March 2021

European Rule of Law Mechanism: written contribution of Romania

INTRODUCTION

The present written input is aimed to contribute to the preparation of the 2021 Rule of Law report.

It presents a synthetic overview of the policy developments and practical application thereof in the four pillars proposed by the European Commission in its document European Rule of Law Mechanism: input from Member States, namely: justice system, anti-corruption framework, media pluralism, other institutional aspects related to checks and balances.

The following institutions contributed with their technical expertise to the consolidated contribution presented below: Ministry of Justice, Superior Council of Magistracy, High Court of Cassation and Justice, Prosecutors Office attached to the High Court of Cassation and Justice, National Anticorruption Directorate, National Integrity Agency, National Audio-visual Council, Ombudsman, Court of Auditors, Constitutional Court, national Parliament, National Council for Combating Discrimination, the Ministry of Culture, General Secretariat of the Government, Legislative Council, National Union of Bars, in order to make sure that the appropriate level of ownership is guaranteed.

The experience gained through the Cooperation and Verification Mechanism allowed for a smooth communication among the responsible national institutions and a swift gathering of relevant information and data.

Compared to the complexity and multitude of aspects that fall under the umbrella of the rule of law mechanism, the input provided below represents a synthetic presentation of the current evolutions in Romania in the period January 1, 2020 – February 1, 2021. The objective is to feed the assessment of the Commission with factual information on developments on the ground in Romania, compared to the first Rule of Law Report, issued on September 30, 2020.

The national authorities remain fully available for any further information deemed necessary for the second Rule of Law Report to be issued by the European Commission in July 2021.

The Rule of Law Mechanism provides the opportunity of an annual dialogue between the Commission, the Council and the European Parliament together with Member States, as well as national parliaments, civil society and other stakeholders on the rule of law.

Aware of the fact that the permanent respect of the rule of law is a shared responsibility for all Member States and EU institutions, Romania welcomes the political commitment of the European Commission to continue work on the Rule of Law Mechanism and, in line with the principle of sincere cooperation provided for in art. 4(3) of the Treaty of the EU, stands ready to further contributing to the success of this second exercise.

I. JUSTICE SYSTEM

A. Independence

Introduction

On September 30, 2020, the Ministry of Justice submitted to public debate the following draft justice laws[1]: the draft Law on the status of magistrates in Romania; the draft Law on judicial organization; the draft Law on the Superior Council of Magistracy.

On January 18, 2021, the public debate was re-boosted as follows:

Written consultation and meetings took place until February 21, 2021. Written proposals were submitted by the courts and prosecutors' offices and are available on the Ministry of Justice website. Analysis of proposals and review of projects will take place until March 31, 2021.

After finalizing the consultations and the debates, the Ministry of Justice will publish a report, which will include their result and the revised texts. It concerns approximately 600 articles. The projects will be sent to GRECO and the Venice Commission[2] for opinions on some of the key issues contained in the new draft laws amending the justice laws, so that it could be confirmed that the issues highlighted in previous reports and opinions are resolved.

After the completion of the public consultation, the Ministry of Justice will notify the draft laws as a comprehensive package to the Superior Council of Magistracy, for approval.

It has to be mentioned that the draft laws were elaborated following a detailed analysis of the requirements of the European Commission's CVM Report, GRECO reports and Venice Commission's opinions. There were also based on the need to rethink, re-discuss and amend the justice laws.

Until finalizing public debates, the draft laws could still suffer modifications of the legislative proposals, therefore the following provisions have to be considered under benefit of inventory.

1. Appointment and selection of judges, prosecutors and court presidents

a) Draft justice Laws

General provisions

According to the draft Law on the statute of magistrates, the admission to the magistracy and initial training for judges and prosecutors shall be carried out through the National Institute of Magistracy. The merit-based selection is maintained, as well as the transparent and objective process of selection.

The graduates of the National Institute of Magistracy shall be appointed by the plenum of the Superior Council of Magistracy to the positions of trainee judges or trainee prosecutors.

[1] 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-publice-urmatoarele-proiecte-de-leg/

[2] Plenary meetings of the Venice Commission in 2021: 18-20 March, 17-19 June, 14-16 October, 9-11 December.

Judges and prosecutors who have passed the capacity examination shall be appointed by the President of Romania upon a proposal from the plenum of the Superior Council of Magistracy.

The draft law maintains the provision according to which may be appointed to the magistracy on the basis of a contest: former judges and prosecutors who have ceased their activity for reasons not attributable to them, legal professionals treated as magistrates, lawyers, notaries, judicial assistants, legal advisers, bailiffs with higher legal education, probation officers with higher legal education, judicial police officers with higher legal education, clerks with higher legal education, persons who have held judicial professional offices within the apparatus of the Parliament, the Presidential Administration, the Government, the Constitutional Court, the Ombudsman, the Court of Accounts or the Legislative Council, in the Institute of Juridical Research of the Romanian Academy and the Romanian Institute for Human Rights, accredited higher education teachers, as well as assistant magistrates, with at least 5 years of experience in the field.

The draft Law regulates all the aspects regarding the career of magistrates in accordance with the decisions of the Constitutional Court in the matter: admission to the judiciary, internship and capacity examination, appointment, promotion, evaluation and professional training of magistrates, appointment in top management positions, revocation from these positions, delegation, secondment, transfer.

The draft Law on the statute of magistrates aims to increase the level of professional exigency and objectivity in case of promotion to the position of judge at the High Court of Cassation and Justice. Therefore, in addition to the competition test of the interview, candidates for these positions will also have to take a written test. Also, changes are proposed regarding the composition of the competition commissions, in order to ensure a higher level of objectivity and professionalism.

Top management positions in the judiciary

Given the Commission's concerns regarding the rule of law and the reversibility of some progresses made by Romania, the draft laws are intended to remedy the negative effects of the setbacks found in November 2017 and November 2018, by proposing measures such as a transparent and objective legislative framework for carrying out the procedures for appointing top management prosecutors within the Prosecutor's Office attached to the High Court of Cassation and Justice (ICCJ), National Anticorruption Directorate (DNA) and Directorate for the Investigation of Organized Crime and Terrorism (DIICOT).

According to the draft Law on the statute of magistrates the Prosecutor-General of the Prosecutor’s Office attached to the High Court of Cassation and Justice, his/her first deputy and deputy, the Chief Prosecutor of the National Anti-Corruption Directorate and the Directorate for Investigating Organised Crime and Terrorism, their deputies, the Chief Prosecutors of the section for prosecutors attached to the High Court of Cassation and Justice, the National Anti-Corruption Directorate and the Directorate for Investigating Organised Crime and Terrorism are appointed by the President of Romania, upon a proposal from the Minister of Justice, with the avis of the Section for Prosecutors of the Superior Council of Magistracy, from prosecutors who have at least 12 years seniority of service as a prosecutor or a judge, for a period of 4 years, with the possibility of re-appointment only once, in the same manner.

Prosecutors participating in the selection who fulfil the conditions provided by law shall undergo an interview before a committee set up by order of the Minister of Justice. The draft law provides clear, objective and transparent criteria for the selection of top management prosecutors.

The committee includes the Minister of Justice, who is also President, two representatives of the Ministry of Justice, a prosecutor appointed by the Section for Prosecutors of the Superior Council of Magistracy, a representative of the National Institute of Magistracy appointed by its Scientific Council, a specialist in management, institutional organisation and communication appointed by the Academy of Economic Studies — Faculty of Management and a psychologist from the Superior Council of Magistracy or from the courts or the prosecutor's offices.

During the procedure, the President of Romania may refuse, motivated, the appointment in these positions, bringing to the public's knowledge the reasons for the refusal. The decree of the President of Romania for appointment or his motivated refusal is issued within a maximum of 60 days from the date of transmission of the proposal by the Minister of Justice.

In the case Kövesi v. Romania of 5 May 2020, the European Court of Human Rights ruled that the applicant did not enjoy an effective domestic remedy against the act of dismissal, meaning the possibility to challenge before a court the respective act (the possibility of the applicant to question in a trial the reasons for her revocation). Therefore, the draft law provides that the prosecutor revoked from the top management position could challenge the decree of the President of Romania for revocation at the competent administrative contentious court, without going through the preliminary procedure. During the trial, the court will be able to verify the legality and validity of the proposal of the Minister of Justice for revocation.

According to the draft Law on the statute of magistrates the president, the vice-presidents and the section presidents of the High Court of Cassation and Justice shall be appointed by the Section for Judges of the Superior Council of Magistracy, following an interview, from among the judges of the High Court of Cassation and Justice who have worked at that court for at least 2 years and who have not been subject to disciplinary sanctions in the last 3 years.

The draft Law on the statute on magistrates increases the duration of the mandates of the top management positions, from 3 to 4 years, in order to ensure the continuity of the managerial vision on a longer term that would allow the achievement of the objectives assumed.

b) Memorandum on *Priority steps necessary to complete the Cooperation and Verification Mechanism (CVM) - legislation in the field of justice*

On January 20 this year, the Government approved the abovementioned Memorandum. The document provides the timetable for the adoption by the Government of projects of interest to the judiciary and their transmission for adoption, in an urgent procedure, by the Parliament, namely:

- by *the end of February* 2021 - the draft law abolishing the Section for the Investigation of Crimes in Justice;
- by *the end of April* 2021 – the Justice laws.

c) Draft law abolishing the Section for the Investigation of Crimes in Justice

The draft law on the abolition of the Section for the Investigation of Crimes in Justice was published on the website of Ministry of Justice[3] on February 4, 2020 and was sent to the Superior Council of Magistracy on the same day, for opinion. The project was not promoted and adopted by the Government.
The draft law has been modified and the additional guarantees provided for the initiation of criminal proceedings against a judge or prosecutor (with the prior authorization of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice) and for the prosecution of judges and prosecutors (with the approval of the Section for Judges or by the Section for Prosecutors of the Superior Council of Magistracy) have been eliminated.
On 31.12.2020, it was sent to the Superior Council of Magistracy, for opinion.
On February, 11, 2021 the Superior Council of Magistracy issued a negative opinion. On the same day the project was sent to the Government for adoption.
On February, 18, 2021 the draft law on the abolition of the section for the Investigation of Crimes in Justice was adopted by the Government and sent to the Parliament to be adopted in emergency procedure.
Currently, the draft law is sent for report to the commissions of the Chamber of Deputies (http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=19177).
The Parliament didn't approve the emergency procedure as requested by the Government.

d) Draft law on admission to the National Institute of Magistracy

The draft Law on some temporary measures regarding the admission contest to the National Institute of Magistracy, the initial professional training of judges and prosecutors, the exam for graduating the National Institute of Magistracy, the internship and capacity examination of the judges and prosecutors, as well as the examination of admission to magistracy was elaborated, following the CCR Decision no. 121/2020 of 10 March 2020, and approved favorably by the Superior Council of Magistracy.

The draft law was adopted by the Parliament but it was challenged at the Constitutional Court. The draft law proposes temporary measures in order to regulate the essential aspects regarding the organization and conduct of the competition for admission to magistracy in 2021 and 2022, the competition for admission contest to the National Institute of Magistracy in 2021 and 2022, the initial professional training and the graduation exam of the National Institute of Magistracy for the auditors of justice admitted in 2021 and 2022, as well as their internship and capacity examination.

e) Government Emergency Ordinance no. 215/2020

By GEO no. 215/2020, measures were adopted in order to postpone the entry into force of the provisions regarding the composition of the appeal panels (3 judges instead of 2). According to the emergency ordinance adopted, the appeal panels are composed by 2 judges until December

[3] http://www.just.ro/update-4-ianuarie-2021-forma-proiectului-retransmisa-spre-avizare-consiliului-superior-al-magistraturii-la-31-decembrie-2020/

31, 2022. The reasons for taking this measure were: the under sizing of the personnel schemes of the courts, the difficulties encountered in setting up the panels, the high volume of activity.

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

The draft Law on the statute of magistrates provides that the irremovable judges may be moved by transfer, delegation, secondment or promotion, only with their consent, and may be suspended or dismissed under the conditions provided by this law. Judges shall be independent and subject only to the law. Judges shall handle cases in accordance with the law, with due regard for the procedural rights of the parties, without any direct or indirect constraint, influence, pressure, threat or interference by any person or authority.

Any person, organization, authority or institution shall to respect the independence of judges.

Prosecutors appointed by the President of Romania shall enjoy stability and shall be independent, in accordance with the law. Prosecutors shall act in accordance with the principles of legality, impartiality and hierarchical control, under the authority of the Minister for Justice.

Prosecutors who enjoy stability may be moved by transfer, secondment or promotion, only with their consent. They may be delegated, suspended or removed from office under the conditions provided for by this Law.

The draft Law on the judicial organization provides for the detailed regulation of the reasons for revocation, as well as the procedure for revoking the prosecutors appointed within National Anticorruption Directorate (DNA) and Directorate for the Investigation of Organized Crime and Terrorism (DIICOT); the draft law provides clear criteria for verifying the improper exercise of the specific attributions.

The draft Law on the statute of magistrates provides the elimination of the early retirement scheme for magistrates, a measure that could have generate the leaving of the system of experienced magistrates and lead to serious blockages in the system determined by the lack of human resources for a rather long period of time.

The draft Law modifies the provisions regarding the suspension and dismissal of magistrates, in order to ensure an adequate level of reputation and integrity of magistrates and to maintain public confidence in the justice system. Therefore, the provisions regarding the possibility to remain in office in case of prosecution, respectively conviction of the magistrate, were eliminated.

3. *Promotion of judges and prosecutors*

Promotion to the position of judge at the High Court of Cassation and Justice

According to the draft Law on the status of magistrates the promotion to the position of judge at the High Court of Cassation and Justice shall take place only by means of a competition organised whenever necessary, within the limits of vacancies, by the Superior Council of Magistracy, through the National Institute of Magistracy.

Judges who have effectively served for at least 5 years as a judge at the court of appeal, who were rated as ‘Very good’ in the last 3 years, have not been subject to disciplinary penalties in

the last 3 years and have a length of service as judges or prosecutors of at least 18 years may participate in the competition for promotion as judge or prosecutor at the High Court of Cassation and Justice.

The competition for promotion to the position of judge at the High Court of Cassation and Justice shall consist of: a test to evaluate the court decisions drawn up; an interview with a committee designated by the plenum of the Superior Council of Magistracy; a written theoretical and practical test.

Promotion of judges and prosecutors to tribunals, specialised tribunals, courts of appeal and prosecutor's offices attached thereto, as well as to the prosecutor's office attached to the High Court of Cassation and Justice

The promotion of judges and prosecutors to the higher courts and prosecutor's offices, whether actual or on-the-spot, shall be carried out in accordance with this section at the court or prosecutor's office immediately above that held by the judge or prosecutor, up to the level of the court of appeal for judges and the Prosecutor's Office attached to the High Court of Cassation and Justice for prosecutors. The promotion of judges and prosecutors to the higher courts and prosecutor's offices, whether actual or on-the-spot, shall be carried out only by means of a competition organised at national level, within the number of vacancies.

The competition for actual or on-the-spot promotion can be entered by judges and prosecutors who were rated 'Very good' in the last assessment, have not been subject to disciplinary penalties in the last 3 years and fulfil the following minimum seniority requirements: 7-year seniority as judge or prosecutor, for promotion to the position or, where appropriate, to the rank of judge of at the court or specialised court and prosecutor at the prosecutor's office attached to the court or at the prosecutor's office attached to the specialised court; 9-year seniority as judge or prosecutor, for promotion to the position or, as the case may be, the rank of a court of appeal judge and prosecutor at the prosecutor's office attached to it; 10-year seniority as judge or prosecutor, for promotion to the position or, where appropriate, the rank of prosecutor at the Prosecutor's Office attached to the High Court of Cassation and Justice.

The competition consists of theoretical and practical written tests.

The theoretical and practical written tests are taken in:

(a) one of the following subjects, depending on the section, the specialisation and, where appropriate, the place chosen by the magistrate: civil law, criminal law, administrative law, financial and tax law, labour law and social security;

(b) civil procedural law for specialised matters: civil law, administrative law, financial and tax law, labour and social security law or criminal procedural law for specialised criminal law;

(c) the case-law of the High Court of Cassation and Justice and the case-law of the Constitutional Court, the case-law of the European Court of Human Rights and the case-law of the Court of Justice of the European Communities, irrespective of specialisation.

