

European Rule of Law Mechanism: written contribution of Romania

INTRODUCTION

The present written input is aimed to contribute to the preparation of the 2022 Rule of Law Report.

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

This contribution consolidates the previous national contributions provided for the first two exercises on the Rule of Law Mechanism. The objective is to feed the assessment of the Commission with factual information on evolutions and developments on the ground in Romania, compared to the second Rule of Law Report, issued on July 20, 2021.

The following institutions contributed with their technical expertise to the consolidated contribution presented below: Superior Council of Magistracy, High Court of Cassation and Justice, Prosecutors Office attached to the High Court of Cassation and Justice, National Anticorruption Directorate, National Integrity Agency, National Audio-Visual Council, Ombudsman, Court of Auditors, Constitutional Court, National Parliament, National Council for Combating Discrimination, the Ministry of Culture, General Secretariat of the Government, Legislative Council, National Union of Bars, Ministry of Justice, the latter being responsible for the overall coordination of the process.

Romania welcomes the Commission' intention to introduce specific recommendations for country reports, allowing to Member States to exchange lessons learnt, as well as to share good practices in the field. This will also constitute a very good opportunity to ensure an appropriate follow-up to the reports.

The national authorities remain fully committed to provide any further information deemed necessary for the third Rule of Law Report to be issued by the European Commission in 2022.

Aware of the fact that the respect of the rule of law is a shared and continuous responsibility for all Member States and EU institutions, Romania reiterates its political commitment to further contribute to the success of this third exercise, in line with the principle of sincere cooperation provided for in art. 4(3) of the Treaty of the EU.

I. JUSTICE SYSTEM

Introduction

The previous contribution for the 2021 Rule of Law report provided *in extenso* the stage and certain provisions of the draft justice laws, on the draft law abolishing the Section for the Investigation of Crimes in Justice and on the draft laws amending the Criminal Code and Criminal Procedural Code.

Therefore, an up-date of the stage of all these draft laws would be useful:

a) Draft Justice laws – state of play

The draft justice laws have been subject to public consultation since September 2020 for several months until the spring of 2021. The Ministry of Justice will resume and continue the legislative process.

Following the integration of proposals and solutions received in the public consultation, taking into account also the recent decisions of the CJEU, the Ministry of Justice will submit the draft justice laws for inter-ministerial approval in the first part of February 2022 and then for the endorsement by Superior Council of Magistracy. According to the calendar the draft justice laws should be sent to the Parliament no later than 31 of March 2022.

It has to be mentioned that according to the National Recovery and Resilience Plan, the draft justice laws should be adopted until 30 of June 2023.

b) Draft law abolishing the Section for the Investigation of Crimes in Justice (SIJ) – state of play

On 22 January 2022 was launched the public debate on the draft law regarding the SIJ dismantling¹.

In the drafting process, the Venice Commission opinions were taken into consideration. Therefore, any procedural safeguards comprised by the draft pending at the Senate and criticized within the Opinion 1036/2021 were eliminated. In the Opinion 924/2018, the Venice Commission has acknowledged the advantages of the recourse to specialized prosecutors associated with appropriate judicial control, and our draft provides that the designated prosecutors will have experience and professional specialization. In the Opinion 950/2019, the Venice Commission criticized the SIJ as being outside the Public Ministry structure and the General Prosecutor's authority.

The draft law provides that the designated prosecutors are integrated within the Public Ministry structure. The criminal offences committed by members of the Superior Council of Magistracy, by judges of the High Court of Cassation and Justice and by the prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, by the judges from the courts of appeal and the Military Court of Appeal, as well as by the prosecutors from the prosecutor's offices attached to these courts are also within the competence of the Criminal Prosecution Section of the Prosecutor's Office attached to the High Court of Cassation and Justice.

The criminal offences committed by judges from courts of first instance, tribunals, military tribunals and by prosecutors from prosecutor's offices attached to these courts are also within the competence of the prosecutor's office attached to the court of appeal.

The criminal investigation is carried out by prosecutors specially appointed by the Plenum of the Superior Council of Magistracy, at the proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, or by prosecutors specially appointed by the Plenum of the Superior Council of Magistracy, at the proposal of the General Prosecutor of the prosecutor's office attached to the court of appeal, according to the procedure provided by this law.

