MINISTERUL JUSTIȚIEI

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# European Rule of Law Mechanism: written contribution of Romania

## Introduction:

The present written contribution includes a general and synthetic overview of the legislative framework, policy developments and practical application thereof in the four pillars proposed by the European Commission in its *Methodology*: justice system, anti-corruption framework, media pluralism, other institutional aspects related to checks and balances.

The document follows the structure included in the *Input from Member States,* aimed at gathering objective and comparable data from all countries alike and serving the general objective of issuing future reports of appropriate quality, fairness, equity and equality.

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 Audiovisual Council, National Agency for the Management of the Seized Assets, in order to make sure that the appropriate level of ownership is guaranteed.

The experience gained through the Cooperation and Verification Mechanism (both on inter-institutional cooperation and on substance) allowed for a smooth communication among the responsible national institutions and a swift gathering of relevant information and data. This was of essence especially during the exceptional situation generated by the COVID-19 pandemic, when informal and distance communication has been privileged.

Compared to the complexity and multitude of aspects that fall under the umbrella of the rule of law, the input provided below remains a non-exhaustive presentation of the current relevant features in Romania. Therefore the national authorities remain available for any further information deemed necessary for the Rule of Law Report to be issued by the European Commission in September 2020.

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 according to the assumed calendar and, in line with the principle of sincere cooperation provided for in art.4(3) of the Treaty of the EU, stands ready to contributing to the success of this exercise.

# I. Justice System

During the last decades the justice system in Romania has embraced substantial reforms. The transition from a communist authoritarian regime to democracy shaped the whole system of checks and balances in Romania, including justice. Major steps have been undertaken from a fragile independence and a rather bureaucratic role of magistrates during the communist regime to a solid framework guaranteeing the independence of justice. An illustrative track record proves the independence of justice in practice (for example convictions in high level corruption cases).

These steps began with the 1991 Constitution and the new Law on the organization of the judiciary (92/1992), both stipulating that judges must be independent and must comply exclusively with the law. Some further changes have taken place since 1996 and have been further strengthened by the pre-accession strategy of 2000. Other important change in the 1990s included the entry into force of the new Code of Civil Procedure (1993), of a new bankruptcy law (Law 64/1995, replaced by Law 85/2006) and the creation of the National Anticorruption Prosecutor's Office (2002; later it became the National Anticorruption Directorate -DNA). In 2004 three essential laws have been adopted: Law 303/2004 on the statute of judges and prosecutors, Law no. 304/2004 the judicial organization and Law no. 317/2004 on the Superior Council of Magistracy. It followed the drafting and entry info force of four new major codes (Civil Code, in force since 2012; Civil Procedure Code, in force since 2013; Criminal Code and Criminal Procedure Code, both in force since 2014). These bills have ensured the legislative prerequisites for the independence, efficiency and quality of justice and they have been constantly updated. Finally, in 2018 and 2019 there were successive interventions on the justice laws; these amendments have been the subject of extensive analyses both at national level (Government, Parliament, judiciary, Constitutional Court) and international level (in different EU and Council of Europe fora and mechanisms), the most recent one being the ECHR judgement in case of Kövesi v. Romania[1].

## *A. Independence*

### *1. Appointment and selection of judges and prosecutors*

#### *a. General provisions:*

The selection and appointment of judges and prosecutors are merit based. Rules and criteria for appointment are law based. Judges and prosecutors are magistrates and professionals. They are appointed for life time. The reforms conducted by the latest bills sought to put in place a clearer separation between judges' and prosecutors' careers. The appointment process is transparent and objective.

According to Articles 12-14 of Law no. 303/2004 on the statute of judges and prosecutors[2], the admission in magistracy of judges and prosecutors is made by competition, based on professional competence, skills and good reputation. The admission into magistracy and the initial professional training for the position of judge and prosecutor is done through the National Institute of Magistracy. Admission to the National Institute of Magistracy shall be

[1] Application no. 3594/19, judgement of 5 May 2020
[2] http://legislatie.just.ro/Public/DetaliiDocument/64928

done in compliance with the principles of transparency and equality, exclusively on the basis of open competition.

According to Article 31 (1) of Law no. 303/2004, judges and prosecutors who passed the capacity examination (after two years following the admission) are appointed by the President of Romania, at the proposal of the Superior Council of Magistracy.

According to Article 33 of Law no. 303/2004, the following can be appointed in magistracy, on the basis of a *competition*, if they meet the conditions provided in art. 14 para. (2): former judges and prosecutors who ceased their activity for non-imputable reasons, specialized legal staff from the Ministry of Justice, Public Ministry, Superior Council of Magistracy, National Institute of Criminal Expertise and from the National Institute of Magistracy, lawyers, notaries, judicial assistants, legal advisers, bailiffs with legal higher education, probation staff with legal higher education, judicial police officers with legal higher education, clerks with legal higher education, persons who have fulfilled their duties of legal specialty in the apparatus of the Parliament, the Presidential Administration, the Government, the Constitutional Court, the People's Advocate, the Court of Accounts or the Legislative Council, in the Institute of Legal Research of the Romanian Academy and the Romanian Institute for Human Rights, accredited higher education teachers, and assistant magistrates with *at least 5 years' experience in the field*.

The competition provided for above is organized annually or whenever necessary, by the Superior Council of Magistracy, through the National Institute of Magistracy, to fill the vacant positions of the judges and prosecutors in courts and the prosecutor's offices attached to them.

Another modality of appointment is provided by the Article $33^1$ of the Law no. 303/2004, according to which persons who have held the position of judge or prosecutor and assistant magistrate for at least 10 years, who have not been disciplined, had the grade "very good" exclusively in all assessments and have ceased their activity for not attributable reasons, may be appointed, without competition or examination, in the vacant positions of judge or prosecutor, in courts or prosecutor's offices of the same degree as those where they functioned or in courts or prosecutor's offices of lower degree.

b. *Top management positions in the judiciary:*

i. According to Article 53 of Law no. 303/2004, the President, Vice-Presidents and Section Presidents of the High Court of Cassation and Justice shall be appointed by the Section for Judges of the Superior Council of Magistracy from among the judges of the High Court of Cassation and Justice who have served in that court for at least 2 years and have not been disciplined for the last 3 years. The appointment in these positions is made for a period of 3 years, with the possibility of reinvestment only once.

ii. Article 54 – Law no. 303/2004 on the statute of judges and prosecutors stipulates that:

(1) The Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, its first deputy and deputy, the chief prosecutor of the National Anticorruption Directorate, his deputies, the chief prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism Offenses, his deputy, as well as the chief prosecutors of the sections of these prosecutors' offices are appointed by the President of Romania, at the proposal of the Minister of Justice, with the opinion of the Section for prosecutors of the Superior Council of Magistracy, among the prosecutors who have a minimum age of 15 years in the position of judge or prosecutor, for a period of 3 years, with the possibility of reinvestment only once.

($1^1$) In order to formulate the nomination proposals in the management positions provided in par. (1), the Minister of Justice organizes a selection procedure, based on an interview, in which the candidates present a project regarding the exercise of the specific duties of the management position for which they have applied. In order to ensure transparency, the candidates' hearing is transmitted live, audiovisual, on the website of the Ministry of Justice, recorded and published on the website of the Ministry.

### *2. Irremovability of judges, including transfers of judges and dismissal*

According to Article 2 of Law no. 303/2004, the judges appointed by the President of Romania are immovable, under the conditions of this law.

The immovable judges may be moved by transfer, delegation, secondment or promotion, only with their consent, and may be suspended or released from office under the conditions provided by this law.

Judges cannot be transferred to another court or location without their consent for other reasons than a disciplinary sanction.

When requested by the judges, the transfer to another court can be granted by the Section for Judges of the Superior Council of Magistracy[3]. It should be mentioned that the transfer of a judge cannot be made to a higher level court than that where the judge has the right to work in.

Removal from office of judges and prosecutors is regulated by art.65 of Law no.303/2004, which provides for specific and limitative situations for removal[4].

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[3] According to article 60 para. 1 of Law 303/2004 „*the transfer of judges and prosecutors from one court to another court or from a prosecutor's office to another prosecutor's office or to a public institution is approved, at the request of those concerned, by the corresponding Section of the Superior Council of Magistracy, with the advisory opinion of the president of the court or of the chief prosecutor of the appropriate prosecutor's office.*"

[4] According to Article 65 of Law no. 303/ 2004 on the Statute of judges and prosecutors the **situations in which judges and prosecutors shall be removed from office** are the following: a) resignation; b) retirement, according to the law; c) transfer to another office, according to the law; d) professional incapacity; e) as a disciplinary sanction; f) conviction, the 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; g) violation of the provisions of art. 7: Prohibition of being operative employees, including undercover, informers or collaborators of the intelligence services. h) non-attendance, unjustifiably, at the specialized expertise, until the fulfillment of the duration of the suspension from office ordered according to art. 64 paragraph (4): In the procedure of ascertaining a mental illness that prevents the magistrate from properly exercising his/her office and the magistrate unjustifiably refuses to show up, within the established term, to the specialized expertise; i) non-fulfillment of the conditions provided in art. 14 paragraph (2) a) and e) : having Romanian citizenship, with permanent residence in Romania and full legal capacity and being fit, medically and psychologically, to exercise this office or non-fulfillment of the condition regarding the lack of the fiscal record, if in the latter case it is considered that it is not necessary to maintain the office; j) failure to pass the capacity examination.

Referring to the **dismissal/removal from office**, Article 65 of Law no. 303/2004 also states the following: (2)The removal from office of the judges and prosecutors shall be ordered by decree of the President of Romania, at the proposal of the Section for judges, as the case may be, of the Section for prosecutors. (3) The placement in reserve or the withdrawal of the military judges and prosecutors shall take place according to the law, after they are removed from office by the President of Romania. In case of retirement or transfer, the removal from office shall be performed after placement in reserve or, as the case may be, after withdrawal. (4) The removal from office of the trainee judges and trainee prosecutors shall be done by the Section for judges, as the case may be, of the Section for prosecutors. (5) Should the judge or prosecutor request his/her removal from office through resignation, the Section for judges, as the case may be, the Section for prosecutors may establish a period not exceeding 30 days from which the resignation will take effect, if the presence of the judge or prosecutor is necessary. (6) The judge or prosecutor who was removed from office for reasons not imputable to him/her shall keep his/her professional rank acquired in the hierarchy of the courts or of the prosecutor's offices. (2) If the judge or the prosecutor exercises the appeal provided by the law against the decision of release from

The judges are independent and subject only to the law. The judges must be impartial, having full freedom in resolving the cases brought to trial, in accordance with the law and impartially, respecting the equality of arms and the procedural rights of the parties. Judges must make decisions without any restrictions, influences, pressures, threats or interventions, direct or indirect, from any authority, or even judicial authorities. The judgments given in the remedies do not fall under the empire of these restrictions. The purpose of the judges' independence is to guarantee every person the fundamental right to have his/her case examined fairly, based only on the application of the law.

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

### *3. Promotion of judges and prosecutors*

The promotion of judges and prosecutors is merit based and criteria for promotion are provided by law. The competitions for promotion take place at national level and does not involve any political decision.

Promotion in non-leading positions is regulated in articles 43- $47^2$ of Law no.303/2004. There are two types of such promotion: “on the spot” - when the judge/prosecutor promotes in status while staying within the same court/ prosecutor’s office - and “effective”. The criteria for promotion are provided by the law.

According to Article 43 of Law no. 303/2004, the competition for the promotion of judges and prosecutors is organized annually or whenever necessary, by the corresponding sections of the Superior Council of Magistracy, through the National Institute of Magistracy.