(3) The written tests shall be carried out in two stages and consist of:

(a) taking a multiple-choice written test of theoretical knowledge;

(b) taking a standard written test of practical knowledge.

(4) The evaluation of answers to multiple-choice test questions shall be carried out by electronic processing.

Superior Council of Magistracy (SCM)

The SCM comments on the the draft Law on Judicial Organisation and the draft Law on the Superior Council of Magistracy were sent to the Ministry of Justice by letter on 4.12.2020.

In the session of the Section for Prosecutors on 20 October 2020 it was decided to set up an interinstitutional working group composed of the Superior Council of Magistracy, the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anti-Corruption Directorate, the Directorate for Investigation of Organised Crime and Terrorism and the professional associations for analysing the draft laws on the judiciary, sent for public debate by the Ministry of Justice on 30.09.2020. The working group held several meetings, resulting in deciding to agree upon a questionnaire on the main proposals in the mentioned draft laws, as well as on the own proposals of the members of the working group. The questionnaire was sent to the prosecutor's offices within the Public Ministry.

4. Allocation of cases in courts

Random allocation of cases is performed by the court staff appointed annually by the president of each court. The random allocation among panels of judges is performed through the courts case management system (ECRIS). The software considers criteria such as: number of panels, legal branch (e.g. civil, criminal, bankruptcy), procedural stage (e.g. first judgement, appeal, second appeal), trial object (e.g. divorce), number of parties, overall complexity case.

For further details please see the Internal Regulation of the courts, adopted by the Superior Council of Magistracy[4].

5. 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)

According to the draft law on the Superior Council of Magistracy, the Superior Council of Magistracy is composed of 19 members, out of which:

a) 9 judges and 5 prosecutors, elected in the general assemblies of judges and prosecutors, who shall constitute the two sections of the Council, one for judges and one for prosecutors;

b) 2 representatives of the civil society, specialists in the field of law, who enjoy a high professional and moral reputation, elected by the Senate;

c) the President of the High Court of Cassation and Justice, the representative of the judiciary, the Minister of Justice and the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, who are *de jure* members of the Council.

The draft Law on the Superior Council of Magistracy changes the system of election of judges and prosecutors of the Superior Council of Magistracy, meaning that, by establishing a new type of election, in which the respective members are elected by all judges, respectively by all

[4] Available at http://portal.just.ro/300/SiteAssets/SitePages/organizare/Regulament%202015.pdf

prosecutors, at national level. The aim is to elect as members of the Superior Council of Magistracy representative magistrates at the level of the entire body of magistrates.

The Plenum of the Superior Council of Magistracy has the following attributions regarding the career of judges and prosecutors:

a) defends the independence and professional reputation of judges and prosecutors;

b) makes proposals to the President of Romania the appointment and removal from office of judges and prosecutors, except the debutant judges and prosecutors;

c) appoints debutant judges and prosecutors, based on the results they obtained in the graduation exam of the National Institute of Magistracy;

d) decides the promotion of judges and prosecutors;

e) removes from office the debutant judges and prosecutors;

f) appoints and dismisses the chief inspector and the deputy chief inspector, in accordance with the law;

g) recommends to the President of Romania the bestowing of distinctions upon judges and prosecutors, in accordance with the law;

h) fulfills any other attributions provided by law or regulation.

The Plenum of the Superior Council of Magistracy has the following attributions regarding the admission to the magistracy, the evaluation, the training and the examinations of the judges and prosecutors:

a) shall establish the annual number of auditors of justice for the National Institute of Magistracy, shall approve annually the date and place of the examination for admission to the National Institute of Magistracy, shall decide on the topics and bibliography for the examination for admission to the National Institute of Magistracy and shall approve the program of professional trainings for auditors of justice, shall issues endorsements and adopts regulations, in the cases and on the conditions provided by law;

b) shall exercise the attributions provided by the law in what concerns the capacity examination for judges and prosecutors and examination for admission in magistracy and validates their results;

c) shall exercise the attributions established by the law in what concerns the examination for judges and prosecutors' appointment to leading positions and validates their results;

d) shall exercise the attributions provided by the law in what concerns the examination for the judges and prosecutors' promotion and validates their results;

e) shall approve the program for continuous professional training of judges and prosecutors, at the proposal of the Scientific Council of the National Institute of Magistracy, as well as the subject-matters for the continuous professional training activities, organized by courts of appeal and the prosecutor's offices attached to these courts;

f) shall appoint and revoke the director and deputy directors of the National Institute of Magistracy, at the proposal of the Scientific Council of the National Institute of Magistracy, and appoint the judges and prosecutors who will be part of the Scientific Council of the National Institute of Magistracy;

g) shall approve the organizational structure and the positions and personnel schemes of the National Institute of Magistracy at the proposal of the Scientific Council of the National Institute of Magistracy;

h) shall appoint the director and deputy directors of the National School of Clerks and appoint judges and prosecutors as members of the school's leading board;

i) fulfills any other attributions established by law or regulations.

The Plenum of the Superior Council of Magistracy shall have the following attributions concerning the organization and functioning of courts and prosecutor's offices: summons the general assemblies of judges and prosecutors, according to the law; approves the measures for supplementing or reducing the number of positions for courts and prosecutor's offices and makes proposals regarding the list of localities that are in the jurisdiction of the courts of first instance; elaborates its own draft budget, with the consultative endorsement of the Ministry of Public Finance, and issues the endorsements for the draft budgets of courts and prosecutor's offices; fulfils any other attributions provided by the laws or regulations.

Other attributions of the Plenum of the Superior Council of Magistracy are the adoption the Deontological Code for Judges and Prosecutors, the Regulation on the organization and functioning of the Superior Council of Magistracy, the Regulation on the procedure for election of the members of the Superior Council of Magistracy, the Interior Regulations for courts of first instance, as well as other regulations and decisions provided by the law.

The Plenum of the Superior Council of Magistracy shall ensure the publication of the Deontological Code for Judges and Prosecutors and the abovementioned regulations in the Official Journal of Romania, Part I, and on the website of the Superior Council of Magistracy.

The Plenum of the Superior Council of Magistracy shall endorse the draft normative acts concerning the activity of the judicial authority, the draft regulations and orders approved by the minister of justice, in cases provided by the law. The Plenum of the SCM may notify the Minister of Justice with regard to the necessity to initiate or to amend some normative acts in the field of justice.

Every year, the Superior Council of Magistracy shall draw up a report on the state of the judiciary and a report on its own activity, which shall be presented to the Joint Chambers of the Romanian Parliament by February, 15 of the next year and shall publish them in the Official Journal of Romania, Part III and on the website of the Superior Council of Magistracy.

The Plenum of the Council shall not be able to adopt Regulations or decisions that add to the provisions of the laws, on the grounds that they are unclear or incomplete or that they violate the law.

Superior Council of Magistracy

Current updates in terms of defending independence of the Judiciary and of judges and prosecutors - proposals in terms of secondary legislation:

At the level of the Superior Council of Magistracy, there was considered the need for amending and completing the secondary legislation regarding the requests for defending the independence of the judiciary as a whole, as well as the requests for defending of the independence, impartiality and professional reputation of judges and prosecutors

Therefore, by the decision no. 155 of July 23rd, 2020 of the Plenum of the Superior Council of Magistracy, the Regulation (adopted by the SCM Plenum decision no. 1073/2018) for organising and functioning of the Council has been modified.

The aim of this approach was to regulate a filter procedure in order to ensure ways of rapidly solving requests for defending the independence of the judiciary as a whole, requests for defending of the independence, impartiality and professional reputation of the individual judge/prosecutor when it is obvious that the aspects in question do not involve any of their professional activity, as well as the requests for defending the independence of judges/prosecutors when these requests are being submitted by another individual than the judge/prosecutor subject to this request.

Thus, the Judicial Inspection shall be relieved of dealing with verifications in these cases, aspect that leads to increasing the celerity in carrying out specific verifications in other cases where such verifications are needed.

In the session of November 16th, 2020, the joint Commission no.2 of the SCM "Human resources and organisation" has decided on publishing for public debate the draft of the Plenum Decision for modifying the above mentioned Regulation of the Council on another aspect, namely, avoid rendering contradictorily decisions where, for the same deeds/aspects there are submitted, ex officio, both requests for defending the independence of judges or prosecutors, as well as requests for defending the independence of the judiciary as a whole.

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

The draft Law on the status of magistrates provides the modification of the legal provisions regarding the patrimonial liability of magistrates, by diminishing the role of the Ministry of Public Finance in exercising the recourse, simultaneously with the increase of the role of the Superior Council of Magistracy in carrying out the procedure.

According to the draft law, the State, through the Ministry of Public Finance, can exercise the recourse against the judge or prosecutor only if, by the decision adopted by the Plenum of the Superior Council of Magistracy, it was found that the judicial error is the result of the judge or prosecutor's bad faith or gross negligence.

Superior Council of Magistracy

- Ethical rules

According to the provisions of the art. 30 para. (6) of the Law no. 317/2004 on the Superior Council of Magistracy, republished with further amendments and completions, the Superior

Council of Magistracy shall ensure compliance with the law and the criteria of professional competence and ethics in the conduct of the professional career of judges and prosecutors, and according to art. 38 of the same normative act, The Plenum of the Superior Council of Magistracy approves the Deontological Code of Judges and Prosecutors.

- Criminal liability

According to the provisions of art. 94 of the Law no. 303/2004, republished, with further amendments and completions, judges and prosecutors shall be subject to civil, disciplinary and criminal liability, according to the law.

According to the provisions of art. 95 of the same normative act, judges and prosecutors may be searched, restrained or held in custody only with the approval of the Section for judges or, as the case may be, of the Section for prosecutors of the Superior Council of Magistracy. In case of flagrant offence, judges and prosecutors may be held in custody and searched according to the law. The Section for judges or, as the case may be, of the Section for prosecutors will be immediately informed by the body that ordered the custody or the search.

According to art. 62, judges or prosecutors may be suspended from office in the following cases:
- he/she has been sent to trial for committing a crime, after the confirmation of the preliminary chamber judge;

- when the measure of preventive arrest or house arrest was ordered against him/her;

- when against him/her the preventive measure of judicial control or judicial control on bail was taken and the judicial body established for him/her the obligation not to exercise the profession in whose exercise he/she committed the offence.

And according to art. 65, judges and prosecutors shall be removed from office in case of conviction, postponement of the sentence and the renunciation to the sentence, ordered by a final decision, as well as the renunciation to the criminal prosecution, confirmed by the preliminary chamber judge, for an offense harming the prestige of the profession, among other situations.

According to art. 83^2 para.(1), of the same normative, judges and prosecutors shall not benefit from the service pension if, even after the release from office, they have received a final conviction or it was ordered the postponement for the application of the penalty for a corruption offense, a crime assimilated to corruption offenses or a crime in connection with them, as well as one of the offenses included in Title IV of Law no. 286/2009, as subsequently amended and supplemented, "Offenses against the execution of justice" committed before the release from office, do not benefit from the service pension provided in art. 82 and 83^1 and from the allowance provided in art. 81. These persons receive a pension in the public system, according to the law.

7. Remuneration/bonuses for judges and prosecutors

The information on salaries of judges and prosecutors is the same as the previous year.

The law amending Law no. 227/2015 on the Fiscal Code established the application of a tax in the amount of 85% on the service pensions of magistrates whose amount exceeds 7001 lei. With this legislative change, in practice, the service pensions of magistrates were eliminated *de*

facto. By the decision of the Constitutional Court (RCC) no. 900/15.12.2020, the law was declared unconstitutional, arguing that the right to a pension is an element related to the career of a magistrate, and its elimination is likely to affect the independence of the judiciary.

8. Independence/autonomy of the prosecution service

The draft Law on the status of magistrates increases the degree of professional independence of prosecutors.

The draft Law provides that the prosecutors appointed by the President of Romania enjoy stability and are independent, in accordance with the law. Prosecutors carry out their activity according to the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice. Prosecutors who enjoy stability may be moved by transfer, secondment or promotion, only with their consent. They may be delegated, suspended or dismissed under the conditions provided by this law.

Prosecutors Office attached to the High Court of Cassation and Justice:

By High Court of Cassation and Justice decision no. 23/2020, an appeal on a point of law was admitted and it was established that the prosecutor general of the POAHCCJ, in case of refusing a solution ordered by a prosecutor from the subordinate prosecutor's offices or specialized structures of the POAHCCJ (National Anticorruption Directorate, Directorate for the Investigation of Organized Crime and Terrorism), does not have in all situations the quality expressly provided by art. 335 para. (1) of the Criminal Procedure Code which refers to "the hierarchically superior prosecutor to the one who ordered the solution".

The Constitutional Court decision no. 547/07.07.2020, by which it was found that the provisions of art. 88 index 1 paragraph (6) and of art.88 index 8 paragraph (1) letter d) of the Law no.304/2004 regarding the judicial organization are unconstitutional, did not bring clarifications of principle, for the functioning of the Public Ministry. Although the status of the SIIJ is that of a section within the POAHCCJ, the criticized legal provisions attribute to the SIIJ a special status, preeminent over the other prosecutorial structures in the POAHCCJ (NAD, DIOCT, Judicial Section) and, at the same time, a superior position in the Public Ministry hierarchy with the violation of art. 132 of the Constitution, which enshrines the principle of hierarchical control within this public authority.

The Constitutional Court settled on 22.10.2020 the notification of the Romanian Senate on the existence of a legal conflict of a constitutional nature with the POAHCCJ and rejected the request on the issue: “The criminal prosecution of a member of the Senate motivated by measures taken in accordance with parliamentary procedures must be considered excessive, as well as a direct and unconstitutional interference of a criminal investigation body (Public Ministry) the activity of the Parliament as an expression of the sole legislative authority of the State.” In the criminal case that generated the conflict, the court was notified through the indictment, on 15.12.2020, regarding the facts retained in the charge of two senators (from the previous legislature). The Constitutional Court decision no. 775/22.10.2020 is useful in the context of other resolved requests, in which the existence of a legal conflict of a constitutional nature was noted.

9. Independence of the Bar (chamber/associations of lawyers) and lawyers

The National Association of the Romanian Bars (UNBR)

According to the Constitution and Law no 51/1995 to the organisation and practice of the lawyer's profession (hereinafter, the Law), the independence of National Association of the Romanians Bars/Uniunea Națională a Barourilor din România (NARB/UNBR), as national structure, bars, as regional structures, and lawyers is provided.

Art. 1 (1) and art. 2 (1) of Law mention that *„The lawyer's profession shall be free and independent, based on an autonomous organisation and functioning, under the terms of the law and the by-law of the profession. ... In the practice of his/her profession, the lawyer shall be independent and subject only to the law, the by-law of the profession, and the code of conduct."* Also, art. 48 (1) of Law stipulates that *„The lawyer's profession shall be organized and shall operate based on the principle of autonomy, within the limits of the competence stipulated in the present law."*.

Regarding to the governing bodies of the profession, the Law provides in art. 59 (2) that *„UNBR is a legal person of public interest, has its own patrimony and budget"*. The independence of the Bar, as regional structure, is regulated in art. 49 (1) and (2) of Law: *„A bar shall be comprised of all the lawyers in a county or in Bucharest municipality. ... A bar shall have legal personality, own assets and own budget."*

There were no amendments approved to the Law no 51/1995 in the reporting period. At the level of the effective exercise of the profession, these rules imposed by the above-mentioned provisions are generally observed.

During the Covid-19 Pandemic, there was a collaboration with the CSM regarding the establishment of rules for the participation of all parties in trials during the Pandemic, which in principle was observed at the level of the courts. From the regional structure, contrary examples were also reported, at the level of some courts or panels.

Further details can be found on the UNBR website, www.unbr.ro .

