associations/ foundations set up/run only by natural persons, the affidavit it is no longer mandatory when the only real beneficiaries are natural persons whose identification data are included in the file's documents. Therefore, the completion of the central register will be done based on them and according to the rules provided in art. 4 of Law 129/2019 for preventing and combating money laundering and terrorist financing;
- the General Assembly and Board members meetings may also take place remotely by electronic means and its decisions can be signed by the members with an extended electronic signature also;
-for the registration of the by-law changes in the RAF, the decisions of the GA or those of the Board are submitted in a certified copy for conformity with the original, by the person/ persons empowered by decision of the GA or the Board. Therefore, it is no longer necessary to be authenticated by a notary or attested by a lawyer.
-the declaration regarding the real beneficiary may be a document under private signature or in an electronic form and may be communicated without any other formality, by electronic means, by electronic signature or by postal and shipping services; therefore, the authenticated form of this declaration is no longer required.
-the obligation to submit a declaration regarding the real beneficiaries of the association/foundation to the Ministry of Justice (by 15th of January each year) has been replaced with the obligation to announce any change regarding the real beneficiaries within 30 days of change.
Another provision adopted in the COVID context that affected the civil society was regarding the freedom of assembly. During the state of emergency, the freedom of movement was strictly limited - thus participation to any public assembly was essentially no longer possible. Starting with the first state of alert (in May) the restrictions regarding the freedom of assembly were gradually relaxed. Starting with September 2020, up to 100 people are allowed to participate in demonstrations, whilst wearing masks and respecting social-distancing. At the same time, the few protests which took place during the state of alert took place in peaceful conditions and the participants were not disproportionately sanctioned.

Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)

3000 character(s) maximum

Considering the limited possibilities of organizing physical discussions with stakeholders related to the rule of law, the necessity of ensuring the proper implementation of the frequently-changing COVID-19 legal framework in 2020 took the limelight. Therefore, apart from isolated initiatives of NGOs, no high-level initiatives related to fostering the rule of law were carried out.

Other – please specify

3000 character(s) maximum

Another aspect worth mentioning is related to COVID context and concerns the lack of transparency and communication of the Government during the pandemic that affected the credibility of the measures and the perception of the society.

For example, the Strategic Communication Group is one of the entities responsible with the pandemic management. According to the Government, it is formed of communication specialists from all ministries and public services with responsibilities in combating the pandemic. However, almost one year since its establishment and despite demands from civil society and journalists, neither the exact component of this group nor its concrete attributions are known to the public. In November 2020, a Romanian MP requested the nominal list of its members from the Ministry of Internal Affairs (MAI) and received it on the basis of the Governments' constitutional obligation to answer the questions of the Parliament. However, the document remains a secret, MAI invoking protection of personal data reasons. As a consequence, APADOR-CH drafted and sent a concrete proposal to amend Law 544/2001 on access to public information in order to oblige the institutions to publish such information. The law that protects personal data cannot limit the right of citizens to access information of public interest under the pretext of the "right to anonymity" of some people, especially when those people hold public positions and they take decisions that influence the citizens lives. Unfortunately, the problem currently persists, one year after the pandemic started.
Moreover, according to art. 56 of Annex I to Decree 165/2020, during the state of emergency, the legal deadlines established for answering FOIA requests were doubled (to a maximum of 60 days). This doubling of the term, although justified by the pandemic context, was problematic from the point of view of transparency and access to timely relevant data about the states' ability to manage the pandemic. Some institutions have gone as far as interpreting this change in the law in the sense that it was totally suspended and refused to answer questions coming from journalists. After the 15th of May, during the current state of alert, the "normal" provisions and legal deadlines of the law on access to information of public interest (in force prior to the state of emergency) are applicable.

Contact

rule-of-law-network@ec.europa.eu