Article 44 provides that:

(1) The judges, prosecutors who had the "very good" qualification at the last evaluation, have not been disciplinary sanctioned in the last 3 years and meet the following time minimum conditions, can participate in the promotion contest on the spot, in the immediate higher professional degree:

a) 7 years seniority in the position of judge or prosecutor, for the promotion in the positions of judge of court or specialized court and prosecutor at the prosecutor's office next to the tribunal or the prosecutor's office near the specialized tribunal;

b) 10 years seniority in the position of judge or prosecutor, for the promotion in the positions of judge of appeal court and prosecutor at the prosecutor's office next to it;

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office or against the decision proposing the release from office, he/she will be suspended from office until the case is finally settled by the competent court. (3) During the suspension period, the provisions regarding the prohibitions and incompatibilities provided for in art. 5 and art. 8 shall not be applicable to the judge or the prosecutor concerned and they will not benefit from the salary rights. During the same period, the social insurance contributions are paid for the judge or for the prosecutor, as the case may be, according to the law. The provisions of art. 63 paragraph (1) shall apply accordingly.

According to art. 40 para 1) c) of the Law no. 317/2004 on the Superior Council of Magistracy, the Section for judges of the Superior Council of Magistracy shall propose to the President of Romania the appointment and dismissal of judges; while according to art. 40 para 2) c) of the same law the Section for prosecutors of the Council shall approve the proposal of the Minister of Justice for the appointment and dismissal of the Chief Prosecutors of sections of the Prosecutors’ Office attached to the High Court of Cassation and Justice, of the National Anti-corruption Directorate and of the Directorate for the Investigation of Organized Crime and Terrorism; and according to art. 40 para 2) d) the Section for prosecutors shall propose to the President of Romania the appointment and dismissal of the prosecutors.

c) 10 years seniority in the position of judge or prosecutor, for promotion to the position of prosecutor at the Prosecutor's Office attached to the High Court of Cassation and Justice.

(2) When calculating the minimum seniority condition to participate in the promotion contest, the period in which the judge or prosecutor had the status of justice auditor[5] shall not be taken into account.

(3) The ages provided for in par. (1) and (2) must be fulfilled by the date of registration for the promotion contest. (3^1) In order to be promoted within the Prosecutor's Office attached to the High Court of Cassation and Justice, prosecutors must not have been disciplined, have a good professional training, an impeccable moral conduct, at least 10 years in the position of prosecutor or judge, at least the professional degree corresponding to the prosecutor's office next to the court of appeal and have been declared admitted following a competition organized by the commission set up for this purpose.

(4) The Superior Council of Magistracy verifies, through the corresponding sections, the fulfilment of the conditions stipulated in par. (1) - (3^1).

*For further details please see articles 42-50 of Law no. 303/2004.*

***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 trough the courts case management system software. 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[6].*

***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)[7]***

The Superior Council of Magistracy is a constitutional body (art.133-134 Romanian Constitution) and it has the main task to act as the guarantor of the independence of justice

The structure of the SCM is composed as follows (according to the Constitution as well as Articles 3 - 5 of the Law no 317/2002 regarding the Superior Council of Magistracy):

The Superior Council of Magistracy is composed of 19 members, of which:

a) 9 judges and 5 prosecutors, elected within the general assemblies of judges and prosecutors, who shall make up the two sections of the Council, of which one is for judges and one for prosecutors;

[5] Trainees admitted to the National Institute of Magistracy have the quality of *justice auditors*. The initial professional training within the National Institute of Magistracy is composed of the theoretical and practical training of justice auditors prior to becoming judges or prosecutors.
[6] Available at http://portal.just.ro/300/SiteAssets/SitePages/organizare/Regulament%202015.pdf
[7] Relevant legislation at https://www.csm1909.ro/274/Legislație.

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, as a representative of the Judiciary, the Minister of Justice and the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, who are de jure members of the Council.

The section for judges in the Superior Council of Magistracy shall be composed of:

a) 2 judges from the High Court of Cassation and Justice;

b) 3 judges from courts of appeal;

c) 2 judges from tribunals;

d) 2 judges from first instance courts.

The section for prosecutors of the Superior Council of Magistracy shall be composed of:

a) one prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice or from the National Anti-Corruption Prosecutor's Directorate;

b) 1 prosecutor from the prosecutor's offices attached to the courts of appeal;

c) 2 prosecutors from the prosecutor's offices attached to tribunals.

d)1 prosecutor from the prosecutor's offices attached to first instance courts.

The sections for judges and prosecutors of the Superior Council of Magistracy have the right, respectively the correlative obligation to be notified *ex officio* to defend the judges and prosecutors against any act of interference in the professional activity or in relation to it, which could affect the independence or impartiality of the judges, respectively the impartiality or the independence of the prosecutors in the disposition of the solutions, according to Law no. 304/2004 on the judicial organization, republished, with the subsequent amendments and completions, as well as against any act that would create suspicions about them.

The sections of the SCM defend the professional reputation of judges and prosecutors.

The complaints regarding the defense of the independence of the judicial authority as a whole are solved on request or *ex officio* by the Plenum of the SCM.

The judge or prosecutor who considers that his/her independence, impartiality or professional reputation is affected in any way may be addressed to the Superior Council of Magistracy. The corresponding section of the Superior Council of Magistracy has the necessary measures and ensures their publication on the website of the Superior Council of Magistracy, it can notify the competent body to decide on the measures that are required or it can order any other corresponding measures, according to the law.

The SCM ensures the observance of the law and of the criteria of professional competence and ethics in carrying out the professional career of judges and prosecutors.

The attributions of the Plenum of the Superior Council of Magistracy and of its sections, regarding the career of judges and prosecutors, are exercised in compliance with the provisions of Law no. 303/2004 and of Law no. 304/2004.

In cases where the justice laws provide for the assent, approval or agreement of the Superior Council of Magistracy, the point of view issued by it is mandatory. If the justice laws provide for the consultation or the opinion of the Superior Council of Magistracy, the point of view issued by it is not mandatory.

The Superior Council of Magistracy draws up and maintains the professional files of the magistrates. The Superior Council of Magistracy coordinates the activity of the National Institute of Magistracy and the National School of Clerks.

6. ***Accountability of judges and prosecutors, including disciplinary regime and ethical rules.***

*Disciplinary accountability*

**Disciplinary liability**: The situations that can be considered disciplinary offences according to the law and which lead to the disciplinary liability of magistrates are stipulated in article 99 of Law no. 303/2004. E.g.: the manifestations that prejudice the honor or the professional probity or the prestige of justice, committed in the exercise or outside the exercise of the work duties; the violation of the legal provisions regarding incompatibilities and prohibitions regarding judges and prosecutors; the unjustified refusal to receive in the file, the requests, conclusions, memories or the documents submitted by the parties to the trial; unmotivated absences from work, repeatedly or directly affecting the activity of the court or of the prosecutor's office; interference in the activity of another judge or prosecutor; the exercise of the office with bad faith or serious negligence, if the offence does not meet the constituent elements of an offense. The disciplinary sanction does not remove the criminal liability.

The **disciplinary sanctions** provided by the law are as follows: warning; decreasing the gross monthly indemnity by up to 25% for a period from one to 3 months; disciplinary transfer for a period from one to 3 years to another court or prosecutor's office, even lower in rank; suspension from office for a period of up to 6 months; demotion in professional rank; exclusion from the magistracy.

According to Article 44 (3) of Law 317/2004, the disciplinary action in case of disciplinary violations committed by judges, prosecutors and assistant magistrates shall be exercised by the Judicial Inspection, through the judicial inspector.

Judicial Inspection is a body within the SCM. When conducting a disciplinary inquiry JI has operational independence. The head of JI is a judge appointed by SCM following a competition. The deputy chief inspector is a prosecutor. The criteria for selection and terms for judicial inspectors are law based. The provisional appointment of JI head of office by Government ordinance back in 2018 was criticized by magistrates.

The Judicial Inspection may be notified *ex officio* or may be notified in writing and motivated by any interested person, including the Superior Council of Magistracy, in relation to the disciplinary violations committed by judges and prosecutors.

The issues reported are subject to a prior check by the judicial inspectors of the Judicial Inspection, which determines if there are indications of a disciplinary offense. Disciplinary offences and sanctions are law based. The most severe disciplinary sanction is exclusion from office. The Government has no power regarding dismissal of judges and prosecutors.

The SCM, through its sections, acts as court in the field of disciplinary liability of judges and prosecutors. The sections of the Superior Council of Magistracy resolve the disciplinary action by a decision that includes, mainly, the following: the description of the fact that constitutes a disciplinary violation and its legal classification, the legal basis of the sanction, the reasons for which the defenses formulated by the judge or prosecutor have been removed, the sanction applied and the reasons that were the basis for its application, the appeal and the term in which the decision can be appealed, the competent court to lodge the appeal. The SCM resolution can be appealed before the HCCJ. The HCCJ decision is final.

*Patrimonial accountability*

The patrimonial responsibility for the judicial error lies first of all with the State, the liability of the magistrate being subsidiary and indirect, this operating only in case of exercising the function with bad faith or serious negligence.

The definition of the judicial error according to art. 96 paragraph (3) of Law no. 303/2004 regarding the statute of the judges and prosecutors:

"There is a judicial error when:

a) it was ordered within the process to carry out procedural documents with the obvious violation of the legal provisions of material and procedural law, by which the rights, freedoms and legitimate interests of the person were seriously violated, producing an injury that could not be remedied by an ordinary or extraordinary appeal;

b) a definitive court decision was pronounced obviously contrary to the law or the factual situation that results from the evidence administered in this case, which seriously affected the legitimate rights, freedoms and interests of the person, injury that could not be remedied by an ordinary or extraordinary appeal. "

Also, according to art. $99^1$ of the law:

"(1) There is bad faith when the judge or prosecutor knowingly violates the rules of material or procedural law, following or accepting the injury of a person.

(2) There is serious negligence when the judge or prosecutor misconstrues, in a serious, doubtful and inexcusable manner, the rules of material or procedural law."

The decision of the Constitutional Court no. 252/2018 of April 19, 2018 emphasized that "the patrimonial responsibility for the judicial error lies first of all with the state, which can be directed only against the magistrate who exercised his function with bad faith or serious negligence in order to recover his amounts of money already paid, its patrimonial liability being, therefore, a subsidiary and indirect one."

Other obligations are provided by the Deontological Code of judges and prosecutors, approved by the Superior Magistracy Council – Decision 328/2005[8].

### *7. Remuneration/bonuses for judges and prosecutors*

*Levels of remuneration:*

- *Judge at the level of the High Court of Cassation and Justice: 20518 RON/4237 EUR*
- *Salaries at the level of Courts of Appeal* *http://www.cab1864.eu/upload/2020/tansparenta_martie_2020.pdf*
- *Salaries at the level of Tribunals* *http://portal.just.ro/114/SiteAssets/SitePages/informatii/Transparenta%20veniturilor%20salariale%20la%2031.03.2020.pdf*
- *Salaries at the level of Prosecutor's Office attached to the High Court of Cassation and Justice* *http://www.mpublic.ro/ro/content/functii-si-venituri*
- *Salaries at the level of the National Anticorruption Directorate* *https://www.pna.ro/comunicat.xhtml?id=9750*

[8]http://portal.just.ro/36/Documents/INFORMATII_DE_INTERES_PUBLIC/INFORMATII_PUBLICE/LEGISLATIE_RELEVANTA/Codul%20deontologic%20al%20magistratilor.htm

*Pensions:*

In 2020 the Parliament adopted a bill to eliminate the professional pensions for judges and prosecutors. The bill was adopted despite the negative notice of SCM, without consultation and despite previous decisions issued by the Constitutional Court stating that the right to pension is a prominent aspect of the independence of justice. The Constitutional Court was seized for the *ex ante* control of the abovementioned bill (term for public hearings: 6 May 2020[9]). Independence and efficiency of justice are relying on both quality of legislation and due allocation of human and financial resources.
Further aspects related to pensions are presented in Annex 6 - CVM Report February 2020

### *8. Independence/autonomy of the prosecution service*

Prosecutors are magistrates. They are selected and appointed in the same ways as judges. The prosecutorial system is hierarchical and the chief prosecutor has the legal ability to invalidate the solutions adopted by their inferiors for reasons such illegality and groundlessness. Prosecutors cannot be transferred, seconded or even promoted without their consent. Prosecutors are independent when investigating cases and adopting solutions. The principle of hierarchical control for prosecutors is set up at Constitutional level.