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

Superior Council of Magistracy

Regarding the legislative mechanism the Superior Council of Magistracy exercises for defending both the independence of the Judiciary as a whole and the independence, impartiality and professional reputation of individual judges and prosecutors, aspects that have been presented in our previous report, a statistical overview might be needed for the referred period, in terms of affecting the independence and how the Council has sanctioned it:

January 1st 2020 – February 1st 2021 (Plenary, SJ, SP)

TOTAL decisions: 52[5]	Defending the independence of the judiciary: Plenum 17 Out of which:	Defending professional reputation, independence and impartiality: Section for judges 22 Out of which:	Defending professional reputation, independence and impartiality: Section for prosecutors 13 Out of which:
	Admitted: 1 Dismissed: 16*	Admitted: 7 Dismissed: 15**	Admitted: 9 Dismissed: 4

* *out of the 16 dismissal decisions 8 requests were submitted by the same person, a judge (currently suspended from office as a consequence of submitting the second appeal against the decision of the Section for Judges of the SCM for sanctioning the judge in question with the disciplinary sanction of removing from office);*

*** out of the 15 dismissal decisions 6 requests have regarded requests for defending the independence, impartiality and professional reputation submitted by the above-mentioned judge*

B. Quality of justice

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

As provided within the previous Report.

The Ombudsman

Given the epidemiological context generated by the COVID-19 pandemic, in July 2020 the Ombudsman addressed to the President of the Superior Council of Magistracy, requesting the communication of the measures taken in the context mentioned above to ensure the exercise of free access to justice and the right to defense and to ensure the functioning of justice, as a public service, both for the period of the state of alert and after its termination.

https://avp.ro/wp-content/uploads/2020/08/rec/solicitare_15iulie2020.pdf

https://avp.ro/wp-content/uploads/2020/08/raspunsuri/raspuns23iulie_2020.pdf

On May 12, 2020, the Section for Judges adopted Decision no. 734/2020, aiming at establishing rules for the development of the administrative-judicial activity of the courts in the period between May 15 and August 31, 2020. The measures concerned had as object: solving the requests that concerned the functioning of the registry and archives services; scheduling the

[5] There were not taken into account, by these statistics, the decisions where the Plenum/Sections have taken notice of the withdrawn requests.

dates of the trials; the manner of conducting court hearings; sending and submitting applications to the courts (preferably by electronic means/by post and communication of the requested documents in the same way); judicial vacation – duration, cases to be tried during this period; ensuring the right to defense.

During November 2020, the Ombudsman proceeded *ex officio* and sent a letter to the Minister of Justice requesting the communication of data on measures ordered by the bodies of the judiciary, in the current epidemiological context, for their proper functioning and for the protection of the health of staff, litigants and other persons involved in the act of justice.

The Ministry of justice informed the courts of appeal of the measures adopted to prevent the contamination with the SARS-COV-2 virus and to ensure a safe and healthy environment at work during the state of alert period, measures which, in essence, referred to activities of disinfection, use of bactericidal lamps, use of sanitizer for surfaces and hands, protective masks, checking body temperature, frequent ventilation of spaces, avoidance by court staff of crowded places, with a high degree of contamination, recommendation to perform rapid tests in case of occurrence of infection outbreaks and rapid testing among staff who have come into contact with a confirmed case; in 2020, the amount of 14,488,000 lei was allocated to the courts (in the requested by each court).

12. Resources of the judiciary (human, financial, material)

A. Human resources

The situation of the positions of judges and clerks and magistrates-assistants at the HCCJ, as well as the situation of the positions of judges and clerks in the courts are set out in the Annex 1.

The situation of all categories of personnel within the Public Ministry is set out in the Annex 2.

The situation of the interpreters used during the trial is set out in the Annex 3.

B. Budget

As concerns the financial resources:

HCCJ

- the budget allocated for 2020 amounted to 186.646 thousand RON;
- the budget requested for 2021 amounts to 266.459 thousand RON.

PICCJ

The budgetary credits approved to the Public Ministry for 2020 were of 1,579,860 thousand RON, out of which 1,568,531 thousand RON on the “State budget” source and 11,329 thousand RON on the “Non-reimbursable external funds” source.

The payments reported by the Public Ministry at the end of 2020 totaled 1,514,486 thousand RON, of which 1,510,094 thousand RON on the "State budget" source, registering an execution of 96.27%, and 4,392 thousand RON on the " Non-reimbursable external funds” source, the degree of execution being 38.77%.

MoJ

- the budget allocated for 2020 amounted to **4,894,225** thousand RON ;
- the budget allocated for 2021 amounted to **4,685,409** thousand RON.

Buildings:

HCCJ:

- the headquarters of the High Court of Cassation and Justice is located in a public property building administrated by the supreme court;
- the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice is located in a leased building. (The lease contract was concluded based on a procurement procedure.)

Public Ministry:

The situation of the Public Ministry headquarters is set out in the Annex 4**.**

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

- Professional training of judges and prosecutors

The National Institute of Magistracy is the public institution, under the coordination of the Superior Council of Magistracy that carries out the recruitment of judges and prosecutors, the initial training and the continuous training of judges and prosecutors in office, as well as training of trainers.

The Institute is organized and operates according to the provisions of Law no. 304/2004 regarding the judicial organization, Law no. 303/2004 regarding the statute of judges and prosecutors and Law no. 317/2004 regarding the Superior Council of Magistracy, reissued, as subsequently amended, as well as according to the provisions of the Regulation of the National Institute of Magistracy.

According to the law and internal regulations the initial training of justice auditors takes place over a period of two years, the first year being dedicated to theoretical and practical training through courses and seminars held at the Institute, and the second year to internships in courts and prosecutor's offices.

The curriculum for the first year includes the fields of study, the number of courses and seminars related to each field, including ethics and judicial organisation, as well as the assessment methodology, and the curriculum for the second year provides the practical training internships.

After completing the courses within NIM, the justice auditors take a graduation exam which assesses the acquired knowledge, skills and abilities necessary to perform the function of judge or prosecutor. One of the exams refers to professional ethics and judicial organisation. Following this exam, the justice auditors opt for the positions of junior judges and junior prosecutors, their distribution being made according to the final graduation grade.

Continuous training is both a right and a duty for judges and prosecutors. According to the law and internal regulations the responsibility for the continuous training of judges and prosecutors belongs to the National Institute of Magistracy, to the heads of the courts or prosecutor's offices where they carry out their activity, as well as to each judge and prosecutor, through individual training.

Judges and prosecutors take part, at least every 3 years, in continuous training programs organized by the National Institute of Magistracy at centralized level, by national or international higher education institutions or in other professional development trainings.

The continuous training consists in knowing and gaining in-depth knowledge of the national legislation, of the European and international documents issued by the bodies to which Romania is a party, the jurisprudence of the courts and of the Constitutional Court, the jurisprudence of the European Court of Human Rights and of the Court of Justice of the European Union, comparative law, as well as professional ethics and deontology.

- Professional training of auxiliary personnel of courts/prosecution offices

In Romania, the professional training of specialized auxiliary personnel for courts and prosecutor's offices falls primarily under the regulations of Law 567/2204 regarding the status of this category of personnel, and is also regulated at a secondary level by the "Regulation of the National School of Clerks", adopted by the Superior Council of Magistracy's Decision no. 183/2007, and the "Regulation for the admission into the National School of Clerks", adopted by the same institution, by Decision no. 173/2007. According to the above indicated normative acts, the professional training of the auxiliary personnel is mainly ensured by the National School of Clerks, a public institution, with legal personality, under the coordination of the Superior Council of Magistracy. Based on the criterion of the type of training, the professional training of auxiliary personnel falls in one of two categories: initial training and continuous training. Initial training is exclusively provided by the National School of Clerks, which holds the highest responsibility in the selection process as well.

Over the course of the last few years, the selection process for admission into the National School of Clerks has been held only for graduates of higher legal education, the initial training of which lasts 6 months. Initial training is conducted at a central level and has a mainly practical nature. Although the possibility of entering the profession of specialized auxiliary personnel for courts and prosecutor's offices of graduates of secondary or higher education of a type other than that of legal education is regulated, such selection processes have been held, over the last few years, only at a decentralized level.

As a matter of fact, in the Romanian justice system, the share of auxiliary personnel with higher legal education is over 86%.

The continuous training of the auxiliary personnel is provided for the most part by the National School of Clerks, through seminars, classes, foreign exchanges and other such training activities, both internally and internationally. According to the regulations in force, in addition to the continuous training provided by the National School of Clerks, within each court and prosecutor's office, on a quarterly basis, profession training of auxiliary personnel is conducted.

Since its formation and to the present, the National School of Clerks has recruited and provided initial training for approximately 1.800 clerks. In the accounting period of this report, due to

the situation created by the COVID-19 pandemic, the admission examination into the National School of Clerks has been delayed, such that in 2020 the initial training of 80 clerks has been commenced, clerks that will be provided to the judicial system only in March 2021.

Also, since its formation, the National School of Clerks has recorded over 43.000 participations in the continuous training sessions. Even though 2020 has been a challenge for the continuous training program, as the pandemic has caused cancelations of all the training activities scheduled to take place in a face-to-face format, the National School of Clerks has managed to adapt and hold all continuous training sessions exclusively in an online format, recording 4.229 participations.

National Association of Romanian Bars

According to Law, the professional training of trainee lawyers is carrying out through National Institute for the Training and the Improvement of Lawyers/Institutul Național de Pregătire și Perfecționare a Avocaților (NITIL/INPPA). The training of qualified lawyer is carrying out through Bars, which can collaborate with INPPA.

The whole professional training of lawyers has adapted to the conditions of the pandemic and it was carrying out exclusively through means of distance communication.

14. 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)

Relevant data from the files (for each case the date and time of the court hearings, the parties, brief solution description, etc.) are automatically published on the courts' portal. During 2020, new functionalities of the courts' portal were implemented, currently being displayed the estimated time for each case hearing (in order to avoid congestion). Also in the crowded courts a software application was implemented that allows litigants wishing to consult the physical registry of the court to schedule online, for the same purpose of avoiding congestion. The litigants can send to the courts by email the files documents.

During 2020, the process of extending the Electronic File application to all courts has been completed, so at the present each part of the trial, as well as the lawyers involved can have electronic access to all documents that constitute the court file.

Furthermore, during 2020, approximately 500 new videoconferencing systems were purchased for the courts. Since the beginning of the last year the number of the videoconference hearings has been continuously increasing.

High Court of Cassation and Justice

The digital court project developed by the High Court of Cassation and Justice includes the following components:

- **The electronic file**

In 2020, the **High Court of Cassation and Justice implemented the electronic file**, as part of the digital court project.

On the basis of the electronic file, parties and their representatives registered according to the procedure available on the website of the High Court of Cassation and Justice have online access to the documents of their files, at the level of the First Civil Chamber, Second Civil Chamber, Penal Chamber, Administrative and Fiscal Contentious Chamber and Panels of 5 judges of the supreme court.[6]

- **The electronic communication service for procedural acts**

Starting with 5 October 2020, the **High Court of Cassation and Justice launched the electronic communication service for procedural acts**, as part of the digital court project, which allows every person registered in accordance with the procedure available on the website of the supreme court to use the e-mail for the communication of the procedural acts.[7]

- **The digital library**

The digital library of the High Court of Cassation and Justice includes:

A. Jurisprudence

The High Court of Cassation and Justice ensures the publication of the decisions rendered by the supreme court on the website (www.scj.ro) ("Digital library" – "Jurisprudence" – "Search jurisprudence").

The **online publicly accessible database of the jurisprudence of the High Court of Cassation and Justice** contains:

→ **1 February 2021** → **5.659** resumed relevant decisions;

→ **1 February 2021** → **159.840** integral text of the decisions (anonymized), decisions concerning preliminary ruling requests and decisions concerning the appeals in the interest of the law.

B. Collections of relevant decisions

In 2020, the High Court of Cassation and Justice published the following collections of relevant decisions on the website of the supreme court in the framework of the digital library

[6] The advantages of the electronic file consist in: saving time and reducing the costs for parties and their defenders, due to the online access to the documents of the file, that does not require their presence at the supreme court headquarters; immediate access to the new documents; increasing the celerity of the procedures, by reducing the number of cases adjourned for reasons concerning the access to the new documents; reducing the overcrowding at the High Court of Cassation and Justice headquarters and ensuring the efficiency of the protection measures against COVID-19; ensuring the online access to the files for the judges, assistant-magistrates and clerks and, as a consequence, ensuring their possibility to take adequate measures immediately; ensuring the simultaneous access to the file for the members of the panel of judges, the parties and their representatives; ensuring the 24/24 access to the documents of the file, irrespective of the public relations program and of the material file.

[7] The electronic communication service for procedural acts ensures celerity, security of the transmission of the communications, protection of the personal data and reducing the costs of the judicial proceedings.

(www.scj.ro) ("Digital library"): the Bulletin of Jurisprudence for 2018 and 2019, the Bulletin of Cassation no. 1/2020 and the Bulletin of Jurisprudence in the matter of the disciplinary liability of judges and prosecutors for 2019.[8]

C. Press releases

The High Court of Cassation and Justice included in the digital library of the supreme court the press releases regarding the decisions concerning the appeals in the interest of the law and the decisions concerning preliminary ruling requests (www.scj.ro) ("Digital library").[9]

Prosecutors Office attached to the High Court of Cassation and Justice

Currently, the law provides for the possibility of submitting evidence in electronic format by the parties. There is no electronic file for the criminal investigation phase and no connection is established between the prosecutor's offices and the police for the electronic transmission of the investigation files. There are, however, prosecutor's offices that voluntarily implement such a system in connection to courts.

15. 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)

The Case Management System (ECRIS) has been installed and has been operational in all courts for 14 years. The electronic judicial statistics system has been operational in various versions for over 10 years. The current electronic judicial statistics enable monitoring and evaluating the courts workload and also contains information on the length of the cases settlement.

Information extracted from annual statistical data of the court, or if case, of the courts of a certain territorial area, are published in the annual reports of each court. The annual Report on the justice state also contains data referring to the statistical reports of all courts.

16. Geographical distribution and number of courts/jurisdictions (judicial map) and their specialization

For the judicial map please see the Annex 5.

C. Efficiency of the justice system

17. Length of proceedings

The situation regarding the length of proceedings is set out in the Annex 6 and Annex 7.

[8] The English version of the Bulletin of Jurisprudence in the matter of the disciplinary liability of judges and prosecutors for 2019 is available on the website of the High Court of Cassation and Justice in the framework of the digital library (www.scj.ro) ("Digital library").

[9] The English version of the press releases issued in 2020 and 2021 regarding the decisions concerning the appeals in the interest of the law and the decisions concerning preliminary ruling requests is partially available on the website of the High Court of Cassation and Justice in the framework of the digital library (www.scj.ro) ("Digital library").

II. ANTI-CORRUPTION FRAMEWORK

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates that have occurred since these documents were published.

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

18. 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), e.g. in table format.

The same as in the previous report.

B. Prevention

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

National Integrity Agency:

A. Follow-up on ANI's cases

Throughout 2020, the National Integrity Agency has finalized 1.143 cases, of which 146 files were pursued as integrity incidents, while the other 997 files were closed.

On-going investigations on December 31st, 2020: 1.808

Average case load on each integrity inspector, on December 31st, 2020, 2020: 60 files / integrity inspector (45 integrity inspectors).

In 2020, ANI ascertained 132 integrity incidents, as follows:

- 93 Incompatibilities: 2 Secretaries of State; 2 Mayors; 9 Deputy Mayors; 22 Local councilors; 18 Persons with management and/or control positions; 1 Member in the Administration Council; 31 Public servants; 8 Public servants with special statute.
- 34 Administrative conflicts of interest: 8 Mayors; 3 Deputy Mayors; 1 County councilor; 17 Local councilors; 5 Persons with management and/or control positions.
- 5 Unjustified wealth amounting to over 3,57 million RON (more than 833.000 Euros): 1 Deputy; 1 Person with management and/or control position; 3 Public servants.

At the same time, the integrity inspectors have identified 17 cases regarding possible criminal offences (criminal conflict of interest, using the office to favor people, etc.) in the case of 12 persons, which were sent to the prosecution bodies, for further investigation, as follows: 3

Mayors; 1 Local councilor; 8 Persons with management and/or control positions; 1 Public servant.

In 2020, 175 cases have remained definitive and irrevocable (either through Courts' decisions that confirmed ANI's ascertainment, or through not challenging of the evaluation report by the evaluated person), as follows: 127 cases of incompatibility; 45 cases of administrative conflicts of interests; 3 cases of unjustified wealth.