The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice selects the prosecutors provided in para. (1) among those who activate within it and meet the following conditions: have a seniority of at least 15 years in the position of prosecutor; have the qualification "very good" at the last 2 professional evaluations and have not been subject to disciplinary sanctions in the last 3 years; have an impeccable moral conduct; have significant professional experience, mainly in the investigation of corruption offences and their assimilated offences or organized crime and terrorism offences, but not limited to these categories of offences; have not been sent to trial for an offence.

The general prosecutor of the prosecutor's office attached to the court of appeal selects the prosecutors among those who work in the criminal investigation section of this prosecutor's office and who meet the following conditions: have a seniority of at least 12 years in the position of prosecutor; have the qualification "very good" at the last 2 professional evaluations and have not been subject to disciplinary sanctions in the last 3 years; have an impeccable moral conduct; have significant professional experience, mainly in the investigation of corruption offences and offences assimilated to

¹ <https://www.just.ro/proiect-de-lege-privind-desfiintarea-sectiei-pentru-investigarea-infractiunilor-din-justitie/>

them or of organized crime and terrorism offences, but not limited to these categories of offences; have not been sent to trial for an offence.

The maximum number of prosecutors within the Criminal Prosecution Section of the Prosecutors' Office attached to the High Court of Cassation and Justice is 12, and the maximum number of prosecutors in the prosecution offices attached to the courts of Appeal is two for each of them, i.e. 30.

The draft law is also in line with the ECJ ruling of 18th of May 2021, respecting the independence of the judiciary.

Regarding the calendar, the draft is under public debate until the 31st of January 2022. The CSM is expected to endorse it in the near future in order to send it to the Parliament until the 20th of February 2022. According to the Governing Program, the draft should be adopted by the Parliament until the 31st of March 2022.

c) Draft laws amending the Criminal Code and Criminal Procedural Code – state of play

On 27 July of 2021, the draft law amending and supplementing Law no. 286/2009 on the Criminal Code, as well as of other normative acts, was published on the website of Ministry of Justice in view of public debates. The draft law envisages amending and supplementing Law no. 286/2009 on the Criminal Code, Law no. 682/2002 on witness protection, republished, Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code and Law no. 254/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by the judiciary during criminal proceedings, in order to harmonize the provisions of these normative acts with the provisions of the Constitution, as the latter were interpreted by the decisions of the Constitutional Court admitting certain exceptions of unconstitutionality regarding these normative acts.

On 2 September of 2021, the draft law amending and supplementing Law no. 135/2010 on the Criminal Procedure Code as well as other normative acts was published on the website of the Ministry of Justice in view of public debates. The draft proposes a series of legislative interventions in order to harmonize the provisions of the Criminal Procedure Code with the Constitution, as it has been interpreted by the decisions of the Constitutional Court.

The Ministry of Justice will resume the necessary procedures for the promotion of the projects so that they are submitted to the Government and Parliament for approval and adoption, respectively, by 31.03.2022 at the latest.

A. Independence

1. Appointment and selection of judges², prosecutors and court presidents (incl. judicial review)

According to the legislation in place there are no further changes in the procedures of appointment and selection of judges, prosecutors and court presidents.

Appointment procedures for senior prosecutors

The procedure for appointing senior prosecutors at Prosecutors' Offices attached to the Courts of Appeal (PCA), Prosecutors Offices attached to the Tribunals (PT), Prosecutors Offices attached to the First Instance Courts (PJ) led to the filling of 76 positions of Prosecutor General or Deputy Prosecutor, First Prosecutor or Deputy Prosecutor, out of a total of 245 positions opened for competition.

Selection of judges and prosecutors

A. During 2021 important steps have been taken in order to improve the proper functioning of the judiciary and for unblocking the human resources issue.

a) On July 9th, 2021 the Law no 192/2021 concerning some temporary measures regarding the admission to the National Institute of Magistracy (NIM), the initial professional training of judges and prosecutors, the exam for graduating the National Institute of Magistracy, the internship and capacity examination of the judges and prosecutors, as well as the examination for admission to magistracy was published in the Official Gazette, Part I, nr. 685/2021.

By the Law no. 192/2021 the admission competitions for National Institute of Magistracy and for magistracy have been unblocked.