The Romanian Constitution[10] provides as follows:

*Article 131 - Role of Public Ministry*

(1) Within the judicial activity, the Public Ministry shall represent the general interests of the society, and defend the legal order, as well as the citizens' rights and freedoms.

(2) The Public Ministry shall discharge its powers through public prosecutors, constituted into public prosecutor's offices, in accordance with the law.

(3) The public prosecutor's offices attached to courts of law shall direct and supervise the criminal investigation activity of the police, according to the law.

*Article 132 - Statute of Public Prosecutors*

(1) Public prosecutors shall carry out their activity in accordance with the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice.

(2) The office of public prosecutor is incompatible with any other public or private office, except for academic activities.

**Article 3 of Law no. 303/ 2004** stipulates that prosecutors shall carry out their activity in accordance with the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice. Prosecutors are independent in rendering the solutions, under the conditions provided by Law no. 304/2004 regarding the judicial organization, republished, with the subsequent amendments and completions.

Prosecutors appointed by the President of Romania enjoy stability.

Prosecutors who are granted stability may not be transferred, seconded or promoted without their consent. They may be delegated, suspended and removed from office only according to the provisions of the present law.

**Article 62 of Law no. 304/2004** provides that prosecutors carry out their activity according to the principles of legality, impartiality and hierarchic control, under the authority of the minister of justice. Prosecutors must respect the fundamental rights and freedoms, the

[9] http://www.ccr.ro/wp-content/uploads/2020/04/Afis-6-mai-2020.pdf?occurrence=2020-05-06
[10] http://www.cdep.ro/pls/dic/site.page?id=371&idl=2&par1=3

presumption of innocence, the right to a fair trial, the principle of equality of arms, the independence of the courts and the enforceable force of the final court decisions. In public communication, the prosecutor's offices must respect the presumption of innocence, the non-public nature of the criminal prosecution and the non-discriminatory right to information. Prosecutor's offices are independent in their relation with the courts, as well as with other public authorities.[11]

The Constitutional Court Decision 358/2018[12] clarifies the meaning of the constitutional notion of "authority of the Minister of Justice" over the activity of prosecutors and mentions, in explicit terms, the decision-making power of the Minister of Justice regarding the management of prosecutors' careers. This decision-making power is limited by constitutional provisions to the appointment of the top management level and to the exercise of disciplinary action, according to the law *(NB: Law 234/2018 amended art.44 of Law no.317/2004; according to the new provision in force[13], only the Judicial Inspection may exercise the disciplinary action, compared to the previous version of art.44 (3) that granted this exercise also to the Minister of Justice).*

*For further details please see the message of the General prosecutor regarding the independence of the prosecutors [14].*

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[11] In addition, **Article 64** of the same law stipulates that (1) The orders of the hierarchically superior prosecutor, given in writing and in accordance with the law shall be binding for the prosecutors working under them. (2) In the solutions that he/she orders, the prosecutor is independent, according to the law. The prosecutor may challenge in front of the Section for prosecutors of the Superior Council of the Magistracy, within the proceedings for checking the conduct of the judges and prosecutors, the intervention of the hierarchically superior prosecutor, occurring either in the criminal prosecution or in the adoption of the solution. (3) The solutions adopted by the prosecutor may be invalidated in a reasoned manner by the hierarchically superior prosecutor, when they are deemed as illegal. **Article 65** - (1) The prosecutors within each prosecutor's office are subordinated to the head of that prosecutor's office. (2) The head of a prosecutor's office is subordinated to the head of the hierarchically superior prosecutor's office from the same jurisdiction. (3) The control exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, by the General Prosecutor of the National Anti-Corruption Directorate, by the General Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism or by the General Prosecutor of the prosecutor's office attached to the court of appeal over the subordinated prosecutors may be exercised either directly or through expressly appointed prosecutors.

[12] https://lege5.ro/Gratuit/gi4dgojyga4q/decizia-nr-358-2018-asupra-cererii-de-solutionare-a-conflictului-juridic-de-natura-constitutionala-dintre-ministrul-justitiei-pe-de-o-parte-si-presedintele-romaniei-pe-de-alta-parte
According to prosecutors, the decision strengthened the power of the Ministry of Justice in relation to prosecutors. The Venice Commission stressed that the impact of the decision is likely to go beyond the issue of chief prosecutors removal since it also contains elements of interpretation of constitutional provisions relevant for the relationship between the prosecution service and the executive. The weight of SCM in the removal process is also considerably weakened. The Venice Commission plead for the increased independence of prosecutors and also underlined the reluctance of the Government to having independence among the general principles for prosecutors. The establishment of new Section for investigating offences committed by magistrates was criticized. The Venice Commission stated that there are fears that this structure would serve as an tool to intimidate and put pressure on magistrates especially if coupled with other measures envisaged in their respect, such as new provisions regarding material liability. The new Government decided to act accordingly to the recommendations formulated by European Commission and other relevant European bodies regarding the new Section. The Venice Commission emphasized that there are reports of pressure and intimidation on magistrates including by some high-ranking politicians and through media campaigns. Also there are important law amendments which seen alone but especially taking into consideration their cumulative effects are likely to undermine the independence of judges and prosecutor and public confidence in judiciary.

[13] Art.44 of Law 317/2004 – *(3) The disciplinary action in case of violations committed by judges, prosecutors and assistant magistrates shall be exercised by the Judicial Inspection, through the judicial inspector.*

[14] http://www.mpublic.ro/sites/default/files/PDF/mesaj_al_procurorului_general_referitor_la_independenta_procurorilor.pdf

### *9. Independence of the Bar (chamber/association of lawyers)*

The matter is regulated by the Status of the lawyer profession[15].

According to Article 62, the independence of the profession, the autonomy of the bar and the free exercise of the profession of lawyer cannot be restricted or limited by the acts of the public administration authorities, the courts, the Public Ministry or other authorities except in the cases and under the conditions expressly provided by law.

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

➢ **Defending the independence of the Judiciary as well as defending the independence, impartiality and professional reputation of individual judges and prosecutors – legal provisions**

As guarantor of the independence of the Judiciary, the Superior Council of Magistracy is entitled to use a legal mechanism for defending both the judicial system as well as the individual judges and prosecutors when the independence, impartiality and professional reputation may be affected, circumstances that may thereof affect even the perception of the general public towards the independence of the judiciary.

Such aspects capable of affecting the perception of the independence of the Judiciary may be those noted by the SCM in decisions of the Plenum or Sections, according to the competence, when admitting such request for defending the independence, impartiality and professional reputation on aspects consisting of allegations, usually made in media and/or social media/political statements, against magistrates' activity in courts/prosecution offices, in courts' sessions, regarding the solutions, procedural measures taken during the judicial proceedings, or different other statements, opinions etc.

According to the provisions of the article 30 para.1 of Law no. 317/2004, the appropriate sections of the Superior Council of Magistracy have the right, respectively the correlative obligation, to take action ex-officio in order to defend judges and prosecutors against any act of interference with their work or in connection with it, which may affect the independence or impartiality of judges, respectively, the impartiality or independence of prosecutors in ordering the solutions, according to Law No 304/2004 on the judicial organization, republished, as amended and supplemented, and against any act which would give rise to suspicion. The sections of The Superior Council of Magistracy shall also protect the professional reputation of judges and prosecutors. The referrals on defending the independence of the judicial authority as a whole shall be settled by the Plenum of the Superior Council of Magistracy, upon request or ex-officio.

Moreover, The Plenum of the SCM, the sections, the President and the Vice-President of the Superior Council of Magistracy, ex-officio or upon notification of the judge or prosecutor, shall notify the Judicial Inspection to perform verifications in order to protect the independence, impartiality and professional reputation of judges and prosecutors.

In cases where the independence, impartiality or professional reputation of a judge or of a prosecutor is affected, the appropriate section of the SCM shall order the necessary measures and shall ensure their publication on the website of the Superior Council of Magistracy, it may refer the matter to the competent body for its decision on the measures to be taken or it may order any other appropriate measures, according to the law.

According to above mentioned legal provisions, the judge or the prosecutor who considers that his/her independence, impartiality or professional reputation is affected in any form

[15] http://www.unbr.ro/statutul-profesiei-de-avocat/

may refer the case to the Superior Council of Magistracy, with the provisions of paragraph (2) being applied accordingly. Upon the request of the judge or of the prosecutor concerned, the press release published on the website of the Superior Council of Magistracy shall be displayed on the premises of the institution where he/she operates and/or published on the website of this institution.

The SCM 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.

- **Statistics in terms of defending both the independence of the Judiciary and the independence, impartiality and professional reputation of individual judges and prosecutors, for the referred period (2019):**

**Defending the independence of the judiciary**

During the referred period (2019), a number of 4 requests for defending the independence and the impartiality of the Judiciary have been investigated by the Judicial Direction for judges within the Judicial Inspection, out of which 1 request have been admitted while 3 requests have been rejected. Moreover 2 of the decisions in this matter regarded several joint requests.

During the referred period, a number of 5 requests for defending the independence and the impartiality of the Judiciary have been investigated by the Judicial Direction for prosecutors within the Judicial Inspection, out of which 1 request have been admitted while the other 4 requests are pending 2 of them before the Judicial Inspection and the other 2 before the Plenum of the Council.

**Defending the independence, impartiality and professional reputation of individual judges and prosecutors**

During the referred period, a number of 38 requests have been submitted to the Judicial Direction for judges, out of which 11 requests have been admitted, 7 requests have been repealed, 5 are were pending before the Section for judges of the Council, 2 requests were pending before the Judicial inspection for investigations, 2 were postponed, another one was submitted to the Plenum, in 7 requests a joint procedure has been decided, 2 were returned to the Judicial Inspection while in another one the request has been withdrawn.

During the referred period, a number of 14 requests have been submitted to the Judicial Direction for prosecutors, in another one the request has been withdrawn, one request is pending before the Section for prosecutors and another one is pending before the Judicial Inspection for investigations.

***11. Other - please specify***

According to the judiciary, multiple and fast changes regarding the magistrates statute, lack of transparency and coherence in law-making process have generated a risk for instability and have put pressure on magistrates.
Amendments made to criminal codes and judiciary organization laws raised a long series of questions and were put to scrutiny by European organizations. Recent reports issued under CVM stressed the importance of the irreversibility of reform. A series of recommendations were formulated.

## *B. Quality of justice*

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

**Court fees** are regulated by Government Emergency Ordinance no. 80/2013 with subsequent amendments[16]. The last amendment was made in December 2019[17] and its aim was to ensure the implementation of *Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.*

*Level of fees:* actions and claims assessable in money, lodged before the courts, are charged as follows[18]:

- up to the value of RON 500 - 8%, but not less than RON 20;
- between RON 501 and RON 5,000 - RON 40 + 7% for the values exceeding RON 500;
- between RON 5,001 and RON 25,000 - RON 355 + 5% for the values exceeding RON 5 000;
- between RON 25,001 and RON 50,000 - RON 1,355 + 3% for the values exceeding RON 25 000;
- between RON 50,001 and RON 250,000 - RON 2,105 + 2% for the values exceeding RON 50 000;
- over RON 250,000 - RON 6,105 + 1% for the values exceeding RON 250,000.

For actions and claims that are not assessable in money GEO no.80/2013 provides for lump sums varying between 20 and 1,000 RON. In addition, some actions are exempted from court fees (e.g. adoption, pensions, consumer protection, rights of persons with disabilities).

The legal framework for the **legal aid** is provided for by GEO 51/2008[19] for civil cases and by the Criminal Procedure Code[20] for criminal cases. The legislation in this field has not changed during the last period of time (2019-2020).