Furthermore, in the reported period of time, the Courts have issued 2 convictions to suspended imprisonment for criminal deeds.

In 2020, 204 administrative fines were applied (for failure to submit assets and interest disclosures in legal terms, for non-disciplinary sanctions applied after the ascertaining act remained final, for failure to comply with the legal provisions by the head of institution and for the persons responsible of ensuring the implementation of legal provisions regarding assets and interest disclosure within public entities).

B. Legislative framework

In 2020, 2 legislative proposals related to the integrity framework were adopted by the Parliament and promulgated by Presidential Decree, one regarding the procedure to fill out and submit assets and interest disclosures electronically (endorsed by ANI) and the other which limits the incompatibly regime for parliamentary civil servants (ANI issued a negative point of view).

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

Legislative Council

Regarding the transparency of the endorsement activity of the Legislative Council, it has to be mentioned that from January 2021, all the opinions issued by the Legislative Council are public and can be fully accessed by any interested person, on the institution's website in the Ro-lex section[10].

General Secretariat of the Government

I. Legal framework

Transparency of public decision-making

Law no. 52/2003 regulates the general framework for transparency of decision-making in public administration. The law aims at: increasing the degree of responsibility of the public administration towards the citizens, as beneficiaries of the administrative decision; active involvement of the citizens in the administrative decision-making and in the drafting process of the normative acts; increasing the degree of transparency of the entire public administration. The authorities obliged to comply with the provisions of the Law no. 52/2003 are the authorities of the central and local public administration.

[10] http://www.clr.ro/RO-Lex/Initiat.aspx

Public access to information

The free access to information of public interest is regulated by Law no. 544/2001, with subsequent amendments and by Government Decision no. 123/2002 for the approval of the Methodological Norms for the application of Law no. 544/2001, supplemented and amended by Government Decision no. 478/2016.

In the context of the Covid-19 pandemic, Decree no. 195 of March 16, 2020 on the establishment of the state of emergency on the territory of Romania provided, *inter alia*, the extension, during the state of emergency, of the legal deadlines for resolving requests of free access to information of public interest and petitions.

II. Practice

In 2020, the General Secretariat of the Government (SGG)[11] carried out constant activities aimed at both improving the application of the law in this field and highlighting working practices, on the one hand, as well as developing a culture of transparency for open governance at central and local level, on the other hand, as follows:

1. Elaboration and implementation of the policy on the free access to information of public interest

1.1. Monitoring and evaluation of the application by the authorities of the legal provisions for the application of Law no. 544/2001 on free access to information of public interest

1.2 Elaboration of syntheses and recommendations regarding the annual reports on the implementation by the public administration of Law no. 544/2001 on free access to information of public interest

1.3 Administration of the online platform RUTI - Single Register of Transparency of Interests (ensuring the transparency of the decision-making act by involving the whole society)

1.4 Supporting the increase of the capacity of public authorities and institutions to apply the provisions of the legislation on free access to information of public interest

2. Development and implementation of policy in the field of decision-making transparency

2.1 Monitoring and evaluation of the application of Law no. 52/2003 on decision-making transparency in public administration

2.2 Elaboration of summaries and recommendations regarding the annual reports on the implementation by the public administration of the Law no. 52/2003 on decision-making transparency in public administration

2.3 Supporting the increase of the capacity of public authorities and institutions to apply the provisions of the legislation on decision-making transparency

2.4 Administration of the E-consultare.gov.ro platform and extension of the platform in order to consolidate the citizens' contribution to the decision-making process

[11] According to its atributions established by Government Decision no. 137/2020 on the organization, functioning and attributions of some structures within the working apparatus of the Government

3.Identifying and coordinating government strategies on associative forms and increasing the capacity of civil society to contribute ideas and expertise to the public policy process

3.1 Ongoing steps to achieve and strengthen the framework for dialogue between the General Secretariat of the Government and the associative environment, including by maintaining online tools for dialogue with civil society

3.2 CONECT Platform administration

3.3 Creation and publication of the single record of legal persons with public utility status

3.4 Periodic evaluation of the situation of the structures for the relations with the civil society according to O.G. no. 26/2000 on associations and foundations

4. Coordinating the process of elaboration, implementation and monitoring of the commitments included in the National Action Plan (NAP) of the Open Government Partnership (OGP)

For further details please see the Annex 8.

National Integrity Agency

Asset disclosure rules

On the 6th of July 2020, Law no. 105/2020 to modify and complete Law no. 176/2010 was published in the Official Gazette of Romania, Part I no. 588. Through this legislative amendment, the procedure to fill out and submit assets and interest disclosures was modified, in the sense that:

- In 2021, the assets and interest disclosures can be filled out and submitted either in paper-based format, and also in electronic format, certified with electronic signature

- Starting with the year 2022, the disclosures will be filled out and submitted exclusively digitally, certified with electronic signature.

In order to fulfill its legal attributions, the Agency has adopted a Procedure which regulates the process to submit remotely the asset and interest disclosures, which was published the Official Gazette of Romania on the 8th of January, 2021.

The procedure formalizes the process of digitization of assets and interest disclosures and applies to the categories of persons who have the obligation to declare, except for the candidates registered in the electoral processes.

Furthermore, to facilitate this process, **the Agency has implemented an electronic system, entitled e-DAI**, which will be finalized in the first quarter of 2021, through which the disclosures will be filled out and submitted to ANI, through the persons responsible within each institution.

Transparency of political party financing

The Law No. 334/2006 on the financing of political parties and election campaigns aims at ensuring equal opportunities in the political competition and transparence in the financing of electoral campaigns and the activity of political parties.

On 13 January 2016, the Government approved, through Government Decision No. 10/2016, the Methodological Norms for the application of Law No. 334/2006 on the financing of political parties and election campaigns.

Government Decision No. 10/2016 mainly regulates the following: (a) the procedure and format for recording, tracking and publishing donations, contributions, loans and own revenues and expenditures of political parties; (b) granting and using subsidies from the state budget; (c) the specific procedure and format for registration, accounting and transparency of revenues and expenses during the electoral campaign; (d) registration and attributions of financial agents; (e) the control procedure and methodology; (f) categories of documentation and methodology for reimbursement of the amounts spent for the electoral campaign; (g) misdemeanors and penalties and which stakeholders establish the misdemeanors.

The Permanent Electoral Authority is the public authority authorized to check the compliance with the lawful provisions on the financing of political parties, political or electoral alliances, independent candidates and electoral campaigns. The Permanent Electoral Authority shall check annually and whenever notified the compliance of each party with the lawful provisions on the financing of political parties. The Permanent Electoral Authority can be notified by any person providing evidence regarding the breach of the lawful provisions on the financing of political parties.

The Permanent Electoral Authority can check the compliance with the lawful provisions on the financing of political parties in case of any suspicions of breach of such lawful provisions brought to its attention by any interested persons or by default. The results of every control carried out shall be published in the Official Journal of Romania, Part I and on the web site of the Permanent Electoral Authority within 15 days from such control.

Transparency of political party financing and the electoral campaigns are carried out by publishing on the website of the Permanent Electoral Authority and in the Official Gazette of Romania, Part I, of the declarations and reports provided by law.

Also, any person has the right to obtain from the Permanent Electoral Authority, in the conditions of *Law no. 544/2001 on free access to information of public interest*, information on political party financing.

In 2017, GRECO terminated the third evaluation round with respect to Romania, after assessing that 11 recommendations concerning political party financing had been satisfactorily addressed by the Romanian authorities and 2 recommendations had been partly implemented.

21. Rules on preventing conflict of interests in the public sector

In 2020, the PREVENT system analyzed 19.140 procurement procedures, in order to identify possible conflicts of interest. Out of these reviewed procurement procedures, 12.958 were public stand-alone procurement procedures (without batches) and 6.182 were public procurement procedures with batches (containing 78.609 batches).

From the total of 19.140 procurement procedures, 3.574 public procurement procedures referred to European funds.

Furthermore, in the same reporting period, the integrity inspectors issued 10 integrity warnings, amounting to approx. 54,3 million RON (approx. 11,1 million EURO).

For 8 integrity warnings, the leader of the contracting authority eliminated the causes that generated the potential conflict of interests. In 2 cases, the National Integrity Agency shall apply the provisions of art. 9 from Law no. 184/2016, meaning that ex-officio procedure of evaluating the conflict of interests will be initiated the after finalization of the awarding procedure provided by law, if the causes that generated the conflict will not be eliminated.

According to art. 9 of Law no. 184/2016: „*Failure to take steps following reception of an integrity warning or to fill out an Integrity Form as under Art. 6 para. (4), triggers an ex officio procedure to assess the conflict of interests, after completion of the award procedure, exclusively concerning the persons who come under the stipulations of Law no.176/2010, as subsequently amended.*"

Also, the integrity inspectors sent before the National Agency for Public Procurement (ANAP), in accordance with the cooperation agreement signed between the National Integrity Agency and ANAP, a number of 7 irregularities regarding possible relations between members of the contracting authority and persons within the tenders, exclusively for the persons who are not required to submit assets and interest disclosures.

During the reported period, PREVENT system analyzed 2.474 contracting authorities, 14.847 companies, as well as 259.355 persons and representatives of the public institutions and the tenders.

Categories of contracting authorities: The potential conflicts of interest signaled by the system refer to public procurement procedures carried out by contracting authorities representing ministries, public institutions at central and local level, administrative-territorial units, autonomous administration, as well as companies at which the state is a majority shareholder.

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

In view of the new EU framework in the field of protection of whistleblowers, the MoJ has assumed the transposition the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

Steps taken by the MoJ in this regard:

- setting up a working group for the transposition of the Directive; the members of the working group also participated regularly in the meetings of two existing formats at European level, in order to exchange views with other MS on the transposition of the Directive: the Expert Group set up by the COM to support the implementation and The Network of European Integrity and Whistleblowing Authorities;

- developing the first draft law that will ensure the transposition;

- conducting a first round of written consultation of public institutions and authorities.

- on March, 5, 2021, the draft law and its explanatory memorandum have been submitted to public debate on the MoJ website (available at the following link: http://www.just.ro/proiect-de-lege-privind-protectia-avertizorilor-in-interes-public/).

In the framework of EU-funded SIPOCA 62 project, MoJ has developed the comparative study: "Evaluation of whistleblower protection and pantouflage framework". This evaluation highlights

the examples of good practice available at European and international level, in 5 countries (France, Italy, the Kingdom of the Netherlands, Ireland and Canada) and in Romania, which form the basis of proposals to improve the existing legislative and institutional framework in Romania.

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

Strengthening integrity, reduction of vulnerabilities and corruption risks in priority sectors and fields of activity is one of the general objectives of the NAS 2016-2020, which includes sectors considered vulnerable (the healthcare system, the national education system, the activity of the members of Parliament, the judiciary, the financing of political parties and electoral campaigns, public procurement, the business environment, the local public administration). Detailed information regarding the measures implemented last year will be published on the NAS portal, as soon as the annual monitoring report will adopted by the cooperation platforms. The report is currently being prepared based on the contributions submitted by public authorities and institutions. This practice follows the same reporting mechanism deployed in the previous years.

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

The MoJ coordinated the involvement of Romanian authorities in the preliminary analysis of the criminal trends in the context of the COVID-19 pandemic, carried out by UNODC. This analysis was started in April 2020 and was completed in December 2020. Data provided by DNA on corruption cases was also used.

UNODC's approach also aimed to exchange information and obtain a clear picture of the criminal status and the risks associated with it in this exceptional context, in order to adapt the measures of the states involved, with emphasis on the phenomenon of organized crime.

During 2020, the National Anticorruption Directorate registered 105 cases involving acts committed in the context of the COVID-19 pandemic. Of these, 29 cases were resolved and 76 cases remain pending.

National Integrity Agency - Direct procurement procedures evaluation

As a consequence to the State of Emergency Decree issued in the context of the COVID-19 pandemic, public authorities and legal entities in which the state is the major shareholder, were allowed to directly purchase (without publishing into the Public Procurement Electronic System (SEAP/SICAP) materials and equipment necessary to combat this pandemic, exceeding the value threshold (which is around 27.000 euros) established by the Law on public procurement for publication in the electronic system. This meant that these direct purchases were not run through the electronic system, and thus have not been scrutinized by the PREVENT System. To address the issue of scrutinizing the procedures carried out through direct procurement, ANI has developed a mechanism meant to analyze, based on information available from public sources, data sets on these procedures. The goal of this mechanism is to identify consumed conflicts of interest in these procurement procedures that bypassed PREVENT scrutiny.

By the end of January 2021, with the help of a risk matrix, ANI has verified 580 direct procurement procedures carried out in the first semester of 2020 and has identified 64 potential integrity incidents (11% of the procedures), which will be further analyzed and the ex-officio procedure of evaluating these cases will be triggered if the case may be.

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

National Integrity Agency

A. Prominent public functions

According to the Emergency Ordinance of the Government no. 111/2020 which transposes the EU Directive 2018/843 into the national law, the National Integrity Agency has the obligation to draw up the list of prominent public functions provided in the national legislation.

In 2020, the Agency fulfilled the aforementioned legal imperatives, and thus has published on the website and sent to the European Commission the list of prominent public functions, as sent by the entities which have this obligation (https://bit.ly/2IEOU3S).

B. 2020 Local and Parliamentary elections

In order to ensure integrity in the context of the 2020 local elections (27 September) and parliamentary elections (06 December), the Agency carried out a several awareness and preventions activities, as follows:

- created a distinct section on its website, for each of the electoral process, where there have been made available: the asset and interest disclosures of the candidates (505.000 disclosures of candidates in local elections and about 12.994 disclosures of candidates in parliamentary elections); a contact form dedicated to notifying the irregularities in the way of filling out the asset and interest disclosures submitted by the candidates; the main legislative texts that rule the legal regime of incompatibilities, conflicts of interest and unjustified assets; guides on filling out the disclosures and on incompatibilities and conflicts of interest; e-forms of asset and interest disclosures;

- issued press releases for launching each of the aforementioned sections, and other two press releases, each for the local and parliamentary elections, with regard to the measures taken for ensuring integrity in the post-electoral phase;

- designated integrity inspectors to offer telephone assistance to candidates to the elections, on filling out asset and interest disclosures;

- updated and made publicly available the list of persons under the interdictions to occupy an eligible office for 3 years;

- carried out multiple verifications to check if there are any candidates and subsequently, if there are any elected officials under the 3 years ban to occupy a public office;

- sent the list of such cases to the Central Electoral Bureau (in the pre-electoral phase of the local elections), to the Courts, who have the competence to validate the mandates of the newly elected officials (in the post-electoral phase of the local elections), as well as to the Romanian Senate, upon request (within the validation process of the newly elected senators), as follows:

2020 Local elections

a) In the pre-electoral phase of the local elections, the Agency sent to the Central Electoral Bureau, the nominal list of persons under the 3-year interdiction to occupy a public office. In reply, the Central Electoral Bureau asserted that analyzing the aforementioned list exceeds their competences and the Agency should refer to the relevant entities.

Moreover, ANI verified the Decisions of the Electoral Bureau, from the information retrieved by ANI from public sources and identified 32 situations in which the Decisions of the Electoral Bureau have been challenged in Court. In 21 of these cases the candidates have been denied to take part of the electoral process, while in the other 11 cases, the persons were allowed to candidate in the local elections.

b) After the local elections, **ANI sent to the Courts who have the competence to validate the mandates** of the newly elected officials, a nominal list of candidates under the interdiction to occupy an eligible office for 3 years, according to art. 25, para. (2) of Law no. 176/2010, and who, if validated in a local elected office, would breach the aforementioned legal provisions.

Following the validation process, ANI carried out an internal analysis of (a) the decisions of the Electoral Bureaus, but also of (b) the decisions of the Courts (issued in the pre and post-electoral phases). The conclusions have shown a non-unitary application, for the following reasons:

- In the pre-electoral phase, some candidacies have been admitted by the electoral bureaus, while others have been rejected. Many of these decisions of the Electoral Bureaus have been challenged in Court. Subsequently, 65% of the Courts invalidated the candidacies, while the rest definitively validated the candidacies

- In the post-electoral phase there are cases in which the Courts with attributions of validating the mandates either admitted, or rejected the taking over of the positions. Subsequently, in the stage of appeal, the dynamic shifted, and most of the elected officials have been validated, some of the first degree Court's decisions being modified.

2020 Parliamentary elections

Within the validation process of the newly elected senators and deputies, the Validation Committee of the Romanian Senate, in an unprecedented action, has requested the National Integrity Agency in December 2020 to communicate definitive and irrevocable decisions issued by Courts regarding incompatibilities of the senators elected on 6th of December 2020.

In this regard, the National Integrity Agency has informed the Validation Committee that none of the senators elected on the 6th of December 2020 have been found under the interdiction to occupy an office provisioned at art. (1) of Law no. 176/2010 on the integrity of exercising public positions and offices, as subsequently amended and supplemented, following a definitive and irrevocable decision on breaching the incompatibility and conflicts of interest regime.

C. The LINC Project

On February the 1st 2021, ANI finalized the EU-funded project "LINC - Increasing the Capacity of Central Public Administration to Prevent and Identify Cases of Conflicts of Interest, Incompatibilities and Unjustified Assets".

The main purpose of the project was increasing the capacity of the central public administration and Parliament to identify, sanction and prevent cases of conflicts of interest, incompatibilities and unjustified assets and to support the implementation of the measures assigned to the National Integrity Agency under the National Anticorruption Strategy 2016 – 2020.

The main results of the project are:

- 3 procedures for preventing potential conflicts of interest and for early prevention of incompatibility situations, addressed to central public administration personnel, which were further adopted by more than 40 institutions;

- over 390 persons within central public institutions and authorities were trained regarding the integrity system;

- 40 integrity inspectors within the Agency were trained (3 study visits to the French High Authority for Transparency in Public Life and the French Anticorruption Agency and one webinar where national and international experts in the field of fighting against corruption from GRECO, World Bank, Transparency International Berlin and Expert Forum Association participated);

- a public policy proposal on conflicts of interest and incompatibilities applicable to Members of Parliament and candidates in parliamentary elections was finalized.

National Anticorruption Strategy

The Ministry of Justice continued to monitor the implementation of the National Anti-Corruption Strategy and to carry out the measures under its responsibility, through the SNA Technical Secretariat (ST SNA). The monitoring of the degree of implementation of the NAS in 2020 will be the subject of the Annual Monitoring Report to be prepared in the first quarter of this year, based on the contributions submitted by the members of the cooperation platforms.

Accordingly, this section contains references to the activities carried out by the MoJ to implement the measures in the SNA under its responsibility, as follows:

On 10-11 December 2020, ST NAS organized electronically the ninth series of meetings of the cooperation platforms set out in the National Anti-Corruption Strategy (NAS) 2016-2020. The agenda covered the following main items: the fourth annual report on the implementation of NAS 2016-2020; the transition between NAS 2016-2020 and the future strategic document; the internal audit of the corruption prevention system at the level of public authorities; the status of the SIPOCA 62 project; the transposition of *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law*.

Measure 2.2.1 - Internal audit of the corruption prevention system at the level of all public authorities

In 2021, the implementation of measure 2.1.1 - *"Performing an internal audit, once every two years, of the corruption prevention system at the level of all public authorities"* - will continue. The objective of the second public internal audit mission is to evaluate the following preventive measures: conflicts of interest, incompatibilities, pantouflage.

The Central Harmonization Unit for Internal Public Audit within the Ministry of Finance Public (UCAAPI) (MFP) requested the internal public audit structures within the central and local public administration to include in the Annual Public Internal Audit Plan for 2021, the mission named Evaluation of the Corruption Prevention System - 2021. According to the request of UCAAPI, the mission will be finalized until 15 September 2021. The internal public audit structures will follow the methodology and the guidance documents on the conduct of the audit mission.

Measure 3.6.7 Performing an analysis of judicial practice in public procurement and tax evasion, for the unification of practice, including by promoting the appeals in the interest of the law

The responsible institutions for the implementations of this measure are the Ministry of Justice and the Prosecutor's Office attached to the High Court of Cassation and Justice (PÎCCJ). The analysis identified aspects of judicial practice and specific indicators in the field of tax evasion offenses (in 2017 and 2018). In order to carry out this activity, a total number of 468 court decisions concerning tax evasion offenses were examined (final judgement from 2017 and 2018 - 185 judgments in 2017 and 283 judgments in 2018). Following the analysis, in June 2020, the working group notified the Prosecutor General, regarding possible legal issues that generate non-unitary practice.

The final aim of the audit missions is to analyze the existing problems at national level in the understanding, application and compliance of the legal framework in the field of corruption prevention.

Measure 3.7.1 - Continuing to pursue Romania’s objective to become a full-fledged member of the OECD and its relevant workgroups, especially the Working Group on Bribery.

MoJ continued to take necessary steps for Romania to become a full member of the Organization for Economic Cooperation and Development (OECD) and of the relevant working groups of the organization, in particular, of the Working Group on Bribery. The implementation of the technical assistance project regarding the compliance of the Romanian legislation with the provisions of the OECD convention on combating bribery of foreign public officials in international business transactions continued this year.

Specific objective 3.7 - Increasing integrity, reduction of vulnerabilities and corruption risks in the business environment (measures 3.7.5 and 3.7.7)

MoJ and AmCham continued in 2020 the project on strengthening integrity in SOEs, by organizing two online meetings. The events were held in June and December 2020 and were a good opportunity to reiterate the importance of integrity in the context of the COVID-19 pandemic.

Criminological study "Causes and factors in the commission of corruption offences, from the perspective of persons convicted of such acts" was finalized (under EU- funded SIPOCA 62 project). Besides the immediate purpose of the research, namely to update our understanding of what motivates a corrupt behavior, the mediate aim of the study is to inform, on scientific bases, the future AC strategy.

The study considers two reference populations: persons convicted serving custodial sentences for corruption offences in prisons; persons convicted of corruption offences, under the supervision of county probation services. The criminological study is accompanied by a sociological research, carried out by the General Anticorruption Directorate, under the same SIPOCA 62 project. This research attempted to assess the way the integrity environment is perceived by the employees of central public administration.

The first part of 2021 will be dedicated to the realization of online training sessions for the staff of central public administration and decentralized structures (over 500 persons, most of them from the healthcare system), on transparency and anticorruption measures and the

realization of the public information campaign. The trainings are important from the perspective of adaptation of the concrete content to the participating professional categories, trying to cover specific aspects related to the issue of integrity in the activity of the staff involved.

As focus of the information/education campaign, ST NAS has developed 13 infographics targeting the measures of institutional transparency and corruption prevention, as well as supporting the actors involved in the fight against corruption in understanding and correctly applying the legislative framework. The infographics are available on-line on the dedicated SNA platform: https://sna.just.ro/Infografice.The infographics are intended to be used by all actors involved in the fight against corruption, in particular by public authorities and institutions as the addressees of the normative acts that are the subject of the presentations, as well as by the citizens, as beneficiaries.

The reporting system regarding the implementation of NAS 2016-2020

According to the Methodology for monitoring the implementation of the NAS 2016-2020 (which was approved by Order of the Ministry of Justice no. 1361/C/2017), annual reports are drawn up regarding the implementation of the integrity plan and the inventory of institutional transparency and corruption prevention measures and the set of performance indicators.

According to the art. 15 (1) of the Methodology for monitoring the implementation of the NAS 2016-2020, a final report which will cover the entire implementation period (respectively 2016 - 2020) will be prepared. The above-mentioned report will be prepared on the basis of the contributions submitted by the members of the cooperation platforms, following the information provided by ST SNA at the cooperation platform meetings in December 2020. The deadline for submitting contributions is March 1, 2021.

The reports for 2017, 2018 and 2019, as well as their annexes, are available on-line at http://sna.just.ro/Rapoarte+de+monitorizare .

Future steps: the transition between NAS 2016-2020 and the future strategic document

The elaboration of a new National Anticorruption Strategy for 2021-2025 is one of the priorities of the New Government Program (2020 - 2024). The new strategy will be developed considering the following issues: the ST NAS own conclusions, expressed in the monitoring reports regarding the implementation of NAS in 2016-2020; the conclusions of the future independent external audit, which will propose recommendations on the future strategy paper, including on its missions, vision and approach; the consultation of cooperation platforms - the participants of the platform that took place in December 2020 were asked to send to ST NAS proposals on the content of the new strategy; the conclusions of criminological study regarding the actual experience with corruption of people convicted for corruption offences, which is backed by a sociological research on how corruption and integrity are perceived by the public administration; the proposals that will be submitted during the public consultation, after the launch in public debate of the project of the new NAS.

The MoJ is in the final stages of negotiating the independent external audit of SNA, by an international organization with experience in conducting evaluations of anti-corruption policies, in the framework of a project financed through the Norwegian Financial Mechanism.

The purpose of the external evaluation is to support the MoJ to analyze the impact of the SNA 2016 - 2020, to identify the best practices, gaps and difficulties identified in the 4 years of implementation. The external evaluation will examine the objectives of the SNA 2016 - 2020, its impact, the efficiency and effectiveness of the implementing measures and the sustainability of its results.

C. Repressive measures

26. Criminalization of corruption and related offences

The criminalization of corruption and related offences are provided by the Criminal Code – Title V Crimes of corruption and service and by the Law no. 78 of May 8th, 2000 on preventing, discovering and sanctioning corruption offences (presented in extenso in the Input transmitted to the European Commission in May 2020 – Annex 5).

In December 2020, the Law no. 78/2000 has been modified in order to ensure the fully transposition of the Directive (EU) 2017/1371 on combating fraud against the financial interests of the Union by legal means criminal (PIF Directive)[12].

Therefore, the anti-corruption legislative framework is comprehensive and remains stable.

Prosecutors Office attached to the High Court of Cassation and Justice:

The amendments with direct impact for the investigation of corruption offenses concern confiscation, in the transposition of the Directive 2014/42/EU (according to Law no. 228/2020 for amending and supplementing some normative acts in the criminal field in order to transpose some EU directives).

The Law on establishing measures for the implementation of EU Regulation 2017/1939 of the Council of 12 October 2017 for implementing a form of enhanced cooperation regarding the establishment of the European Public Prosecutor's Office - Law no.6/2021 was enacted.

27. 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 to the implementation of the EU funds

During the reporting period (01.01.2020 - 01.02.2021), the DNA's activity remained strong, maintaining the level of efficiency and quality of criminal prosecution in corruption cases and those assimilated to high and medium level corruption:

- 319 cases concerning 520 defendants were sent to court. Of these, 370 were prosecuted by indictment and 150 by plea agreements. Defendants sent to court include Members of Parliament, secretaries of state, prefects, mayors, general directors of national companies, etc.;

[12] Law no. 283/2020 for amending the Law no. 78/2000 for the prevention, detection and sanctioning of acts of corruption and for the provision of other measures transposing Directive (EU) 2017 / 1.371 of the European Parliament and of the Council of 5 July 2017 on combating fraud against the financial interests of the Union by legal means criminal

- in the cases sent to court, the prosecutors ordered precautionary measures in the amount of approximately 145 million Euro;

- 269 final judgments were pronounced by the courts and 491 defendants were convicted. Of these, 108 defendants were convicted to prison sentences with execution in detention (22%); 308 were convicted to prison sentences with suspension of execution (62.7%) and 60 were convicted to criminal fines (12.2%).

Criminal prosecution for petty corruption offenses - non-specialized prosecutor's offices (without DNA):

In the period 01.01.2020 - 01.02.2021, 1,895 cases were solved having as object petty corruption offenses, out of which 316 indictments and plea bargain agreements, ordering the prosecution of 414 defendants. Quality of defendants arraigned: justice - 2 bailiffs, police - 44 police officers, 2 penitentiary officers, 2 local police officers, public administration - 6 mayors, 1 deputy mayor, 1 local councilor, 1 accountant, 2 cashiers, 1 forester, 2 work inspectors, 1 health inspector, 2 car traffic inspectors, 2 other inspectors, health system - 6 doctors, 4 nurses. other civil servants - 28, other areas - 7 driving instructors, 1 assessor of qualification courses, 3 engineers, 1 director, 1 company administrator, 1 firefighter, 2 security guards, 1 student.

Data on the number of indictments/plea bargain agreements, as well as the number of defendants arraigned, broken down by categories of offenses: conflict of interest: 5 indictments / PBA , on 8 defendants; taking bribe: 47 indictments / PBAs, regarding 80 defendants; giving bribe: 191 indictments / PBAs, regarding 208 defendants; influence peddling: 38 indictments / PBAs, regarding 55 defendants; buying influence: 16 indictments / PBAs, regarding 31 defendants; art.6-7 of Law 78/2000: 7 indictments / PBA, regarding 15 defendants; art.10-13*2 of Law 78/2000: 12 indictments / PBA, regarding 17 defendants.

The measure of preventive arrest was ordered against 29 defendants, out of which 11 for taking bribes, 7 for giving bribes, 8 for trafficking in influence, 1 for buying influence, and 2 for offenses provided by art.10-13^2 of Law no.78/2000.

Out of the total number of solved cases of petty corruption, 671 were formed through ex officio notifications, of which 193 cases were finalized through arraignments.

The share of cases with judicial finality (on ex officio notification) is 28.76%.

Judgments - petty corruption

In the period 01.01.2020 - 01.02.2021, 203 final decisions were registered, by which 207 individuals were convicted. 26 defendants were definitively acquitted, out of which 9 for taking bribes, 3 for giving bribe, 1 for trafficking in influence, 11 for art.13*2 of Law no.78 / 2000, of which 3 based on art.18*1 of the old Criminal Code, 1 for art. 12 letter a) of Law no. 78/2000 and 1 for the conflict of interests.

The quality of the convicted defendants: police - 9 police workers, 1 local policeman, public administration - 2 referents, 1 RAR engineer, 1 work engineer, 1 cashier; health system - 1 doctor, 1 nurse, other civil servants: 38. other fields - 2 driving instructors, 1 firefighter.

Punishments applied: taking bribe - 7 sentences with execution in detention (maximum 7 years and 8 months imprisonment), 38 sentences with suspension under supervision and 1 with the postponement of the application of the sentence; giving bribe - 5 sentences with execution in detention (maximum 3 years and 6 months imprisonment), 111 sentences with suspension under supervision and 1 educational measure; influence peddling - 5 sentences with execution in detention (maximum 5 years and 2 months imprisonment) and 20 sentences with suspension under supervision; purchase of influence - 1 sentence with execution in detention, 2 years and 11 months imprisonment and 10 sentences with suspension under supervision; art.13 ind.2 of Law no.78 / 2000 - 2 sentences with execution in detention (maximum of 4 years and 2 months imprisonment) and 2 sentences with suspension under supervision; conflict of interests - 1 with the postponement of the application of the punishment, art. 12 letter b) of Law no. 78/2000 - 1 with the postponement of the application of the punishment.

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

National Directorate Anticorruption:

DNA reiterates the comments made for the 2020 Rule of Law report, with reference to the obstacles resulting from the amendments made in 2018 and 2019 on the justice laws, especially those on:

- increasing the seniority condition from 6 years to 10 years in order to be appointed as DNA prosecutor and establishing an atypical procedure, which makes extremely difficult the recruitment of anti-corruption prosecutors;

- since the establishment of the Section for the Investigation of Crimes in Justice, no prosecutors or judges have been prosecuted for corruption offenses. However, there have been attempts by the section to intimidate DNA prosecutors and to access files that the last ones were investigating.

DNA supports the intention of the Minister of Justice to promote legislative project in order to return to reasonable conditions for the appointment of prosecutors in DNA and the legislative project to abolish the SIIJ.

Prosecutors Office attached to the High Court of Cassation and Justice:

Legislative issues:

By the Constitutional Court decision no. 55/2020, the exception of unconstitutionality was admitted and it was found that the provisions of art. 139 para. (3) the final thesis of the Criminal Procedure Code are constitutional insofar as they do not concern the records resulting from the performance of activities specific to gathering information that involves restricting the exercise of fundamental human rights or freedoms carried out in compliance with the legal provisions, authorized according to Law no. 51/1991.