*Latest resources for legal aid as provided in the state budget:*

- Government Ordinance 12/12.08.**2019** supplemented the budgets of the Ministry of Justice by 40,000 thousand RON and of the Public Ministry with 10,000 thousand RON respectively for the payment of legal services *ex officio*[21].
- The amount provided in the Law of the state budget of Romania for the year **2020** no. 5/2020 having as destination the payment of the fees for the judicial assistance, broken down by both authorities provided by law that have attributions in this field is as follows: amount stipulated in the budget - 75,330 thousand RON, of which: in

[16] *The consolidated version of GEO 80/2013 is available here: http://legislatie.just.ro/Public/DetaliiDocument/149314*
[17] *GEO 75/13 december 2019 is available here http://legislatie.just.ro/Public/DetaliiDocumentAfis/221013*
[18] *Art.3 par.1 ouf GEO 80/2013*
[19] *GEO 51/2008 is available here http://legislatie.just.ro/Public/DetaliiDocument/91863*
[20] *http://legislatie.just.ro/Public/DetaliiDocument/120611*
[21] *http://www.unbr.ro/publicam-adresa-nr-476-970-20-08-2019-a-ministerului-finantelor-publice-prin-care-se-comunica-faptul-ca-prin-og-nr-12-12-08-2019-s-a-aprobat-suplimentarea-bugetelor-ministerului-justitiei-cu-40-000/*

the budget of the Ministry of Justice - 70,500 thousand RON; in the budget of the Public Ministry - 4,830 thousand RON[22].

*For more details related to the accessibility of courts, please see RO input for the Justice Scoreboard, sent in autumn 2019 (attached – Annex 1).*

***13. Resources of the judiciary (human/financial)***

*Human resources:*

- *January 2019:*
  - out of a total of **5069 positions of judge**, there 4570 positions were occupied (approximately 73% women and 27% men) and 499 vacant.
  - out of the total of **3024 positions of prosecutor**, 2572 positions were occupied and 476 vacant.
  - out of a total of **123 positions of assistant-magistrate at the High Court of Cassation and Justice**, there 106 positions were occupied and 17 vacant.
  - Out of a total of **7693 specialized auxiliary staff**[23], 7629 positions were occupied and 64 vacant (of which court clerks 6287 positions - 6239 occupied and 48 vacant).
- *December 2019:*
  - out of the total of **5068 positions of judge**, 4415 positions were occupied and 653 vacant.
  - out of the total of **3029 positions of prosecutor**, 2492 positions were occupied and 587 vacant.
  - out of a total of **123 positions of assistant-magistrate at the High Court of Cassation and Justice**, there 118 positions were occupied and 5 vacant.
  - Out of a total of 7705 **specialized auxiliary staff**, 7657 positions were occupied and 48 vacant (of which court clerks 6296 positions - 6268 occupied and 28 vacant).

*For more details on human resources please see the Report of the SCM issued for 2019*[24].

*Financial resources:*

Total budget for the Ministry of Justice (centralized for the whole judiciary and penitentiary system) in 2020: **4.944.752.000 RON** and in 2019: **4.425.274.000 RON.** For more details, please see *link* in footnote[25].

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

*Recent developments:*

In order to operate the necessary updates to the ICT case management system, continuous efforts are undertaken. Moreover, for the development of a revised electronic case

[22] *http://www.unbr.ro/publicam-adresa-ministerului-justitiei-nr-2-103771-16-01-2020-inregistrata-la-uniunea-nationala-a-barourilor-din-romania-u-n-b-r-la-22-01-2020-prin-care-se-informeaza-cu-privire-la-suma-prevazut/*

[23] The total positions of specialized auxiliary staff include the positions of court clerk, statistician clerk, document clerk, archivist clerk, registrar clerk and IT specialists at the level of courts.

[24] *https://www.csm1909.ro/267/3571/Rapoarte-privind-activitatea-Consiliului-Superior-al-Magistraturii*

[25] *http://www.just.ro/transparenta-decizionala/bugetul-mj/buget-anual/*

management system (ECRIS) at present a macroanalysis is carried out. The analysis includes technical elements and characteristics, the hardware infrastructure and the costs necessary for the future development (modernization and extension) of the electronic case management system ECRIS, as an integrated management tool both operationally and strategically that the institutions of the judiciary will benefit from and which will allow key decisions to be taken to administer the system. The analysis is carried out by an external contractor with high specialisation in ECRIS.

The following aspects are considered within the analysis contract:

- identification and establishment of specific aspects, such as the possibility of developing a management functionality and electronic access to the procedural documents or the possibility of developing an electronic archiving functionality in the file management system;

- it is envisaged to build an IT system with an architecture based on services (web services) and layers, which allows for the introduction of new functionalities or new interconnections with minimal input, ensuring a good service life of the system under appropriate operating conditions. In this regard, in order to solve the identified problems, the future system is aimed to offer functionalities and facilities related to (the list is not exhaustive):

- interconnection with other existing computer systems, including the implementation of a data standard;
- document flows, including automating the generation of documents or obtaining them in an interactive manner;
- preparing the system for the use of electronic signature;
- electronic, fast and secure access to the documents in the court files for judges, prosecutors, inspectors and probation counselors, lawyers and other interested persons.

The analysis is focused especially on the following modules (applications):

1. ECRIS Courts - related to the activity of the courts, including the High Court of Cassation and Justice;
2. ECRIS Prosecutors - for the activity of prosecutors, including the Prosecutor's Office attached to the High Court of Cassation and Justice, the Directorate for the Investigation of Organized Crime and Terrorism Offenses and the National Anticorruption Directorate;
3. ECRIS Probation - related to the activity of the probation services and to the National Probation Directorate;
4. ECRIS Judicial Inspection - related to the internal activity of the Judicial Inspection;
5. Functionalities of judicial statistics including business intelligence components, with specific elements of each beneficiary institution;
6. Electronic archiving functionalities, with specific elements of each beneficiary institution;
7. Functionalities related to the electronic file (e-file type), with specific elements of the beneficiary institutions.

The analysis is expected to be concluded until the end of this year. The next stage for the case management system new version development will consist in a further software development project.

For related details please see also RO input for Justice Scoreboard, sent in autumn 2019 (attached – *Annex 1*).

***15. Other - please specify***

The Superior Council of Magistracy is already implementing five projects financed with non-reimbursable funds; in addition to that, starting with 2020, the SCM is to start the implementation of other 3 projects.

Some of the objects of these projects are:

-(I) improved and unified public communication within the judicial system; (II) improving the access to justice by facilitating the access to information regarding the judicial system and to services dedicated to the public and (III) high level of information, increased awareness of public's rights and the judicial education of the public, with a view to improve the access to justice and the quality of the judicial services;

- raising the cross-border cooperation between the European Member States for the implementation in particular of the Council Framework Decision 2002/584/JHA of June 13, 2002 on the European arrest warrant and the surrender procedures between Member States and of the Council Framework Decision 2008/909/JHA of November 27, 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union;

- the consolidation of the judicial system by improving efficiency and developing the concept of judicial European culture within the Romanian judicial system.

- to identify the required mechanisms for developing a modern judicial system, adapted to the needs of the contemporary society, through the identification and development of the necessary legal and infralegal means (regulations, internal working procedures).

- to contribute to the improvement of the access to justice by a transparent and predictable process of reduction of causes that lead to the congestion of the courts and implicitly to the lengthening of the time of case processing.

## *C. Efficiency of the justice system*

***16. Length of proceedings***

The judiciary is concerned about reducing the length of proceedings and, in this respect, it has shown great interest in developing certain mechanisms able to improve the current situation.

Thus, SCM has started the implementation of some major projects, as follows: The objective of the project „Optimization of the judicial system's management. The courts component" is to identify the required mechanisms for developing a modern judicial system, adapted to the needs of the contemporary society, through the identification and development of the necessary legal and infralegal means (regulations, internal working procedures).

Also, the project „Eliminating the factors of the inflation of cases, Identifying the normative elements and the tendencies for congestion - Efficiency" aims to contribute to the improvement of the access to justice by a transparent and predictable process of reduction of causes that lead to the congestion of the courts and implicitly to the lengthening of the time of case processing. The mechanisms created through this project is aiming to ensure a transparent system of intervention and solving the repetitive cases.

Please see *Annexes 2 and 3* for statistics in terms of average length of proceedings in criminal and non-criminal matters (detailed in different sub-matters) in terms of both different procedural stages and different proceedings before each type of court.

For related details please see also RO input for *Justice Scoreboard* (attached – *Annex 1*).

### *17. Enforcement of judgements*

The enforcement provisions for non-criminal cases are set out in Articles 622-914 of the Code of Civil Procedure. The enforcement procedure is the second stage of the civil proceedings and is intended mainly to ensure the actual exercise of the right recognised by a court judgment/another enforceable document. Court judgments and the other enforceable documents are executed by a bailiff (*executor judecătoresc*) whose office is located in the jurisdiction of the court of appeal where the immovable property is located in the case of enforcement in respect of immovable goods and in the case of direct enforcement in respect of immovable property. The enforced recovery of movable goods and direct enforcement of movable property are executed by the bailiff whose office is located in the jurisdiction of the appeal court where the debtor has his/her residence/registered office or where the property is located. If the debtor's residence/registered office is located abroad, any bailiff is competent.

Failure to enforce court judgements is incriminated by art.287 of the Criminal Code[26]. Furthermore, enforcing a penalty is regulated in detail in three laws: one dedicated to enforcing the custodial penalties and measures (Law no.254/2013) and other two laws dedicated to setting up the system for implementing non-custodial measures and sanctions (Law.no.252/2013 and Law no.253/2013).

*For more details on the enforcement procedure of judgements please see https://e-justice.europa.eu/content_procedures_for_enforcing_a_judgment-52-ro-en.do?init=true&member=1*

### *18. Other - please specify*

*Recovery of criminal assets*. Operational since December 2016, according to Law no. 318 of 11 December 2015, the National Agency for the Management of Seized Assets (ANABI) is the national authority designated as National Asset Recovery Office and National Asset

[26] ART. 287 - Failure to enforce court judgements
(1) The failure to enforce court judgements, committed:
a) by resisting the enforcement of a court judgement, by resisting the actions of the authority in charge of said enforcement;
b) by the refusal of the authority in charge of the enforcement to enforce a court judgement, by means of which it must carry out a certain act;
c) by the refusal to support the authority in charge of the enforcement in implementing the court judgement, by individuals who are under this obligation by law;
d) by failure to enforce a court judgement reinstating an employee;
e) by failure to enforce the court judgement regarding the payment of wages within 15 days of the date when the enforcement request was submitted by the interested party to the employer;
f) by failure to enforce court judgement on establishing, paying, indexing and recalculating pensions;
g) preventing an individual from using, in whole or in part, a house or part of a house or building held based on a court judgement, committed by the person against whom the court order was returned, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by fine;
h) non-compliance with a protection measure ordered in the execution of a European protection order.
(2) In the case of the acts listed under lett. d) - g), criminal action shall be initiated based on a prior complaint filed by the victim.
(3) In the case provided in par. (1) lett. h), the reconciliation of the parties removes the criminal liability.

Management Office in line with Council Decision 2007/845 and Directive 2014/42. During 2019, relevant evolutions were registered from the perspective of the operational activity:

*Asset management:*

- the total assets managed and registered in ANABI records is approaching 1 billion lei (963,721,212 lei – approx. 200.000.000 Euros) in ANABI unique account, other bank accounts and movable assets;
- following establishing a track record of selling regular assets, the Agency managed to conclude the first interlocutory sales of atypical and complex stocks of goods – shares, large deposits, industrial equipment, construction materials, assets seized in the free trade area.
- ANABI manages virtual currency accounts in international organized crime cases;
- Judicial practice with novelty elements – e.g. interlocutory sale at the request of ANABI;
- ANABI consolidated its storage capacity with a new facility – 2000 m2 warehouse;
- the first cases of sharing agreements of confiscated sums with EU and other jurisdictions: France, UK, Principate of Monaco and USA.

*Asset recovery:*

- During 2019, the Romanian Asset Recovery Office has dealt with 194 incoming request. The most frequent countries that requested information were France, Italy, Germany, Spain and the Netherlands. The most common offenses investigated were: laundering of the proceeds of crime, participation in a criminal organization, trafficking in human beings, fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests. In total, the Romanian asset recovery office received requests from 23 states, including 4 from outside the EU.
- During 2019, ARO Romania received a number of 50 requests from national agencies (courts, prosecutors' offices and police). The most frequent countries that were asked for information were the United Kingdom, Hungary, Germany, the Netherlands and Italy and the most frequent crimes that were investigated referred to laundering of the proceeds of crime, tax evasion and participation in a criminal organization. Overall, the Romanian ARO sent requests to 73 states, out of which 12 are non EU members.