In August 2020, a group of parliamentarians initiated a draft law amending and supplementing Law no. 51/1991 (PL-x no. 460/2020). The project is in parliamentary procedure. A negative opinion was expressed by the SCM (on the grounds that it does not meet the requirements of the RCC, the ECHR, etc.).

Logistical obstacles:

The limited technical capacities of the Public Ministry to execute the wiretappings and recordings of conversations or communications made by telephone and the locating or tracking by technical means of the communication devices which, although offering the judicial bodies the unlimited legal possibility of wiretapping and recording, is factually limited to conversations made by telephone in analog mode, excluding, for technical reasons (impossibility of interception in real-time) those made through social networks that allow VoIP telephone calls, encrypted.

For non-specialized prosecutor's offices, other than DNA, the lack of judicial police officers or agents, seconded within the prosecutor's office units, under the direct leadership and direct control of prosecutors, in order to carry out the activities provided by art. 142 para. (1) of the Criminal Procedure Code, as stipulated in art. 66 ind. 1 of Law no. 304/2004, as well as the lack of judicial police officers or agents, seconded to the prosecutor's offices attached to the courts, in order to quickly and thoroughly carry out the activities of discovery and prosecution of offenses in the economic, financial, fiscal and customs area, related to complex corruption offenses, as mentioned in art. 120 ind. 2 of Law no. 304/2004.

III. MEDIA PLURALISM

A. Media authorities and bodies

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

National Audiovisual Council (CNA)

Regarding the mechanisms for implementing the new directive, CNA as a member of the European Group of Regulators in the field of Audiovisual Media Services (ERGA) recently signed the Memorandum of Understanding. The Memorandum of Understanding sets out a framework for cooperation and exchange of information between these regulators, in order to address in a coherent way, the practical problems arising from the implementation of Directive 2018/1808/EU. According to the Directive, the role of ERGA (and, by extension, of regulatory authorities) is to ensure the consistent implementation of Directive 2018/1808/EU in all Member States and to facilitate cooperation between authorities and with the European Commission. In addition, the Memorandum establishes mechanisms for the exchange of information, experience and best practices on the application of the regulatory framework for audiovisual media services and video-sharing platforms.

The Ombudsman

Decree of the president of Romania no. 195 of March 16, 2020, which established the state of emergency in Romania, mentions in para 54 the possibility of blocking the content of online publications or blocking the access of users in Romania to them if that content promotes fake news about the evolution of COVID-19 and to protection and prevention measures.

During the state of emergency and the state of alert, the Ombudsman has shown several times that blocking the content of the online space, as a method of controlling misinformation, risks to limit the right to free speech, affecting freedom of press, and intimidating journalist to institute self-censorship.

During the state of emergency, 15 websites were suspended and another 2 were forced to remove certain articles published on their platform. The decisions issued by the National Authority for Administration and regulation in Communication (ANCOM), at the recommendation of the Strategic Communication Group were motivated by the imminent danger which the published information represented for the population. The arguments based on which the decisions were taken to block online content and some publications were not made public. There were also no procedures to allow parties to challenge these decisions.

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

National Audiovisual Council (CNA)

Currently, the composition of the CNA is changing as four of the mandates of its members have expired. According to the provisions of art. 30 para. (5) of the Directive 2018/1808/EU, Member States shall lay down in their national law the conditions and the procedures for the appointment and dismissal of the heads of national regulatory authorities and bodies or the members of the collegiate body fulfilling that function, including the duration of the mandate.

The procedures shall be transparent, non-discriminatory and guarantee the requisite degree of independence.

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

The National Audiovisual Council is the guarantor of the public interest and the only authority in the field of audiovisual programs. Its mission is to ensure a climate based on free expression and responsibilities towards the public in the audiovisual field. In order to fulfill its mission, the CAN issues decisions, recommendations and instructions, including the Decision on the regulatory Code of the audiovisual content.

B. Transparency of media ownership and government interference

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

National Audiovisual Council (CNA)

The transparent and equitable allocation of state advertising does not fall within the area of competence of CNA. According to the Law no. 98/2016 on public procurement, the competent authority is the Ministry of Public Finances.

The state advertising can be an important source of support for the media sector, especially in times of economic crisis, and the absence of transparent rules and fair criteria may increase the risk that public funds would be allocated to certain media companies.

Therefore, CNA considers it is particularly important that there are measures to encourage the transparent and fair allocation of state advertising and that these measures are effectively implemented.

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

Ministry of Culture

In Romania, the ownership of audiovisual services and, especially, its concentration are controlled from two perspectives: fair competition (rules that apply to all companies, regardless of their profile) and avoiding the monopoly on information, maintaining the pluralism of ideas and respect for the public's right to access information. The regulatory authority has the legal obligation to notify the competent authorities of any anti-competitive practices, abuse of a dominant position or economic concentration.

General rules governing transparency of media ownership are provided by the Constitution[13], by the Audiovisual Law no. 504/2002[14] and by the Law 31/1990 on company law[15].

C. Framework for journalists' protection

34. Rules and practices guaranteeing journalist's independence and safety

Regarding the audiovisual media, the provisions of art. 3-9 of the Audiovisual Law no. 504/2002, with subsequent amendments and completions, establishes the basic principles regarding the freedom of expression and the independence of the audiovisual press, such as the protection of journalists. These regulations may be updated and developed in the framework of the transposition procedure of Directive 2018/1808/EU. However, they will remain applicable only to the audiovisual sector.

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

The same as provided within the previous report.

36. Access to information and public documents

The same as provided within the previous report.

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

From the data transmitted by the directorates and prosecutor's offices subordinated to the POAHCCJ, with one exception, no files were identified regarding the prosecution of journalists or files regarding the summoning to court of journalists to question their freedom of expression.

[13] Art. 30 (5): The law may impose upon the mass media the obligation to make public their financing source.

[14] Art. 10 (3) g): The Council shall be required to ensure the transparency of the organization, functioning and financing of the mass media in the audiovisual sector.

[15] Art. 185 (3): (…) Legal publicity is achieved by mentioning in the trade register the submission of annual financial statements, accompanied by the report of the board of directors, respectively of the directorate, the report of the auditors or the report of the financial auditors, as well as by publishing the economic-financial indicators.

The National Anticorruption Directorate concluded plea bargain agreements in 9 cases in which journalists were prosecuted (9 people) and ordered the arraignment of another person, but the deeds retained for the defendants have nothing to do with the profession of journalist, or their freedom of expression has not been called into question.

With regard to the various press materials with defamatory content, the civil courts apply the ECHR standards for assessing the limits of the exercise of the right to expression, the journalistic approach to be necessary in a democratic society.

Examples of cases:

1. By indictment no. 92/P/2020 of the National Anticorruption Directorate, Timişoara Territorial Service, the defendant was arraigned under the aspect of the offense of trafficking in influence provided by art. 291 Criminal Code against art. 6 of Law no. 78/2000.

It was retained that the defendant, a journalist by profession, in June 2020, together with two other defendants, asked the whistleblower, and subsequently received a large sum of money from him, promising to determine the prosecutor, who is investigating a pedophilia case, to give a favorable solution to the whistleblower. It does not follow from the data regarding the conduct of the criminal investigation that the defendant questioned aspects related to the exercise of the journalistic profession, from the arraignment resulting that she owns a grocery store.

2. Through the plea bargain agreements concluded by the National Anticorruption Directorate, Constanța Territorial Service no. 91/P/2020, 92/P/2020, 93/P/2020, 94/P/2020, 95/P/2020, 96/P/2020, 97/P/2020, 98/P/2020, 99/P/2020, 100/P/2020, 101/P/2020 of 13.08.2020, in charge of the defendants, all journalists in some publications from Constanţa County, has been retained the offense of forging documents under private signature provided by art. 321 para. (1) Criminal Code, consisting in the falsification, by pre-dating, of some offers regarding the publication of some greeting cards of March 8, offers that they sent to Medgidia City Hall.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

A. The process for preparing and enacting laws

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

Legal commission, of discipline and immunities – Chamber of Deputies

Rules on the access of the mass-media, of the guests, of other authorities, institutions, or non-governmental organizations to the commissions and the plenary of the Chamber of Deputies, as

well as the access to the documents on which the parliamentary debates are based on art. 47 of the Rules of Procedure of the Chamber of Deputies. Therefore, the Bureau of each commission has the attribution to invite to the works of the commission representatives of civil society, employers' associations, professional or trade unions, central or local public administration and other persons, as well as natural persons, who can provide expertise and information necessary for the activity.

Representatives of the institutions interested in legislative initiatives in the commission's portfolio participate as guests of the Committee on Legal Affairs, Discipline and Immunities, such as: representatives of the High Court of Cassation and Justice, the Superior Council of Magistracy, the Prosecutor's Office attached to the High Court of Cassation and Justice, the Association of Romanian Magistrates, the National Union of Romanian Bars, participants from the university and academic environment, as well as representatives of professional associations, agencies, institutions and interested authorities. If the debates concern laws of great complexity, with a major impact on society, human freedom or human rights, the committee organizes extensive discussions on the important aspects of the laws, with the participation of the aforementioned guests. Documents resulting from debates, analyzes, statistics, assessments on social or financial impact are taken into account, as well as the observations and proposals submitted by the participants are taken into account.

In accordance with the provisions of art. 59 of the Rules of Procedure of the Chamber of Deputies, minutes are concluded and transcripts or recordings can be made, which can be consulted by deputies. At the end of each meeting, the bureau elaborates a summary of the debates and a press release. The summary of the debates of each commission is published weekly in the Official Gazette of Romania, Part II. The audio recordings of the meetings of the commissions and of the plenum of the Chamber of Deputies are posted on the website of the Chamber of Deputies and can be consulted by any interested person.

In accordance with the provisions of art. 56 of the Rules of Procedure of the Chamber of Deputies, at the meetings of the committees are invited to participate the deputies and senators who made proposals and amendments and at the request of the chairman, specialists of the Legislative Council. The Commissions may also invite interested persons, representatives of non-governmental organizations and specialists from public authorities or other specialized institutions to participate in the proceedings.

According to art. 143 of the Rules of Procedure of the Chamber of Deputies, diplomats, representatives of the press, radio and television, as well as other guests, may attend the public meetings of the Chamber of Deputies, based on the accreditation or invitation signed by the Secretary General of the Chamber.

As a guarantee of respect for the principle of access to Parliament's work, citizens can attend the work of the Chamber of Deputies on the basis of access permits distributed on request of those interested, within the number of places available.

According to art. 156 of the Rules of Procedure of the Chamber of Deputies, the debates of the works of the Chamber of Deputies are registered and transcribed by electronic means. The transcripts are posted on the website of the Chamber of Deputies and are published in the Official Gazette of Romania, Part II, within 10 days, except for those concerning secret works. The summaries of the meetings of the commissions shall be published on the website of the

Chamber of Deputies within a maximum of 10 days, except for those relating to secret meetings. In the sense of the above, the deputies have the right to verify the accuracy of the transcript, by confronting it with the electronic registration, within 5 days from the date of the sitting. Until the publication of the Official Gazette of Romania, the deputies have the right to obtain a copy of the transcript.

The draft laws and the legislative proposals must be accompanied by a preliminary assessment of the impact of the new regulations on fundamental human rights and freedoms, carried out by the initiators of the draft normative act.

The works of the Chamber of Deputies shall be public and shall be broadcasted online, unless, at the request of the President or of a parliamentary group, it is decided, by a majority of the Members present, that certain works are not public.

During the COVID - 19 pandemic, the committee and Chamber of Deputies meetings were held on the established dates, online and in a mixed system. An electronic vote is currently being implemented at the Chamber of Deputies, on a tablet, on the phone or via a computer or laptop.

Legislative Council

The attributions of the Legislative Council in the legislative process, according to the Constitution and Law no. 73/1993 on the setting up, organization and functioning of the Legislative Council:

- on request of the chairperson of the relevant parliamentary committee, it analyzes and gives opinions on the amendments submitted to the committee, as well as on the draft laws or legislative proposals received by the committee after their adoption by one of the Chambers of the Parliament;
- analysis and approval of rectifications that are to be made to the normative acts and of republishing of normative acts in the Official Gazette of normative acts;
- upon request of the Chamber of Deputies or the Senate, it draws up or coordinates the drafting of codes or other particularly complex laws;
- upon request of the Chamber of Deputies or the Senate or ex officio, it compiles studies for the systematisation, unification and co-ordination of the legislation and, on this basis, it forwards proposals to the Parliament or Government, as the case may be.

39. Rules and use of fast-track procedures and emergency procedures (e.g. the percentage of the decisions adopted through emergency/urgent procedures compared to the total number of adopted decisions

Legislative Council

The Legislative Council signaled, through its opinions, that, in accordance with the provisions of art. 115 para. (4) of the Romanian Constitution, republished, the preamble of the emergency ordinance must include the presentation of factual and legal elements of the extraordinary situation, whose regulation cannot be postponed and which requires the fast-track procedure.

In this regard, according to the jurisprudence of the Constitutional Court for the issuance of an emergency ordinance it is necessary to have an objective, quantifiable state of affairs, independent of the Government's will, which endangers a public interest (Decision no. 1008/2009). At the same time, in order to fully comply with the requirements of art. 115 para. (4) of Constitution, the Government must also demonstrate that the measures in question could not have been postponed and that there was no other legislative instrument that could have been used in order to quickly avoid negative consequences (Decision No 919/2011).

The year 2020 was marked by the Covid-19 pandemic, which increased the number of emergency ordinances adopted in order to prevent and combat the effects of the pandemic, as well as to provide financial incentives to economic operators.

Thus, between January 1, 2020 - February 1, 2021, a number of 230 emergency ordinances were adopted, of which 227 emergency ordinances in 2020 and 3 emergency ordinances in 2021.

In the same period, the Romanian Parliament debated and adopted in emergency procedure 117 draft laws.

40. Regime for constitutional review of laws

The Ombudsman

Out of the total of 18 referrals of unconstitutionality (objections and exceptions) raised directly by the Ombudsman, 11 referrals were admitted or partially admitted, 2 referrals were rejected, the remaining 5 referrals being in the reporting phase.

During the state of emergency and alert, established as a result of the declaration of the COVID-19 pandemic, the Ombudsman notified the Constitutional Court with 6 exceptions of unconstitutionality, which sought to clarify, improve and strengthen the legal framework for establishing states of emergency or alert and the measures of quarantine and isolation, so that they are compatible with the constitutional requirements on the obligation that fundamental rights and freedoms can be only be restricted by law, as a formal act of the Parliament.

During the control prior to the promulgation, 5 objections of unconstitutionality were formulated, at the Constitutional Court.

During the subsequent control, in addition to the art. 6 referrals formulated in connection with the legislation related to the states of emergency and alert, the Ombudsman raised, ex officio, 7 exceptions of unconstitutionality, aiming at the protection and guarantee of human rights.

For additional information, please see the Annex 9.

Constitutional Court

According to the Romanian Constitution, the Constitutional Court is the guarantee of the supremacy of the Constitution. Regulated under the european/kelsenian model, as a special and specialized authority, distinct from the authorities performing legislative, executive and legislative functions, the Constitutional Court has a key role in ensuring the balance and control mechanism in the rule of law.

The powers of the Constitutional Court are enshrined in Article 146 of the Constitution, as well as in Article 23 and Article 27 of Law No 47/1992 on the organization and functioning of the Constitutional Court and can be classified, according to the content criterion, into two broad categories: those that concern the control of the constitutionality of some normative acts and those that concern the verification of the constitutionality of some activities, behaviors and attitudes.

1. The activity of the Constitutional Court during the period January 1, 2020 - February 1, 2021.

2.1 Statistical data (State of files and decisions of the Constitutional Court during the period January 1, 2020 - February 1, 2021)

	Total	Objections of unconstitutionality art. 146 point a)	Control Of Parliament's regulations art.146 point c)	Exceptions of unconstitutionality art.146 point d)	Legal conflicts of a constitutional nature art. 146 point e)	Control Of Parliament's decisions art.146 point l)
Number of files closed	**1604**	**99**	**1**	**1485**	**10**	**9**

	TOTAL decisions	**Admission decisions of unconstitutionality referrals[16]**	**Decisions rejecting referrals of unconstitutionality[17]**
Number of decisions pronounced	**976**	**96**	**880**

41. 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 the COVID-19 pandemic

High Court of Cassation and Justice

Judicial review of the administrative acts issued in the context of the COVID-19 pandemic

The provisions of **article 15 from the Law no. 136/2020** establishing public health measures in situations of epidemiological and biological risk, applicable in the context of the COVID-19 pandemic, regulate the judicial review of the administrative acts issued based on these provisions which establish public health measures in the context of the COVID-19 pandemic.