*2019 Presidency of Camden Asset Recovery Inter-Agency Network (CARIN):*

- ANABI held the CARIN Presidency and continues to provide management for the European founded project awarded to support the network until June 2021. Following the Annual General Meeting held in Bucharest, a set of recommendations for policies in the area of asset recovery were submitted to European Commission. Main topics covered: tracing and recovering criminal assets from corporate structures/entities, asset return and reuse, tracing and recovering virtual currencies, with emphasis on addressing cooperation with off-shore jurisdictions.

*New instruments – online auctions for seized assets:*

- considering the COVID health risks associated with organising public auctions, we decided to suspend the organisation of classic – direct public auctions for selling seized assets in criminal procedures (interlocutory sales). In this context, ANABI is launching a web platform for continuing the auctions online.

## II. Anti-corruption framework

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

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

- Ministry of Justice (within the Ministry of Justice, the Department for Crime Prevention serves as the Technical Secretariat of the National Anti-corruption Strategy; the department is staffed with 17 members).
- National Integrity Agency (according to the National Integrity's Report for 2019, 99 positions were occupied[27] out of 200 positions[28]).
- General Anti-corruption Directorate from the Ministry of Home Affairs. The 2019 Activity Report for the General Anti-coruption Directorate includes data on the financial and non-financial resources.[29]
- The Prosecutor's Office attached to the High Court of Cassation and Justice (including the National Anti-corruption Directorate and the other competent prosecutor's offices, according to the law).
    - The National Anti-coruption Directorate, according to its 2019 Report, has 152 prosecutors (this means that a 77% of the total positions are occupied), 237 officers and police agents ( 91% of the total positions are occupied) and 73 specialists (this represent 81% of the total positions). The report also includes data on financial resources.[30]
    - In what concerns the petty corruption, falling in the competence of the General Prosecutor's Office attached to the High Court of Cassation and Justice and other competent prosecutor's offices, a general overview related to the positions in the General Prosecutor's Office attached to the High Court of Cassation and Justice and other competent prosecutor's offices can be found in the Order of the Minister of Justice no.414/C/03.02.2020.[31]

[27]AgenţiaNaţională de Integritate, 2019 *Raportanual de activitate,* subchapter 4.2, *ResurseUmane* , published on February 28,2020, on the website https://www.integritate.eu/Files/Files/Rapoarte/073b%20Raport_Activitate_Anual_ANI_2019.pdf, accessed on April 7, 2020, 1st para., p. 20.
[28]AgenţiaNaţională de Integritate, *Structuraorganizatorică a ANI*, published on the website: https://www.integritate.eu/A.N.I/Organizare.aspx , accessed on April 7, 2020.
[29]MinisterulAfacerilor Interne, DirecţiaGeneralăAnticorupţie, *A n a l i z a principaleloractivităţi de prevenireşicombatere a corupţieidesfăşurate de DirecţiaGeneralăAnticorupţieînanul 2019 (material public)*, published on the website: http://www.mai-dga.ro/wp-content/uploads/2020/03/Bilant-DGA-2019.pdf , accessed on April 7, 2020, p. 17-21.
[30]DirecţiaNaţionalăAnticorupţie, *Raport de activitate 2019*, published on the website https://www.pna.ro/obiect2.jsp?id=431 accessed on April 7, 2020, p 23.
[31]Ministerul Public, Parchetul de pe lângă ÎnaltaCurte de CasaţieşiJustiţie, *Ordinul Ministrului Justiţiei nr.414/C/03.02.2020 şi anexe, published on the website* http://www.mpublic.ro/sites/default/files/PDF/state_functii_03022019.pdf , accessed on April 7.

***B. Prevention***

***20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)***

National legislation in place[32]:

- Law no. 184/2016 to establish a mechanism to prevent conflict of interests in public procurement contract awarding
- Law no. 176/2010 regarding the integrity in exercising the public official and dignities in order to modify and complete Law 144/207 regarding the establishment, organization and operation of the National Integrity Agency as well as for the modification and completion of other normative acts
- Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency
- Law no. 115 /1996 for the declaration and control of assets of the officials, magistrates, of persons holding management and control positions and of public officials There are no rules on lobbying, due to the fact that lobbying is not allowed according to the national law.
- Government Decision no. 175/2008 regarding the establishment for the register templates of the assets declarations and the register for the interests declarations
- Law no. 161/2003 regarding some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, preventing and sanctioning corruption

➢ **Asset disclosure rules**

The legal framework concerning the regime of assets disclosures is provided by *Law no. 176/2010 on the integrity in exercising the public offices and dignities*, which stipulates the obligation of certain categories of persons occupying public positions or public dignities to submit annually declarations of assets and interests (for example, the President of Romania, Presidents of the two Chambers of Parliament, senators, deputies, members in the European Parliament, Prime Minister, Government members, state secretaries, members of the Superior Council of Magistracy, judges, prosecutors, judges of the Constitutional Court, public officials *etc.*). Filers also have to file declarations at the beginning and end of their mandate and when running for elections.

The persons expressly provided by law must submit asset declarations. These declarations are received and centralised by a specific Agency created for this purpose, namely the National Integrity Agency (NIA). A project of full automation of the disclosing process is currently ongoing.

The duty to declare assets and income concerns also the family, spouse and dependent children of the respective public officials. The forms are available to public officials both on paper and electronically and guidelines on filling in the templates were elaborated by the NIA as well.

[32] Available at https://www.integritate.eu/A.N.I/Legisla%C8%9Bie.aspx and https://www.integritate.eu/A.N.I.-interactiv/Ghiduri.aspx

The evaluation of the declarations of wealth, data, information and economic changes, of interests and incompatibilities concerning persons expressly provided by law is carried out by the National Integrity Agency (NIA), through integrity inspectors, *ex officio* or at the request of any natural or legal person.

The evaluation of the assets disclosures, data and information on existing wealth and economic changes occurring during the performance of existing public position or dignity shall be done during the performance of public dignities, and within three years after their termination.

In the Romanian legal system there is a special procedure applicable in the case of identifying significant differences in the wealth of those exercising public positions or dignities.

By December 2019, **NIA has ascertained 160 cases of unjustified wealth amounting to over 29 million Euros**. Out of these, 32 cases of unjustified wealth amounting to 5,9 million Euros have remained definitive and irrevocable (in these cases, the Courts have ordered the confiscation of the respective amounts).

For further details regarding this procedure please see the *Annex 4 pct. A.*

- **Lobbying**

At the moment, in Romania, there is no law in force regulating the lobbying activity. However, the current legislative framework offers a balanced system that ensures the transparency of the decision-making process (aspects that are detailed below at the section concerning transparency) and the participation of citizens at this process.

In 2016, the Romanian Government adopted soft legislation in this field - the Memorandum creating RUTI, a centralized register for the transparency of interests.

RUTI is an on-line platform[33], technically managed by the General Secretariat of the Government, joined on a voluntary basis by interest groups (called specialized groups). Holders of top executive functions are required to publicly disclose interactions with such specialized groups.

Therefore, RUTI aims at increasing the quality of a more participatory public decision making process, by creating the framework and shaping the principles based on which interactions of the top policy makers with specialized groups take place with regards to an already issued policy that the groups want to amend or to a new policy idea arising from outside the public administration which the Government might endorse.

- **Revolving doors**

In Romania, the aspects regarding revolving doors (*pantouflage*) are regulated by several normative acts. In accordance with art. 94 para. (3) of Law no. 161/2003[34], public officials who, in the exercise of their public office, have carried out monitoring and control activities with regard to commercial companies or other profit-making units cannot carry on their activity and cannot provide specialized consultancy to these companies for 3 years after leaving the public office.

Another normative act which contains regulations concerning the revolving doors situations is the Emergency Ordinance of the Government no. 66/2011 on the prevention, detection

[33] http://ruti.gov.ro/wp-content/uploads/2016/10/English-description-of-the-Romanian-Unique-Group-Interests-Transparency-Register.pdf

[34] Law no. 161/2003 on certain measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, the prevention and sanctioning of corruption.

and sanctioning of irregularities in obtaining and using European funds and/ or national public funds related to them. Thus, according to the provisions mentioned above, the beneficiaries (natural/ legal persons) are not entitled to hire natural or legal persons who have been involved in the process of verifying/ evaluating the applications for funding in the selection procedure, during a period of at least 12 months from the signing of the financing agreement. The authorities with powers in the management of the European funds have the obligation to ask the court the annulment of the financing contract that was concluded, in case of violation of the provisions aforementioned.

Provisions concerning revolving doors are also contained in the legislation on public procurement (Law no. 98/2016) which stipulates that the successful bidder with whom the contracting authority has concluded the public procurement contract has no right to employ or conclude any other agreements regarding the provision of services, directly or indirectly, for the purpose of fulfilling the public procurement contract, with natural or legal persons who have been involved in the process of verifying/ evaluating the requests for participation/ offers submitted in the framework of an award procedure or with employees / former employees of the contracting authority or of the procurement services provider involved in the award procedure with whom the contracting authority/ the procurement services provider involved in the award procedure ceased the contractual relations, following the award of the public procurement contract. The aforementioned interdiction is applied during a period of at least 12 months from the conclusion of the contract, under the sanction of *de jure* termination of the respective contract.

With regard to the regulation of the revolving doors situations, the Ministry of Justice has carried out, in the framework of a project financed from European funds, a comparative study that analyzes, from a theoretical and practical point of view, 5 models existing at European and international level. This evaluation has the role of highlighting the examples of good practices and can be the basis for proposals for improving the existing legislative and institutional framework concerning the revolving doors situations.

- **General transparency of public decision-making (including public access to information)**

*Transparency of public decision – making*

The Law no. 52/2003, republished, as subsequently amended and supplemented, regulates the general framework of the decision-making transparency in public administration. The aforementioned law aims: to increase the degree of responsibility of the public administration towards the citizens, as beneficiaries of the administrative decision; to involve the active participation of citizens in the administrative decision-making process and in the drafting of normative acts; to increase the degree of transparency of the whole public administration.

The authorities obliged to comply with the provisions of Law on the decision-making transparency are central and local public administration authorities.

For further details please see the *Annex 4 pct.B.*

*Public acces to information*

Regarding the free access to information of public interest, it is regulated by Law no. 544/2001, as subsequently amended, in force since December 22, 2001, and by Government Decision no. 123/2002 approving the Methodological Norms for the application of Law no. 544/2001 on free access to information of public interest.

Law no. 544/2001 defines information of public interest as any information concerning the activities or resulting from the activities of a public authority or public institution, regardless of the support or the form or way of expressing the information.

The public authorities and institutions ensure the access to information of public interest *ex officio* or upon request.

According to the legislation in force, also the access of media to information of public interest is guaranteed. The activity of collecting and disseminating information of public interest, carried out by the mass media, constitutes an embodiment of the right of citizens to have access to any information of public interest.

The explicit or tacit refusal of the designated employee of a public authority or institution to enforce the provisions of the legislation in force constitutes a misconduct and entails disciplinary liability. Against the refusal, a complaint may be lodged with the head of the respective authority or public institution within 30 days from the date the injured person was informed. If, after the administrative investigation, the complaint is found to be well founded, the response will be sent to the injured person within 15 days from submitting of the complaint and will contain both the information of public interest originally requested and the disciplinary sanction taken against the culprit.

Also, if a person is considered injured in his/her rights, he/she may lodge a complaint at the administrative litigation section of the court stipulated by the law. The court may oblige the public authority or institution to provide the requested information of public interest and to pay moral and/or patrimonial damages.

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

*General aspects*

Law no. 161/2003 on certain measures to ensure transparency in the exercise of public mandates, public functions and in the business environment, the prevention and sanctioning of corruption, as subsequently amended and supplemented, regulates the regime of conflicts of interest in the exercise of public dignities and public functions.

A conflict of interest means the situation in which a person exercising a public dignity or a public function has a personal interest of a patrimonial nature that could influence the objectively fulfilling of his / her duties under the Constitution and other normative acts.

The Law no. 161/2003 expressly regulates conflicts of interest regarding the following categories of persons:

- The person who acts as a **member of the Government, Secretary of State, Undersecretary of State or functions assimilated to them, prefect or sub-prefect** is obliged not to issue an administrative act or not to conclude a legal act or not to take or not to participate in taking a decision in the exercise of a public office of authority which generates a material benefit for herself / himself, for her /his husband / wife or for her / his first-degree relatives. These obligations do not concern the issuance, approval or adoption of normative acts.
- The **mayors and deputy mayors, the mayor and the deputy mayors of the municipality of Bucharest** are obliged not to issue an administrative act or not to conclude a legal act or not to issue a provision in the exercise of the function, which produces a material benefit for himself / herself or for his / her spouse or his / her first-degree relatives.

- The conflicts of interest for the **presidents and vice-presidents of the county councils or the local and county councilors** are stipulated by the Local Public Administration Law no. 215/2001, as amended and supplemented.
- A **public official** is in a conflict of interest if he / she is in one of the following situations:

- is called upon to resolve requests, to make decisions or to participate in decision-making process regarding natural and legal persons with whom he / she has patrimonial relations;
- participate in the same commission, established according to the law, with public officials who have the status of spouse or first degree relative;
- his / her patrimonial interests, the patrimonial interests of his / her spouse or first degree relatives may influence the decisions he / she has to take in the exercise of public office.

For further detail regarding the prevention of conflicts of interests, see *Annex 4 pct.C.*

Law no. 176/2010 provides the categories of persons who are required to declare their interests. In addition to the persons who have the obligation to submit declarations ofinterests, this normative act also includes provisions regarding the implementation of regulations on declarations of interests, the procedures before the National Integrity Agency, as well as the sanctions applicable in the case of non-compliance with the applicable provisions in the field of the declaration of interests.

The activity of the assessment of the declarations of assets, data, information and patrimonial changes, interests and incompatibilities is carried out within the National Integrity Agency, established by Law no. 144/2007. For the president and vice-president of the Agency, as well as for its staff, the activity of the assessment of assets, interests and incompatibilities is carried out within the National Integrity Council.

Over the last decade, **the National Integrity Agency has investigated about 18,000 cases**, of which some files were **pursued** as integrity incidents, while others were closed. Thus, **for approx.3,000 completed files, NIA ascertained a number of 2,782 integrity incidents, as follows: 1,954 cases of incompatibility, 668 cases of administrative conflicts of interest.** At the same time, the integrity inspectors have identified signs of criminal offences (criminal conflict of interest, false statements, abuse of office, offences assimilated to corruption, etc.) in 686 cases, which were notified to the competent prosecution bodies for further investigation.

During the same period, **over 7,500 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 interests disclosure within public entities).*

*The PREVENT System*

The legislation in force (Law no. 184/2016) also regulates a mechanism to prevent conflicts of interest in the procedure for awarding public procurement contracts. According to the aforementioned provisions, within the National Integrity Agency, an integrated information system was created in order to prevent and identify potential conflicts of interest (the PREVENT System).

The PREVENT System works on the basis of the data mentioned in the integrity forms, registered in the Electronic Public Procurement System (SEAP) and processed by the integrity inspectors according to the law.

The integrity form drawn up within the conflict prevention mechanism is part of the documentation for the award of public procurement contracts and has 3 sections, as follows: Section I - Data on the procurement procedure, the decision-making factor, the evaluation commission, the consultants and co-opted experts; Section II - Data on the bidders / candidates; Section III - Measures to remove the potential conflict of interest, ordered as a result of a warning of integrity.

In order to identify potential conflicts of interest and validate the notifications issued by the PREVENT System, the integrity inspectors from the National Integrity Agency performs the analysis of the data and information from the system, monitoring the system by reference to all the specific regulations applicable to each award procedure and to the persons communicated in the integrity form.

If, following the specific analysis, the integrity inspectors from the Agency detects elements of a potential conflict of interest, they are obliged to transmit the warning of integrity issued by the PREVENT System to the public authority concerned.

The head of the contracting authority, after receiving the integrity warning, is obliged to take all necessary measures in order to avoid the conflict of interest.

Failure to take the measures as a result of receiving an integrity warning or to submit the integrity form generates the procedure for evaluating the conflict of interests, after the award procedure has taken place.

The lack of a warning of integrity or the lack of a measure ordered by the head of the contracting authority as a result of issuing a warning of integrity does not impede the procedures for identifying, evaluating, investigating and engaging the civil, disciplinary, administrative, contraventional or criminal liability of persons, following the violation of the legal provisions.

Since the moment the system went live, PREVENT issued 117 integrity warnings, amounting to approx. 1,16 billion RON (approx. 244,16 million Euros). In approx. 97% of the cases notified by the system, the leaders of the contracting authorities removed the causes that generated potential conflict of interests, while in 4 cases, NIA will proceed to apply art. 9 of Law no. 184/2016, in case the causes of the conflict of interest will not be eliminated. In the other 2 cases in which the management of contracting authorities didn't comply with the prevention rules, NIA has started the ex-officio investigations on the consumed conflicts of interests.

As a result of the PREVENT system, the number of the files on conflicts of interest ascertained by the Agency has decreased.

### *22. Measures in place to ensure Whistleblower protection and encourage reporting of corruption*

I. Legal provisions in force:

Law no. 571/2004 regarding the protection of staff from public authorities, public institutions and other units that report violations of law[35]. Many institutions adopted

[35] Relevant links:
https://www.transparency.org.ro/publicatii/ghiduri/GProtectieAvertizori.pdf
https://lege5.ro/Gratuit/gu3dinrw/legea-nr-571-2004-privind-protectia-personalului-din-autoritatile-publice-institutiile-publice-si-din-alte-unitati-care-semnaleaza-incalcari-ale-legii

operational procedures aimed at implementing the whistleblowing legislation and other integrity instruments[36].

According to the operational procedure regarding whistleblowers, adopted by the National Integrity Agency, the persons reporting corruption facts benefit from protection, as follows:

II. Regarding 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

MoJ has the role of coordinator of the process of transposing this directive. In this respect, at the level of this institution has been set up an internal working group to analyze and identify the measures required to transpose the Directive. A first analysis revealed the need to set up an inter-institutional working group, in a first phase being invited representatives from the National Integrity Agency.

*Other activities*

The MoJ is carrying out the POCA project on strengthening administrative capacity of the technical secretariat of the NAS 2016-2020 to support the implementation of anti-corruption measures. One of the activities of the project is the elaboration of a comparative study entitled "Evaluation of legislation on whistleblower institution and post-employment interdictions (pantouflage)". This assessment is designed to identify examples of good practices at European and international level, which can form the basis for proposals to amend 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 in these sectors. (e.g. public procurement, healthcare, other)***

The National Anticorruption Strategy (NAS) 2016-2020 represents the strategic document that aims at promoting integrity by thorough application of the legal and institutional framework with a view to prevent corruption in Romania. The document has a multidisciplinary character and it is addressed to all public institutions which represent the executive, legislative and judicial authorities, the local public administrations, the business sector and civil society.

NAS 2016-2020 continued to give priority to preventive measures in the following sectors: healthcare system, national education system, the activity of the members of Parliament; judiciary; financing of political parties and electoral campaigns; public procurement; business environment; the local public administration[37]. For of the list of measures

[36] See, for example, the operational procedure adopted by ANI, according to which persons reporting the persons reporting corruption facts benefit from protection, as follows:
- the whistleblowers, which have made a notification being convinced of the reality of the fact or that the fact constitutes a violation of law, benefit from the presumption of good faith, until proven otherwise;
- at the request of whistleblower that is investigated as a result of a warning act, the disciplinary committees or other similar bodies within the public authorities, public institutions, national companies, autonomous companies of national and local interest, or national companies with state capital, have the obligation to invite the mass-media and a representative of the trade union or professional association. The announcement is made on the Internet page of the public authority, the public institution or the budgetary unit, at least 3 working days before the meeting, under the sanction of the nullity of the report and of the disciplinary sanction applied;
- in case the one claimed by the warning in the public interest is a hierarchical chief, directly or indirectly, or has the powers of control, inspection and evaluation of the warning, the disciplinary commission or other similar body will ensure the protection of the whistleblower, hiding its identity;
- in the case of warnings in the public interest, provided in art. 5 lit. a) and b) of the provisions of art. 12 paragraph (2) lit. a) of Law no. 682/2002 regarding witness protection.

[37] A detailed status of the implementation of above-mentioned measures can be found in the annual progress reports published by the Ministry of Justice, available on-line at www.sna.just.ro.

envisaged by the strategy for priority sectors, please see *the text of the Strategy, available on-line at www.sna.just.ro*.

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

On 10th of August 2016, the Romanian Government adopted the National Anti-corruption Strategy (NAS) for 2016-2020 by Government Decision no. 583/2016. The document includes the sets of performance indicators, risks associated with objectives and measures of the strategy and verification sources, inventory of the institutional transparency and corruption prevention measures, evaluation indicators and standard publication of information of public interest.

The implementation of NAS 2016 - 2020 is performed under the authority and coordination of the minister of justice. For carrying out the monitoring process, a Technical Secretariat was set up within the Ministry of Justice and one of the important activities of the structure is to document and disseminate good practices identified in the implementation period.

In order to help public institutions to better address the integrity challenges, the MoJ has developed two methodologies, for evaluating corruption risks and for ex-post assessing of integrity incidents. In this context, on the 2nd of August 2018, the Government adopted the Decision no. 599/2018, approving the Standard methodology for the assessment of corruption risks in central public authorities and institutions, the indicators for estimating the likelihood of corruption risks occurring, indicators for estimating the impact of corruption risks occurrence and the template for the Corruption Risks Register, as well as the Evaluation methodology of the integrity incidents in central public authorities and institutions, together with the template for the annual Report on the evaluation of the integrity incidents. The two methodologies apply to central public institutions and authorities, including those subordinated, coordinated or under authority, whose managers are main, secondary or tertiary budget holders.

NAS 2016 - 2020 uses the evaluation mechanism created by the previous strategy (NAS 2012-2015) and considered as being a good international practice - the peer reviews missions carried out in public institution. This tool, partially replicating international experience, refers to assessment missions carried out by teams of experts from independent authorities, anticorruption institutions, public administration, business environment and civil society. The evaluated themes are selected from a list of 12 preventive measures, as provided in Annex 3 to NAS 2016-2020.

The evaluation reports following each peer review mission are also important reminders to public authorities, that integrity incidents are errors whose repetition should be limited through appropriate management actions.

Another evaluation mechanism used by NAS 2016-2020 refers to the annual reporting according to which, every public institution has to send to the Technical Secretariat, a Progress Report on NAS` implementation.

Moreover, one of NAS` measures (measure 2.1.1) refers to the internal audit, once every two years, of the corruption prevention system at the level of all public authorities. In this context, we underline the fact that by the end of 2019, internal public audit missions were carried out in 4007 public institutions, out of which 837 were carried out at central level (independent and anticorruption authorities, institutions from central public administration, including subordinate/coordinated/under authority structures), and 3170 at local level (city halls, county councils, educational/cultural establishments, etc.).

***For other preventive measures than the ones already analyzed, such as Code of ethics, declaration of gifts, ethic advisor, incompatibilities, please see the Annex 4 pct.D.***

***C. Repressive measures***

***25. Criminalisation 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. For the relevant texts, please see the *Annex 5.*

***26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)***

With regard to the application of sanctions, according to the data registered at the Office for Statistics of the Ministry of Justice, the following information for 2019 concerning the situation of persons with **final convictions** for committing corruption offenses, can be taken into account:

- Offence of taking a bribe (art. 289 of the Criminal Code)

- 89 convicted persons (natural persons): 13 persons executing the sentence in detention regime, for 72 persons was ordered the suspension of execution, for 4 persons was ordered the postponement of the execution.

- Offence of giving a bribe (art. 290 of the Criminal Code)

- 81 convicted persons (80 natural persons and 1 legal person): 4 pe0rsons executing the sentence in detention regime, for 74 persons was ordered the suspension of execution, for 1 person was ordered the postponement of the execution, 2 persons were sentenced to a fine.