[16] Regardless of the object.
[17] Regardless of the object.

The judicial review of the administrative acts issued based on the article 15 from the Law no. 136/2020 is exercised in first instance by the **administrative and fiscal contentious chambers of the courts of appeal** and in last instance (recourse) by the **Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice**.

The judicial review of the administrative acts issued based on the article 15 from the Law no. 136/2020 is exercised in last instance (recourse) by **Panels of 5 judges** constituted within the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice.

In 2020 and 2021 (1 February 2021), the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice solved, as last instance (recourse), by final decision, **12 cases** concerning administrative acts issued based on the article 15 from the Law no. 136/2020[18].

In **2 cases** concerning administrative acts issued based on the article 15 from the Law no. 136/2020, the Panels of 5 judges of the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice maintained the judgments rendered in first instance ordering the annulment of the administrative acts issued based on the article 15 from the Law no. 136/2020.

Superior Council of Magistracy

Measures taken in the context of the situation generated by the COVID pandemic.

In the exceptional context of the COVID 19 pandemic situation and of its evolution within Romania, the Superior Council of Magistracy has been expressing a constant concern for maintaining in safe parameters the health of the staff within courts and prosecution offices and of the court users as well. Therefore, SCM has adopted a series of decisions in order to insure a proper unitary implementation of the preventive measures at the level of all courts / prosecution offices countrywide as well as guarantees in this matter for all those accessing the judiciary.

Thus, during the emergency state, the following measures/decisions have been taken:

By the Decision no. 192/March 10th, 2020 the Section for judges of the Council has settled urgent supplementary measures in terms of judicial activity in courts in order to: avoid crowded gatherings in the premises of courts; limit as much as possible, the presence of participants in judicial activities in courts; settling exact time frames for each of the hearings etc.

On March 10th, the Section for Prosecutors has issued a circular address for the Prosecution Office of the High Court of Cassation and Justice, the National Anticorruption Directorate, the Directorate for Investigating Organised Crime and Terrorism as well as for the prosecution offices of the courts of appeal with recommendations to be implemented at the level of prosecution units. Among the recommended aspects the following can be mentioned: to suspend direct working program with public, to adapt prosecutors' activities, aspects regarding epidemiological triage of persons under measures depriving of liberty, evaluating the need to proceed several procedural activities involving a higher number of persons etc.

[18] In 3 cases the Administrative and Fiscal Contentious Chamber quashed the judgments rendered in first instance and ordered the retrial by the court of first instance.

By the Decision no.257/March 17th, 2020 the Section for Judges has decided on the following: limit the judicial activity of courts in non/criminal matters strictly to very urgent cases; communication, in criminal matters, the list of very urgent cases to the president of the court to be posted on the court's portal, on the web site of the courts, and for informing the lawyers bars and the prosecution offices.

By the Decision no.417/March 24th, 2020 the Section for Judges has decided on the cases to be dealt with during the emergency state, considering the courts' competences.

By the Decision no.479/March 31st, 2020 the Section for Judges has decided that in those areas where the quarantine measure has been taken or in the areas under protection the judicial activity of the courts to be limited to the cases regarding exceptional situations that can be considered as very urgent cases.

By the Decision no.707/April 30th, 2020 the Section for Judges has extended the list of cases to be dealt with during the emergency state.

Subsequently, by the Decision no. 734/May 12, 2020 the Section for Judges of the Superior Council of Magistracy has settled a series of rules towards organising the judicial – administrative activity of the courts, to be implemented during 15.05.2020 - 31.08.2020, such as the following: the possibility to adapt the working schedule, including the public relations; setting precise time frames for: access to different compartments performing public relations activities, access to session rooms; the possibility to organise hearings through videoconference both in criminal and non-criminal cases; the possibility to draft the hearing lists for calling the cases, by groups of cases within certain time frames; the recommendation for the procedural documents, requests, appeals or any documents send to court as well as documents' communication to the parties to be made, where possible, by distance communication means.

Moreover, taking into account the referred period, there should be mentioned that the decision no.734/12.05.2020 of the Section for Judges has also stated, among other aspects, that, exceptional to the Internal Regulation of courts, for 2020, magistrates' holiday shall be reduced to one month for the period 1-31 august; moreover, the judicial panels shall be able to decide on other types of cases, other than the urgent ones (set by the leading board of the court), to be dealt with during the magistrates' holiday.

Subsequently, by the Decision no. 1095/August 20th, 2020 the Section for Judges has decided that the provisions of the previous decision no. 734/May 12, 2020 regarding the administrative-judicial activity of courts to continue to be implemented after 31st of August 2020, all along the duration of the state of alert, with amendments and completions that have entered into force beginning with September 1st 2020.

By the Decision no. 527/June 2nd, 2020 the Section for Prosecutors decided to modify the Internal Regulation of prosecution offices and completing the provisions with a chapter dedicated to "Rules for carrying out activities in exceptional situations" on aspects regarding the working program in such situations within the prosecution units/work from home, as well as on the access of public observing the access to justice.

By the Decision no. 81/May 7th, 2020 the Plenum of the Council has positively endorsed the legislative proposal for completing the Law no. 304/2004on judicial organisation, with

observations, resulting in the further adoption of the Law no. 120/2020 on July 9th 2020 on aspects regarding the judicial activity during the state of siege and emergency.

On November 11th, 2020, in the current epidemiological context, a working meeting was held at the Council's premises, with the participation of the members of the Section for Judges, members of the Council representing the civil society, and the minister of justice, the topic of the discussions aiming at analysing the need for adopting legislative amendments regarding the activity in courts with safeguarding the health of all participants to the judicial proceedings.

In the same context, taking into consideration the evolution of the SARS-CoV-2 epidemiological situation countrywide, and considering the need for new measures to be adopted in a coordinated approach for a unitary implementation designed to allow courts and prosecution offices to safely continue to function in order for access to judiciary proceedings to be granted as a fundamental right of citizens and for ensuring as well the standards for sanitary protection for judges, prosecutors, auxiliary staff and of all participants in the proceedings, by the decision no. 222 of 18.11.2020, the Plenum of the Council has positively endorsed, with observations, the draft law on measures in the field of the Judiciary in the COVID-19 pandemic context.

The Ombudsman

Regarding the human rights situation, the Ombudsman, as the constitutional guarantor of fundamental rights and freedoms, taking note of the establishment of the state of emergency and the state of alert on the territory of |Romania, carefully monitored the application of these measures.

As such, the Report on the observance of human rights and the exceptional measures ordered during the state of emergency and the state of alert (March 16 – September 10, 2020) was prepared, which reflects the activity of the Ombudsman in the crisis we are going through, as well as the responses and the reactions of the authorities. The report is available on the website: https://avp.ro/wp-content/uploads/2020/10/The-observance-of-human-rights-and-the-exceptional-measures-ordered-during-the-period-of-the-state-of-emergency-and-the-state-of-alert-eng.pdf

Many of the actions taken by our institution materialized in decisions of the officials responsible for managing the crisis, which were taken only after the Ombudsman drew attention to them, through letters and recommendations, such as: the inclusion of COVID-19 in the category A group of infectious diseases, so that 100% of the salary be paid during temporary incapacity of working, carrying out the teaching-learning-evaluation act in the online environment, in the sense of identifying the necessary financing sources for the procurement of the necessary desktop, laptop, tablet or smartphone devices, request for the issuance, by the Ministry of Health, as a matter of urgency, of a circular to all COVID-19 support hospitals, instructing that they resume hospitalization and scheduled surgeries, as well as the activity of outpatient clinics, in safe conditions, thus observing the patients' rights to protection of health, as there are several patients with serious chronic diseases for whom urgency is imperative, patients requiring complex medical procedures, which can only be performed in hospital, steps initiated since May, 13, 2020.

- oversight by Parliament of emergency regimes and measures in the context of the COVID-19 pandemic

- measures taken to ensure the continued activity of Parliament (including possible best practices)

According to the provisions of art. 93 of the Romanian Constitution, the President of Romania establishes, according to the law, the state of siege or the state of emergency in the whole country or in some administrative-territorial units and requests the Parliament to approve the adopted measure, within 5 days. It results that the state of alert does not allow *per se* the restriction of the exercise of some fundamental rights, not being an exceptional state in the constitutional meaning of the notion.

In an exceptional situation, extraordinary measures are taken in order to remove some consequences produced by serious danger situations. The establishment of the alert state is an organizational measure that allows the implementation by the entities from the National Emergency Management System according to their specific competencies, of the necessary measures to deal with emergency situations.

Constitutional Court

Among the many decisions pronounced during the reference period, those issued in the context of the state of emergency and then of the alert caused by the COVID-19 pandemic which stated itself on the shared competences of the legislature and the executive in taking extraordinary measures, the conditions for restricting the exercise of fundamental rights and freedoms, and the quality of the legislation are particularly relevant.

1) Ensuring the continuity of parliamentary activity

The restrictions imposed during the COVID-19 pandemic also affected the activity of public authorities, which had to identify solutions in order to operate under the given conditions. In order to adapt the activity of the Parliament to the new conditions, the Senate Regulation has been amended and a new Article has been introduced, aimed at conducting the Senate plenary sessions by electronic means. A parliamentarian group of the Senate challenged the amendment decision to the Constitutional Court, claiming, among other things, that the new procedure does not provide any of the democratic guarantees provided by the Constitution regarding the functioning of the Chambers of Parliament. The Constitutional Court rejected the notification, noting, among other things, that "the Permanent Bureau of the Senate, given the existence of the emergency situation decreed under Article 93 of the Constitution, has taken administrative measures necessary for the proper organization of the activity" . The Court noted that such a competence of the Permanent Bureau does not concern the exercise of national sovereignty or the exercise of sovereignty in its own name by a group constituted in the Permanent Bureau of a Chamber; on the contrary, the decision to hold plenary sittings by electronic means is a technical and urgent measure, in situations that do not allow the physical presence of senators at the Senate, a measure that ensures the continuity of Parliament, a prerequisite for exercising national sovereignty by Parliament; ”Otherwise, it would be prevented from exercising its constitutional role, with direct effects on art. 2 para. (1) of the Constitution”. The Court stressed that "public authorities must carry out their activity according to the provisions of the Constitution, even in the conditions of the declared state of emergency".

(2) Shared competence of the authorities with regard to the state of emergency

Considering the constitutional frame of reference, the Constitutional Court ruled that in Romania, as regards the establishment of the state of emergency, the authorities have shared competences. Thus, a priori the Parliament "has the power to legislate, by organic law, the regime of the state of emergency, establishing the premise situations which may lead to establishing the state of emergency, the procedure to establish and end that state, the competences and responsibilities of the public authorities, the possibility of restricting rights and fundamental liberties of citizens, obligations of natural and legal persons, measures that can be ordered during the state of emergency, the sanctions applicable in cases of non-compliance with the legal provisions and ordered measures". The President of Romania "has the constitutional power to establish the state of emergency and to enforce the legal provisions of the state of emergency, as they are set forth by the legislator". The Parliament – a posteriori, after the adoption of the decree establishing the state of emergency, "has the obligation to verify the fulfilment of the legal conditions regarding the establishment of the state of emergency, approving this measure or not by a decision to be adopted in a common sitting of the two Chambers (the Senate and the Chamber of Deputies). In the process of approving the establishment of the state of emergency, the Parliament carries out a review of the President's decree as regards its validity and legality in connection with the constitutional and legal norms referring to the legal regime of the state of emergency. If the Parliament refuse to approve it, by its decision (which has the effect the revoking of the administrative act issued by the President of Romania) it has to motivate such decision, stating the constitutional and legal grounds that the administrative act did not observe".

(3) Restrictions on the exercise of fundamental rights – only by law adopted by the Parliament, and not by emergency ordinance of the Government

In the COVID-19 pandemic context multiple measures restricting the exercise of fundamental rights and liberties were adopted. The Constitutional Court was notified by unconstitutionality exceptions directly raised by the Ombudsman, both from the perspective of the competence relations of public authorities regarding the adoption of measures restricting rights as well as the proportionality of the measures adopted.

As regards the competence, the Court sanctioned the restrictions on the exercise of fundamental rights and freedoms by emergency ordinance of the Government, because the normative act which affects fundamental rights and freedoms of citizens and fundamental institutions of the state can only be a law, as a formal act of the Parliament, adopted observing article 73 (3) paragraph g) of the Constitution, as an organic law. This is the meaning of article 53 of the Constitution "(1) The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defense of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe. (...)", as well as article 115 Legislative delegation, which forbids the Government to adopt emergency ordinances that "could affect" the rights, liberties and duties provided for by the Constitution, and electoral rights.

The Court therefore found the unconstitutionality of the Emergency Ordinance of the Government no. 34/2020 to modify and amend the Emergency Ordinance of the Government no.1/1999, because by its normative content it aimed at restricting the exercise of the property right, the right to work and social protection, the right to information and the economic liberty.

In the same register of the limits of competence of the public authorities and the relations between the legislature and the executive in this field, the Constitutional Court sanctioned the rules allowing the minister of health to expand and to modify, without limitations, the rules on the conditions under which persons having transmissible diseases must declare, follow treatment or be admitted (to hospitals). Examining the Ombudsman's notification, the Court partly admitted the unconstitutionality exception and found that the provisions of article 25 (2), second thesis of the Law no.95/2006 and article 8 (1) of the Emergency Ordinance nor.11/2020, according to which the infectious diseases for which declaring, treatment or admission (to hospitals) are mandatory shall be established by order of the minister of health are unconstitutional, because they affect the individual liberty, the free movement and personal and family privacy, without observing the constitutional conditions for restricting the exercise of certain fundamental rights and liberties .

(4) Lack of quality / vague character of norms

In the context of the exponential growth of the number of sanctions and the value of the fines imposed by the police, the Ombudsman invoked the unconstitutionality of some norms of the Emergency Ordinance of the Government no.1/1999, invoking their lack of preciseness. Essentially, the Ombudsman argued that the contravention is not configured by law, but by various administrative acts enforcing laws (government decisions, military ordinances, orders and any other normative acts connected) whose object of regulation aims different domains, therefore allowing for discretionary application. Practically, the ascertaining agent, through his/her own understanding of the measures, has to evaluate, in a discretionary manner, if a certain conduct of a natural person is or not a contravention, not having specific benchmarks to outline the contravention.

The Court admitted the unconstitutionality exception, founding that the norms in question do not clearly provide the deeds that call for contraventional liability, but set a general obligation to observe the law by all (undifferentiated) leaders of the public authorities, legal persons and natural persons. The Court found that «the provisions of article 28 (1), by phrase "failure to comply with provisions of article 9 constitutes a contravention", qualifies as contravention the violation of the general obligation to observe and apply all measures set forth in the Emergency Ordinance of the Government no.1/1999, in the normative acts connected, as well as in military ordinances or orders, specific to the established state, without expressly distinguishing between acts, deeds or omissions that may bring contraventional liability. Implicitly, establishing the deeds that constitute contraventions is arbitrarily let to the free appreciation of the ascertaining agent, without the legislator having set the necessary criteria and conditions to ascertain and sanction contraventions. At the same time, in the absence of a clear representation of the elements that constitute the contravention, the judge himself / herself does not have the necessary indicators for application and interpretation of the law, during the settlement of the complaint against the act that ascertains and sanctions the contravention».

A significant aspect of 2020 was the adaptations of the activities of the public institutions in the CoVID-19 pandemic context. The Constitutional Court took all necessary logistic measures to continue its activity and quickly solved complaints aiming at the exceptional situation.

Additional information is provided in Annex 10.

B. Independent authorities

42. 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

Romanian Court of Audit

The independence, capacity and attributions of the Court of Audit, as provided by the Law no. 94/1992 on the organization and functioning of the Court of Audit, are compliant with the key recommendations/criteria of independence identified by the INTOSAI community[19].