- Offence of influence peddling (art. 291 of the Criminal Code)

- 58 convicted persons (all natural persons): 17 persons executing the sentence in detention regime, for 41 persons was ordered the suspension of execution.

- Offence of buying of influence (art. 292 of the Criminal Code)

- 4 convicted persons (all natural persons): 1 person executing the sentence in detention regime, for 2 persons was ordered the suspension of execution, for 1 person was ordered the postponement of the execution.

- Corruption offences stipulated by Law no. 78/2000

- 132 convicted persons (121 natural persons and 11 legal persons): 28 persons executing the sentence in detention regime, for 85 persons was ordered the suspension of execution, for 7 person was ordered the postponement of the execution, 12 persons were sentenced to a fine.

**Last instance decisions in high-level corruption cases at the High Court of Cassation and Justice:**

- During 2018: the Panels of 5 judges settled, as last instance, 10 high-level corruption cases.
- During 2019: the Panels of 5 judges settled, as last instance, 14 high-level corruption cases.

**National Anticorruption Directorate statistics for January 1 – December 31 2019:**

The DNA track record remains strong:

- *Indictments:* 235 cases were sent to trial, regarding 501 defendants, 97 of these defendants being indicted after signing a plea-bargaining agreement. Among them there have been ministers, Members of the Romanian Parliament, Members of the European Parliament, state secretaries, presidents of state agencies.
- In the indicted cases, the prosecutors have taken *seizure measures* in the amount of 224 million euro
- *Conviction decisions*: The courts ruled 203 final conviction decisions against 422 defendants, in the cases investigated by DNA, as follows: 114 punishments with execution in prison (27%); 257 punishments with suspension of the execution (61%); 38 criminal fines (9%); 12 punishment with postponing the execution of the punishment during the judicial surveillance period (under 3%).

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

The Venice Commission and GRECO stated that the envisaged reforms of judicial organization laws and criminal codes endanger the fight against corruption. Reports issued by European Commission under the CVM recommended the adoption of objective criteria for deciding on and motivating the lifting of immunity of MP to help ensuring that immunity is not used to avoid investigation and prosecution of corruption offenses. Taking into account the European experts recommendations, the Internal Regulation of the Chamber of Deputies was modified through Decision 23/2019. Same approach is expected to be adopted by the Senate.

For obstacles identified in the investigation and prosecution of high level corruption cases in Romania please see also Annex 6 – CVM Report February 2020 (on aspects related to the new Section for investigating the offences committed by judges and prosecutors[38] and, respectively, to the immunity from prosecution).

Obstacles regarding the investigative capacity of DNA:

- According to the amendments brought in 2018 and 2019 to the Law no. 304/2004 on judicial organization, the seniority conditions for a prosecutor to be appointed as a prosecutor in DNA has been increased from 6 years to 10 years, and in practice this condition creates serious difficulties in the recruitment of DNA prosecutors.

[38] Since the operationalization in 23.10.2018 of the section, no judge or prosecutor has been indicted for corruption offenses in Romania. Currently, there is a preliminary ruling procedure ongoing before the European Court of Justice with regard to the setup of this special section in Romania.

## III. Media pluralism

The Romanian Constitution provides for **the freedom of expression in art.30**[39] and for the **right to information in** art.31[40]; the subsequent legislation includes specific provisions in this respect (Civil Code, Law 544/2001 on the access to public information, the Audiovisual Law 504/2002). Limitations on freedom of expression are clearly defined by law, pursuing legitimate objectives in accordance with the European Convention of Human Rights.

### *A. Media regulatory authorities and bodies*

The National Audiovisual Council (CNA) is the guarantor of the public interest and the only regulatory authority in the field of audiovisual programs. The mission of the CNA is to ensure a climate based on free expression and responsibility towards the public in the audiovisual field. In order to fulfill this mission established by the Audiovisual Law 504/2002, the CNA issues decisions, recommendations and instructions, including the Decision on the regulatory Code of the audiovisual content.

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

*Independence*: According to art.10 of Law 504/2002 CNA is an autonomous public authority under parliamentary control and the guarantor of the public interest in the field of audiovisual communication. The Council is the only regulatory authority in the field of audiovisual media services, under the conditions and in compliance with the provisions of

[39] *Article 30 - Freedom of expression*
*(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.*
*(2) Any censorship shall be prohibited.*
*(3) Freedom of the press also involves the free setting up of publications.*
*(4) No publication may be suppressed.*
*(5) The law may impose upon the mass media the obligation to make public their financing source.*
*(6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of person, and the right to one's own image.*
*(7) Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.*
*(8) Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Indictable offences of the press shall be established by law.*

*Article 31 - Right to information*
*(1) A person's right of access to any information of public interest cannot be restricted.*
*(2) The public authorities, according to their competence, shall be bound to provide for correct information of the citizens in public affairs and matters of personal interest.*
*(3) The right to information shall not be prejudicial to the protection of the young or to national security.*
*(4) Public and private media shall be bound to provide correct information to the public opinion.*
*(5) Public radio and television services shall be autonomous. They must guarantee for any important social and political group the exercise of the right to be on the air. The organization of these services and the Parliamentary control over their activity shall be regulated by an organic law.*

[40] http://legislatie.just.ro/Public/DetaliiDocument/37503

the present law. The members of the Council are guarantors of the public interest and do not represent the authority that proposed them (article 11).

*Enforcement powers:* CNA is in charge of the supervision of compliance, control of the fulfillment of obligations and sanction of the violation of the provisions of Law 504/2002, as well as of the decisions and instructions of normative character issued on the basis and for its application (except for the provisions applicable to the broadcasting licenses, the licenses for the use of radio frequencies in digital terrestrial system or to the technical authorizations, whose compliance with, supervision, control and sanctioning of the infringement, respectively, are stipulated in the law of the National Authority for Administration and Regulation in Communications).

*Statistics on enforcement*: in 2019 CNA issued 484 **sanctioning decisions**, in 2018 is issued 167 sanctioning decisions, in 2017 188 sanctioning decisions, in 2016 176 sanctioning decisions, in 2015 145 decisions[41]. In 2020 CNA issued so far 89 decisions (cut off date – 19.03.2020).

*Resources*: the CNA budget provided by Law 5/2020 on the state budget for 2020 is of **14,142** thousand RON. The CNA budged provided for 2019 was of **13,667** thousand RON.

*For more details on budget, please see http://www.cna.ro/-Documente-financiare-.html.*

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

*Procedure (article 11 of Law 504/2002)*: The Council members is composed of 11 members appointed by the Parliament, on the proposal of the Senate (3 members); Chamber of Deputies (3 members); President of Romania (2 members); Government (3 members), by the majority of the present senators and deputies, for a 6 years mandate.

*Incompatibilities (article 12 of Law 504/2002)*: The membership of the Council is incompatible with the public or private functions, except for the didactic ones, if they do not give rise to conflicts of interests. During the term of office, the members of the Council may not be part of parties or other political structures. The members of the Council shall not have the right to hold shares or social shares, directly or indirectly, in companies with activities in areas in which they would conflict with interests as a member of the Council. If a member of the Council falls within one of the above-mentioned situations, he/she shall be dismissed.

*Dismissal (article 13 of Law 504/2002)*: The members of the Council shall be dismissed, at the proposal of the specialized committees of the Parliament, in the following situations: a) in the case of the inability to exercise his function for a period longer than 6 months; b) in the case of a criminal conviction applied by a final court decision. It is to be mentioned that within the activity of parliamentary control, the activity of the Council is analyzed by the Parliament through the debate of the annual report. The rejection by the Parliament of the annual activity report entails the dismissal of the president of the Council (article 20).

### *B. Transparency of media ownership and government interference*

***30.The transparent allocation of state advertising (including any rules regulating the matter)***

[41] The sanctioning decisions are available here: http://www.cna.ro/-Decizii-de-sanc-ionare-.html

*A site dedicated to the public advertising is accessible here http://www.publicitatepublica.ro/?fbclid=IwAR0mjsGvemoagwY640t8qSTgfB8qOmfPnEZLHkz_S453ei05jEiQQBXvhV4#null.*

*Guidelines related to the public procurement of advertising are available on the abovementioned site: http://www.publicitatepublica.ro/ghid.pdf.* The guidelines are based on the following legislative acts:

- Emergency Ordinance no. 34/2006 regarding the awarding of public procurement contracts, public works concession contracts and service concession contracts,
- Law 544/2001 on free access to public information
- Law 52/2003 on the transparency of decision-making in the public administration in Romania.

***31.Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)***

***TAEJ Project - Transparency, accessibility and legal education by improving the public communication at the level of the Judiciary"[42]:***

- The Superior Council of Magistracy adopted the ***Best practices Guide for the relation of the judicial system with the mass-media***. The Guide is distributed to the public on the occasion of the visibility events and also to the target audience (judges, prosecutors, journalists, representatives of the main institutions within the judicial system and other legal professions).
- The Superior Council of Magistracy also adopted ***the Best practices Guide for the relation of the judicial system with other legal professions, lawyers in particular***. The printed copies are distributed to the public on the occasion of the visibility events and also to the target audience (judges, prosecutors, journalists, representatives of the main institutions within the judicial system, other legal professions etc.).
- The Superior Council of Magistracy adopted ***the Best practices Guidebook for the activity of judges and prosecutors on social media platforms***.

In the referred period the following visibility events have taken place:

- The Conference for disseminating the Best practices Guide for the relation of the judicial system with the mass-media – November 22, 2019 – Bucharest.
- Session for disseminating the Best practices Guide for the relation of the judicial system with the mass-media – December 13, 2019 – Bucharest.

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As every year, on October 25th, 2019, the Open Day activities dedicated to the European Day of Civil Justice were organized by inviting to courts/prosecution offices and to the

[42] *SIPOCA 454 / MySMIS code 118765,* contracted on 5.09.2018 by the Superior Council of Magistracy (leader), in partnership with the National School of Clerks, the Judicial Inspection, the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Institute of Magistracy and the Ministry of Justice;

The project's objectives are: (I) improved and unified public communication within the judicial system; (II) improving the access to justice by facilitating the access to information regarding the judicial system and to services dedicated to the public and (III) high level of information, increased awareness of public's rights and the judicial education of the public, with a view to improve the access to justice and the quality of the judicial services;

premises of the Superior Council of Magistracy, citizens, representatives of the media and organized groups of pupils and students, students from the National Institute of Magistracy and from the National School of Clerks, where issues of general interest concerning the work of the institutions of the judiciary were raised.

*On this topic please also see RO latest CVM progress report sent to the Commission in February 2020 (Annex 6).*

***32.Rules governing transparency of media ownership***

Rules governing transparency of media ownership are included in the Constitution[43], in the Audiovisual Law no. 504/2002[44] and in Law 31/1990 on company law[45].

### *C. Framework for journalists' protection*

Specific rules on the protection of journalists are included in the Audiovisual Law 504/2002, related to the confidentiality of information sources and the protection of journalists by authorized public authorities[46]. Moreover, the law stipulates the editorial independence of the media providers and the prohibition of any external interference.

***33.Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities***

Censorship of any kind on audiovisual communication is prohibited by law. The editorial independence of the audiovisual media service providers is guaranteed and interferences of any kind are prohibited in the content, form or modalities of the presentation of the elements of the audiovisual media services, from the public authorities or of any natural or legal persons, Romanian or foreign.

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[43] *Article 30 para.(5) The law may impose upon the mass media the obligation to make public their financing source.*

[44] *Art.10 para.3 - As a guarantor of the public interest in the field of audiovisual communication, the Council shall be required to ensure: g) the transparency of the organization, functioning and financing of the mass media in the audiovisual sector;*

[45] *Art.185 para.(3) - In order to carry out the legal publicity, the Ministry of Public Finance sends, electronically, to the National Office of the Trade Register copies of the following documents, in electronic form: annual financial statements and, as the case may be, consolidated annual financial statements, report and, as appropriate , the consolidated 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 the economic-financial indicators necessary for the legal publicity.* ***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.***

[46] **Article 7** (1) The confidentiality of the information sources used in the design or creation of news, programs or other elements of the program services is guaranteed by this law. (2) Any journalist or program maker is free not to disclose data that is capable of identifying the source of the information obtained in direct connection with his/her professional activity.

**Article 8** (1) The authorized public authorities shall provide, on request: a) the protection of journalists if they are subjected to pressures or threats that are likely to prevent or effectively restrict the free exercise of their profession; b) protection of the broadcasters' premises and premises, if they are subject to threats which are likely to impede or affect the free conduct of their activity. (2) Protection of journalists and broadcasters' premises, under the conditions of par. (1), should not become a pretext to prevent or restrict the free exercise of their profession or activity.

**Article 9** The conduct of searches in the broadcasters' headquarters or premises should not prejudice the free expression of the journalists and may not suspend the broadcasting of the programs.

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

According to the law, authorities shall provide the protection of journalists if they are subjected to pressures or threats that are likely to prevent or effectively restrict the free exercise of their profession. The protection of the broadcasters' premises, if they are subject to threats which are likely to impede or affect the free conduct of their activity shall also be provided. The protection provided by competent authorities should not become a pretext to prevent or restrict the free exercise of their profession or activity.

***35.Access to information and public documents***

Specific rules are included in Law 544/2001 on the free access to information of public interest[47]. According to the law, in order to ensure the access of any person to information of public interest, public authorities and institutions have the obligation to organize specialized information and public relations departments or to designate persons with responsibilities in this field. Public authorities have the obligation to answer to the requests in 10 days or, in case of difficult or complex replies in 30 days.

The National Anticorruption Strategy pays special attention to the disclosing of information of public interest. Two annexes detail the standard of publication of such information by public institutions and state-owned companies. The annual monitoring process also collects data on the way public institutions enforce the legislation; such data is publicly available at www.sna.just.ro.

The peer-review process employed by the NAS Technical Secretariat as part of the monitoring process of the strategy has regularly touched upon the topic of public access to information. This was one of the themes of the evaluation rounds carried out in 2013-2015 and 2019. 17 evaluation reports dealing with this issue can be found on the NAS portal www.sna.just.ro.

Examples of **annual reports** regarding the enforcement of Law 544/2001:

- Prosecutors' Office attached to the High Court of Cassation and Justice http://www.mpublic.ro/ro/content/raport-legea-5442001-anul-2018
- National Anticorruption Directorate - https://www.pna.ro/raport_anual_l544.xhtml
- Ministry of Interior - https://www.mai.gov.ro/informatii-publice/aplicarea-legii-544-2001/
- General Secretariat of the Government - https://sgg.gov.ro/new/despre-institutie/rapoarte-si-studii/

***36.Other - please specify***

# IV. Other institutional issues related to checks and balances

## *A. The process for preparing and enacting laws*

The legal framework related to the process for preparing and enacting laws includes mainly:

- The Constitution of Romania[48];

[47] http://legislatie.just.ro/Public/DetaliiDocument/31413
[48] http://www.cdep.ro/pls/dic/site.page?id=371&idl=2&par1=1

- Law No. 24 Of 27 March 2000 on the rules of legislative technique for the preparation of normative acts[49]
- Law 52/2003 regarding the decisional transparency in the public administration[50]
- Government Decision no. 561 of May 10, 2009 for the approval of the Regulation regarding the procedures, at the level of the Government, for the elaboration, approval and presentation of the projects of documents of public policies, the projects of normative acts, as well as of other documents, for adoption / approval[51]

In brief, a law goes through the following stages:

a. Preparation of the draft law (in most of the cases Government through its Ministries)
b. Endorsement of the draft law by the public authorities with responsibilities in its application
c. Public consultation on the draft law
d. Submitting the draft law to the General Secretariat of the Government (SGG)
e. Opinion of the Legislative Council
f. Adoption of the draft law by the Government and submission to the Parliament
g. Opinions of committees of the first seized chamber and adoption (Senate/ Chamber of Deputies)
h. Transmission to the second seized chamber (Chamber of Deputies/ Senate)
i. Opinions of committees of the second seized chamber and adoption
j. (Pos.) Seizing the Constitutional Court for an *ex ante* check of the draft law
k. Transmission to the President of Romania for promulgation
l. Publication in the Official Gazette

37. ***Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).***

*Stakeholders'/ public consultations and transparency:* the initiator has the obligation to publish the draft law at least 30 days before being submitted for analysis, approval and adoption. The following documents are to be published: a note including reasons for the new act, the full text of the draft law, as well as the deadline, place and manner in which the interested parties can send in writing proposals, suggestions, opinions with value of recommendation regarding the draft normative act. The announcement regarding a draft normative act with relevance on the business environment is transmitted by the initiator to the business associations and to other legally constituted associations. The draft normative act is transmitted for analysis and approval to the public authorities concerned only after finalization of the public consultation. The public authority in the case is obliged to decide to organize a meeting in which the draft normative act should be debated publicly, if this has been requested in writing by a legally constituted association or by another public authority. In the case of a situation which, due to its exceptional circumstances, requires

[49] http://legislatie.just.ro/Public/DetaliiDocument/21698
[50] http://legislatie.just.ro/Public/DetaliiDocument/41571?isFormaDeBaza=True&rep=True
[51] http://legislatie.just.ro/Public/DetaliiDocument/105816

the adoption of immediate solutions, in order to avoid a serious harm to the public interest, the draft normative acts are subject to the adoption in the urgent procedure provided by the regulations in force.

Examples of draft laws published for public debate: http://www.just.ro/transparenta-decizionala/acte-normative/proiecte-in-dezbatere/

*Rules and use of fast-track procedures and emergency procedures:*

According to the national system, under specific conditions the Government can adopt emergency ordinances having the power of a law. According to the Constitution (art.115), the Government can only adopt emergency ordinances in exceptional cases, the regulation of which cannot be postponed, and have the obligation to give the reasons for the emergency status within their contents. An emergency ordinance shall only come into force after it has been submitted for debate in an emergency procedure to the Chamber having the competence to be notified, and after it has been published in the Official Gazette. Emergency ordinances cannot be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for transferring assets to public property forcibly.

In **2020** (cut-off date 16 April 2020) **49 Laws** have been issued, as well as **48 Emergency Ordinances** (some of them in the context of the COVID-19 pandemic).

In 2019, **263 Laws** have been issued, as well as **89 Emergency Ordinances.**

***38.Regime for constitutional review of laws***

The constitutional review of laws is regulated in art.146 of the Constitution. According to this provision, the Constitutional Court shall have the following powers:

a) to adjudicate on the constitutionality of laws, before the promulgation thereof upon notification by the President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, a number of at least 50 deputies or at least 25 senators, as well as ex officio, on initiatives to revise the Constitution;

b) to adjudicate on the constitutionality of treaties or other international agreements, upon notification by one of the presidents of the two Chambers, a number of at least 50 deputies or at least 25 senators;

c) to adjudicate on the constitutionality of the Standing Orders of Parliament, upon notification by the president of either Chamber, by a parliamentary group or a number of at least 50 Deputies or at least 25 Senators;

d) to decide on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration; the objection as to the unconstitutionality may also be brought up directly by the Advocate of the People.

(…)

***B. Independent authorities***

***39.Independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies***

A non-exhaustive list of national human rights institutions, ombudsman and equality bodies includes:

- **The Ombudsman (*Advocate of People - Avocatul Poporului*)**[52] was one of the new institutional structures created by the Constitution of 1991 and its purpose is to defend individuals' rights and freedoms in their relationship with the public authorities. It is governed by the rules stipulated in Law 35/1997 on the organisation and functioning of the institution of the Advocate of the People[53];
- **National Council for Combating Discrimination**[54] - an autonomous state authority, under parliamentary control, which carries out its activity in the field of discrimination. The Council guarantees the observance and application of the principle of non-discrimination, in accordance with the national legislation in force and with the international documents to which Romania is a party. The National Council for Combating Discrimination operates on the basis of the Government Ordinance no. 137/2000 republished, regarding the prevention and sanctioning of all forms of discrimination[55];
- **National Authority for the Rights of Persons with Disabilities, Children and Adoptions**[56] - specialized body of the central public administration, with legal personality, subordinated to the Ministry of Labour, with the role to fulfil the obligations assumed by the Romanian state in the matter of protection and promotion of the rights of persons with disabilities through the international conventions and treaties to which Romania is a party, to implement and to ensure the application;
- **National Agency for Equal Opportunities between Women and Men**[57] - public institution subordinated to the Ministry of Labor, which promotes the principle of equal opportunities between women and men and it aims at combatting all forms of discrimination based on gender and eliminating domestic violence;
- **Romanian Institute for Human Rights**[58] - an independent body with legal personality, established by Law No. 9/1991[59], the first national human rights institution created in Romania after 1989.

### *C. Accessibility and judicial review of administrative decisions*

#### *40. Modalities of publication of administrative decisions and scope of judicial review*

*Publication*: according to art.108 of the Constitution the Government adopt **decisions and ordinances**. Decisions shall be issued to organize the execution of laws. Ordinances shall be issued under a special enabling law, within the limits and in conformity with the provisions thereof. Decisions and ordinances adopted by the Government shall be signed by the Prime Minister, countersigned by the Ministers who are bound to carry them into execution, **and shall be published in the Official Gazette of Romania. Non-publishing entails non-existence of a decision or ordinance.**

[52] http://www.avpoporului.ro/index.php?option=com_content&view=article&id=346&Itemid=212&lang=en
[53] http://www.avpoporului.ro/index.php?option=com_content&view=article&id=394&Itemid=266&lang=en
[54] https://cncd.ro/home
[55] https://main.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2017/02/Ordinance_No_137_of_2000.pdf
[56] http://anpd.gov.ro/web/despre-noi/
[57] https://anes.gov.ro
[58] http://www.irdo.ro/english/index.php
[59] http://www.irdo.ro/english/legea9.php

*Judicial review*: According to Law 544/2004 on the administrative litigation[60], any person who considers herself/himself injured in hes/hir right or in a legitimate interest, by a public authority, by **an administrative act** or by the non-resolution within the legal term of an application, **may address to the competent administrative litigation court**, for the annulment of the act, the recognition of the claimed right or the legitimate interest and the reparation of the damage caused to it. The legitimate interest can be both private and public (art.1 par.1).

An **administrative act** according to the Law 544/2004 means administrative act - a unilateral act of an individual character or a normative act issued by a public authority, under a regime of public power, in order to organize the execution of the law or the concrete execution of the law, which gives rise, modifies or extinguishes legal reports.

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

The final court decisions are compulsory for the public administration and the State institutions.

***D. The enabling framework for civil society***

The right of association is guaranteed by the Constitution (art.40).

***42. Measures regarding the framework for civil society organisations***

Government Ordinance 26/2000[61] provides for the rules governing the setting up associations and foundations. According to art.1 of this act, natural persons and legal persons who follow activities of general interest or in the interest of some communities or, as the case may be, in their non-patrimonial personal interest may constitute associations or foundations. According to art.2, the purpose of this ordinance is to create the framework for:

a) the exercise of the right to free association;

b) promoting civic values, democracy and the rule of law;

c) the pursuit of a general, local or group interest;

d) facilitating the access of associations and foundations to private and public resources;

e) the partnership between the public authorities and the legal persons of private law without patrimonial purpose;

f) observance of public order.

The association becomes a legal person from the moment of its registration in the Register of associations and foundations. The registration is ordered by a **judge**, after having verified the legality of documents submitted by the applicant.

**Relevant statistics – registrations in the Register of associations and foundations:**

| Category/ Year | 2019 | 2020 | Total 2019+2020 |
|---|---|---|---|
| Associations | 3397 | 668 | 4065 |
| Federations | 20 | 2 | 22 |
| Foundations | 70 | 11 | 81 |

[60] http://legislatie.just.ro/Public/DetaliiDocument/57426
[61] http://legislatie.just.ro/Public/DetaliiDocument/20740

| | | | |
|---|---|---|---|
| Unions | 1 | 2 | 3 |
| Foreign Legal Persons | 1 | 1 | 2 |
| **Total** | **3489** | **684** | **4173** |