According to the Article 140 of the Romanian Constitution, the Court of Audit is a fundamental institution for the rule of law[20]. Details on its functions, authority and responsibilities are provided by the Law 94/1992 regarding the organization and functioning of the Court of Audit. Although the independence of the Court of Audit is not expressly provided for in the Constitution, the law guarantees a high degree of initiative and autonomy.

The organisational independence/ autonomy:

The Court of Audit has full freedom to establish its own rules and procedures for the performance of the tasks and obligations deriving from its mandate, according to the law. The Parliament and the Government do not intervene in the organisation and management of the Court of Audit.

The Plenary approves the list of positions of the personnel; the name, scope and organizational structure of the departments; the organizational structure, appoints the directors, deputy directors, heads of units, the general secretary and establishes their attributions; the organizational structure of the General Secretariat and the responsibilities of its departments; the list of vacancies, as well as organization of the competitions to fill the vacancies.

The President appoints the personnel, except for those appointed by the plenary, and orders, if necessary, its secondment or dismissal, in accordance with the law; exercises the disciplinary action and applies disciplinary sanctions in the cases provided by the Code of Ethics of the

[19] As provided in the Lima Declaration adopted in 1977 (ISSAI Principle P1), as well as those contained in the Mexico Declaration, adopted in 2007 (ISSAI Principle P10), on the independence of supreme audit institutions

[20] Article 140 of the Constitution
(1) The Court of Audit shall exercise control over the formation, administration, and use of the financial resources of the State and public sector. Under the terms of the organic law, the disputes resulting from the activity of the Court of Audit shall be solved by specialized courts of law.
(2) The Court of Audit shall annually report to Parliament on the accounts of the national public budget administration in the expired budgetary year, including cases of mismanagement.
(3) At the request of the Chamber of Deputies or the Senate, the Court of Audit shall check the management of public resources, and report on its findings.
(4) Audit advisers shall be appointed by the Parliament for a term of office of 9 years, which cannot be extended or renewed. Members of the Court of Audit shall be independent in exercising their term of office and irremovable throughout its duration. They shall be subject to the incompatibilities the law stipulates for judges.
(5) The Court of Audit shall be renewed with one third of the audit advisers appointed by the Parliament, every 3 years, under the terms stipulated by the organic law of the Court.
(6) The Parliament shall be entitled to revoke the members of the Court of Audit, in the instances and under the terms stipulated by the law.

profession; communicates the vacant positions for audit advisers to the Parliament, in order to take measures in order to fill them.

The independence/autonomy of the Court of Audit' activity

According to the law, the Court of Audit has full independence in planning, scheduling, executing audits, reporting and of documents resulting from audits.

Thus, Court of Audit:

- carries out its activity autonomously;

- does not receive instructions and there is no possibility of interventions regarding the selection of audit topics, planning, implementation, reporting and verification of how the measures ordered following the audit missions have been carried out;

- decides autonomously on its activity program; the annual activity program of Court of Audit is elaborated in accordance with the its own methodology;

- the actions of compliance audit, financial audit, performance audit and performance audit are initiated ex officio; these actions can be stopped only by the Parliament, in case of exceeding the competences of the Court of Audit;

- the decisions of the Chamber of Deputies or of the Senate, by which the Court of Audit is required to carry out controls, within the limits of its competences, are mandatory, according to the law; no other public authority or natural or legal person can oblige it in this respect;

- the planning of activities is done on two levels, namely a multi-annual planning (for 3 years) and an annual planning;

- the financial audit activities must include, every year, the public authorities and institutions within the central public administration whose managers have the quality of main chief accountants;

- at the level of the chambers of accounts (which represent the territorial structures of the Court of Audit in each county) the financial audit activities must include, every year, the counties and municipalities county residences, and the other administrative-territorial units depending on the results of the risk analysis.

The mandate and attributions of the Court of Audit, established by the Constitution and the law, confer on it the exclusive competence: to audit the formation, administration and use of state and public sector financial resources[21]; to carry out the financial audit on the execution

[21] the formation and use of resources of the state budget, the state social insurance budget and the budgets of administrative-territorial units, as well as the movement of funds between these budgets; the establishment and use of the other public funds component of the general consolidated budget; the formation and management of public debt and the situation of government guarantees for internal and external loans; the use of budgetary allocations for investments, subsidies and transfers and other forms of financial support from the state or administrative-territorial units; the establishment, administration and use of public funds by the autonomous administrative authorities and by the public institutions established by law, as well as by the autonomous social insurance bodies of the state; the situation, evolution and manner of administration of the public and private patrimony of the state and of the administrative-territorial units by the public institutions, autonomous utilities, companies and national

accounts[22]; to carry out the audit of the financial statements of the main chief accounts from the central level every year, and at the level of the administrative-territorial units that have the quality of main authorizing officers, annually or once every 3 years; to carry out compliance audits to verify and monitor whether the management of the public and private assets of the state and administrative-territorial units and the execution of the revenue and expenditure budget of the controlled entity are consistent with the purpose, objectives and the attributions provided in the normative acts by which the entity was established; to audit the performance of the use of state and public sector financial resources; the performance audit shall carry out an independent assessment of the cost-effectiveness, efficiency and effectiveness with which a public entity, program, project, process or activity uses the allocated public resources to achieve the objectives set; to follow, according to the competencies established in the organization and functioning law, mainly the accuracy and reality of the financial statements, as established in the accounting regulations in force; to evaluate the management and control systems of the authorities with tasks regarding the pursuit of financial obligations to budgets or other public funds, established by law, of legal persons or natural persons; ascertain whether the funds allocated from the budget or from other special funds have been used in accordance with the intended purpose; to rule on the quality of economic and financial management and on the economy, effectiveness and efficiency of the use of public funds; to inform the management of the audited public entity the situations in which it finds the existence of deviations from legality and regularity that determined the occurrence of damages, its management having the obligation to establish the extent of the damage and to order measures to recover it; to notify the law enforcement authorities in situations where during the audit missions it is found that there are facts for which there are indications that they were committed in violation of criminal law and to inform the audited entity about this.

The Court of Audit' access to information

- unrestricted access of the Court of Audit to the records, documents and information necessary for the audit missions;

- if the access to the information necessary for the performance of the audit missions is restricted or denied, the Court of Audit may apply fines;

- the specialized personnel have the right of unrestricted access to the headquarters of the audited entities in order to carry out the activities necessary to fulfill the mandate established by law;

companies, as well as the concession or rent of goods that are part of the public property; setting up, using and managing financial resources on environmental protection, improving the quality of living and working conditions;

[22] of the state budget, of the state social insurance budget, of the special funds, of the local budgets (of the counties, of the Bucharest municipality and of the sectors of the Bucharest municipality, of the municipalities, cities and communes), the budget of the State Treasury, the budgets of the autonomous public institutions, the budgets of the public institutions financed in whole or in part from the state budget, the state social insurance budget, the local budgets and the special funds budgets, as the case may be, the public institutions budgets financed entirely from own revenues, from the budget of non-reimbursable external funds, as well as from other budgets provided by the legislation in force;

- at the request of the Court of Audit, public authorities with responsibilities for financial control, fiscal control, as well as control or prudential supervision in other areas have the obligation to carry out specific verifications as a matter of priority.

Reporting rights and obligations:

- the Court of Audit shall report annually and independently to Parliament on its findings;

- the institution shall report annually to Parliament on the management accounts of the consolidated general budget for the past financial year, including any irregularities found; The annual public report is published in the Official Gazette of Romania, Part III;

- the Court of Audit submits, whenever it deems necessary, reports to the Parliament and, through the county chambers of audit, to the deliberative public authorities of the administrative-territorial units, whenever it deems it necessary;

- the Court of Audit decides itself on the content of the audit reports and on the timeline of the publication of the audit reports.

Financial independence/autonomy:

The Court of Audit draws up and approves its own budget, which it sends to the Government, in order to include it in the draft state budget submitted to the Parliament for approval.

The budget of Court of Audit is provided separately as an annex to the annual law approving the state budget. According to the Constitution and Law no. 94/1992, only the Parliament would be able to "censor" the draft budget approved by the plenary of the Court of Audit.

The control of the budget of the Court of Audit is exercised by a commission set up for this purpose by the two Chambers of the Parliament and the execution of the budget is submitted to the Parliament, for approval, in the first session of each year.

National Council for Combating Discrimination (NCCD)

The **National Council for Combating Discrimination (NCCD)** is the main specialized body of the central public administration, empowered to guarantee and supervise the implementation of the principle of equality and non-discrimination among citizens. The Council is an autonomous public institution, with legal personality, under parliamentary control. It carries out its activity without any restriction or influence coming from other public institutions or authorities. Its annual report is debated and approved by the Parliament.

The autonomy and independence of the specialized institution were two criteria specifically requested by the European Union and expressed by:

- autonomy in the administration of the institution's annual budget - the president of the institution is a main budget administrator;
- a transparent system of appointing the members of the Steering Committee. NCCD's Steering Committee members are appointed by the Romanian Parliament for a mandate of 5 years following a public procedure, which entails the publication of applications, the possibility of contesting candidates, the public hearing of candidates and the vote of the Romanian Parliament;

- a determined term of the mandate of the Steering Committee members and there are express provisions for their dismissal. The members of the Steering Committee can be dismissed and released of office only in the following cases: resignation, expiry of the mandate, incapability to work according to the law, if they were definitely condemned for a deed stipulated by the criminal law, if they do not fulfill anymore the requirements stipulated in par. 3, upon the substantiated proposal of at least two thirds of the members.
- the Council must present an annual report before the Parliament, a possible rejection of such a report does not lead to the dismissal of the Steering Committee members.
- **The Council's documents are entirely subject to the control of courts through their attack to administrative contentious matters courts.**

NCCD is an instrument designed specifically to fight all forms of discrimination. The Council is responsible for the enforcement and observance of anti-discrimination legislation, in particular the Governmental Ordinance no.137/2000, as well as for harmonizing provisions of normative and administrative acts infringing upon the principle of non-discrimination with the relevant legislation. NCCD is qualified to investigate, to establish and to sanction cases of discrimination. At the same time, the Council elaborates and applies public policies in the field of non-discrimination.

NCCD receives and reviews petitions and complaints regarding violations of the legal provisions concerning the principle of equality and non-discrimination from individuals and groups of persons, NGOs active in human rights protection, other legal entities and public institutions. The Steering Committee of NCCD, exercising its decision-making role, analyses the petitions and complaints received, and adopts, by decisions, the appropriate measures, following investigations carried out by the specialized staff of the Council (the Inspection Team).

Once the decision has been adopted, the Steering Committee decides on the sanction, which can be a notice or the payment of a fine. The Steering Committee also decides on the specific amount of money to be paid by the person or by the legal entity, for perpetrating a discriminatory act. It is possible to appeal against the sanctions applied for committing the discriminatory act, under the procedure provided for by ordinary law.

According to the Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination (republished), the National Council for Combating Discrimination is the public authority with a legal entity status and the guarantor of enforcement and substantiating the observance of the principle of non-discrimination, assuring the prevention of all forms of discrimination.

The institution is exercising its duties in accordance with its mandate established by the Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination (republished), which also specifies its composition (art. 23 – "The Steering Board is formed of 9 members) and its sphere of competence (art. 19 – "Prevention of all forms of discrimination, mediation of discrimination deeds, investigation, ascertaining and sanctioning of discrimination deeds, monitoring the discriminatory cases and providing specialized assistance to victims of discrimination") and also, since 2019 we were appointed to fulfill the competences given by Law 106/2018, related to freedom of movement of EU workers and their families.

Regarding these matters, The National Council for Combating Discrimination is responsible for the harmonization of provisions from normative and administrative acts which are infringing the principle of non-discrimination (art. 18). In addition to this, the Council is responsible for preparing and enforcing public policies in matters of non-discrimination, for which purpose the Council will hold advisory meetings with the public authorities, NGOs, trade union and other legal entities whose purpose is to protect human rights and which have a legitimate interest to combat discrimination.

The Council has the competence of not only exercise its legal authority based on petitions and complaints from individuals or legal entities but also to take action *ex officio* when it detects the infringement of nondiscrimination laws.The National Council for Combating Discrimination is a member of the European Network of Equality Bodies (EQUINET), participating actively at trainings and meetings among other Member States Equality Bodies.

The Steering Board of the NCCD is a collective and deliberative body that takes responsibility for the tasks provided by law, composed of 9 members having the rank of secretary of state, appointed in the plenary session by the two Chambers of the Parliament. At this moment, two members of the Steering Board were appointed by the civil society and are representing the civil society. In the activity of solving the complaints addressed to the National Council for Combating Discrimination, the Steering Board, through its decisions, applies contravention sanctions by warnings or fines, and provides recommendations to prevent future acts of discrimination or the re-establishment of the situation prior to the discrimination.

The appointment of the members of the Steering Board is made by Decision issued by the Parliament which establishes a period of 5 years for each mandate, which can be renewed at the end of this period and it is non-revocable.

An important component of C.N.C.D. is the activity of preventing forms of discrimination. In order to carry out the prevention activity, the National Council for Combating Discrimination carries out at local, regional and national level campaigns, programs and information courses aimed at raising the awareness of the society on human rights, the principle of equality and the effects of discrimination.

C. Accessibility and judicial reviews of administrative decisions

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

High Court of Cassation and Justice

A. Judicial review of the administrative acts

The judicial review of the administrative acts is exercised in last instance (recourse) by the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice, in accordance with the Law no. 554/2004 on administrative contentious.

As concerns the judicial review of the Governmental Decisions exercised in last instance (recourse) by the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice based on Law no. 554/2004 on administrative contentious, according to the statistics, between 1 January 2020 and 1 February 2021, there were **71 cases** solved, as last instance (recourse), by final decision.

In **8 cases** regarding the judicial review of the Governmental Decisions, the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice maintained the judgments rendered in first instance ordering the annulment of the Governmental Decisions.

In 50 cases the Administrative and Fiscal Contentious Chamber maintained the judgments rendered in first instance rejecting the action for annulment of the Governmental Decisions and in 13 cases the Administrative and Fiscal Contentious Chamber ordered the retrial by the court of first instance.

B. Judicial review of the evaluation reports of the National Integrity Agency

The Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice exercises the judicial review of the evaluation reports of the National Integrity Agency in last instance (recourse).

According to the statistics of the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice regarding the cases concerning the evaluation reports of the National Integrity Agency, between 1 January 2020 and 1 February 2021, there were **189 cases** solved, as last instance (recourse), by final decision, as follows:

■ in **40 cases** the evaluation reports of the National Integrity Agency were annulled;

■ in **3 cases** the evaluation reports of the National Integrity Agency were partially annulled;

■ in **140 cases** the evaluation reports of the National Integrity Agency were maintained;

■ in **6 cases** the Administrative and Fiscal Contentious Chamber ordered the retrial by the court of first instance.

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

The Government adopted in the meeting of November 27, 2020 the Memorandum on Measures to ensure the enforcement of judgments against a public debtor, according to ECHR case law on non-enforcement or late enforcement of judgments against a public debtor. The interinstitutional working group shall submit to the Government, as soon as possible, a draft normative act which provides for the establishment within the SGG of the mechanism of prevention and control in the matter of the execution of court decisions establishing obligations to give or do in charge of a public debtor.

D. The enabling framework for civil society

45. 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)

The relevant information was provided within the previous report.

E. Initiatives to foster a rule of law culture

46. 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.)

The period 2017 – 2019 can be seen as a test which the democracy and rule of law were subjected to. Despite pressures, the state institutions have resisted, primarily supported by citizens – in the winter of 2017, people took to the streets for an ideal – maintaining the rule of law in RO. The pressure of the street protests determined the repeal of GEO 13 and generated the solidarity necessary to preserve democracy and rule of law in Romania.

On 29 October 2020, Expert Forum (EFOR) and APADOR-CH organised a Round table - Report of the European Commission on the rule of law in Romania[23], where discussions were held on the basis of the first Rule of Law Report.

[23] https://expertforum.ro/masa-rotunda-29-octombrie-ora-10-00-raportul-comisiei-europene-privind-statul-de-drept-in-romania/