² The reference to judges concerns judges at all level and types of courts as well as judges at constitutional courts.

The Regulation for admission to the National Institute of Magistracy was adopted by the Plenum of the Superior Council of Magistracy through Decision no. 119 of 16 July 2021. The Regulation for organizing and carrying out the competition for admission in magistracy was adopted by the Plenum of the Superior Council of Magistracy through Decision no. 120 of 16 July 2021.

In this context, during July 2021 – March/April 2022 *the competition for admission to the National Institute of Magistracy* is being carried out (300 justice auditor positions are open for competition: 175 for judge positions and 125 for prosecutor positions), as well as the *competition for admission to magistracy* (under art. 33 of the Law no. 303/2004, republished, with subsequent amendments and completions), 75 judge positions for the first instance courts being open for competition together with 50 prosecutor positions for the prosecution offices of the first instance courts.

b) Moreover, during 2021, *filling in the vacant non-leading positions* was carried out through the following procedures:

- *Assignment of the National Institute of Magistracy graduates, promotion 2020*

In the session on 17.12.2020, the Section for Judges of the SCM has decided the appointment of **113 National Institute of Magistracy graduates** - promotion 2020 as **junior judges**, beginning with 01.01.2021, according to the options expressed during assignment procedure carried out on 16.12.2020. The 113 filled in positions were counted as vacant in the statistics on 31.12.2020, due to the fact that the effective impact of occupying these positions produced effects with 2021. Moreover, based on the same results of the graduation NIM exam - promotion 2020, the Section for Prosecutor of the SCM decided to appoint as **junior prosecutors** beginning with 01.01.2021, of **86 National Institute of Magistracy graduates**.

- *Assignment of the National Institute of Magistracy graduates, promotion 2021*

In the session no 02.12.2021, the Section for Judges of the SCM has decided the appointment of **139 National Institute of Magistracy graduates** - promotion 2021 as **junior judges**, beginning with 01.01.2022, according to the options expressed during assignment procedure carried out on 02.12.2021. The 139 filled in positions were counted as vacant in the statistics on 31.12.2021, due to the fact that the effective impact of occupying these positions shall produce effects with 2022. Moreover, based on the same results of the graduation NIM exam -promotion 2021 the Section for Prosecutor of the SCM decided to appoint **70 National Institute of Magistracy graduates as junior prosecutors** beginning with 01.01.2022, according to the options expressed during assignment procedure carried out on 13.12.2021.

- *Appointment as definitive judge or prosecutor after the capacity exam of the junior judges/prosecutors*

According to art. 25 para. (1) of the Law no. 303/2004, after completing the internship junior judges and prosecutors are obliged to participate in the capacity exam. Under these provisions, during November 2020 - March 2021 the capacity exam for junior judges and prosecutors was carried out and as a result, during 2021 by the decree of the President of Romania 129 judges and 68 prosecutors were appointed, without noting it as a new procedure for filling in vacant positions.

- *Appointments and reappointments in judge and prosecutor positions under art. 33¹, respectively art. 83 para. (3) of the Law no. 303/2004 republished, with subsequent amendments and completions*

During 2021, a procedure for appointment in judge positions under art. 83 para. (3) of the Law no. 303/2004 was carried out. The Section for Judges of the SCM has decided to reappoint former magistrates; by the decree of the President of Romania 8 persons were appointed in judge positions out of which, 2 judges at courts of appeal, 3 judges at tribunals and 3 judges at first instance courts.

- *Appointing, upon request, prosecutors in judge positions and judges in prosecutor positions*

By the decision no. 476/16.04.2021 of the Section for Judges, a session for appointing prosecutors in judge positions has been carried out in 2021. According to the provisions of art. 61 of the Law no. 303/2004, republished, with subsequent amendments and completions, currently, following the motivated request prosecutors may be appointed as judges at the first instance courts, through the decree of the President of Romania at the proposal of the Superior Council of Magistracy, under the conditions provided by the law. The proposal for appointment in judge position shall be issued by the Section for Judges of the SCM with the advisory (non-compulsory) endorsement of the prosecution unit where the prosecutor functioned in, as well as of the court where he/she shall function. Following this procedure, the Section for Judges of the

SCM has proposed to the President of Romania the dismissal as judges and the appointment as prosecutors, upon request, 21 persons. Also, in the session on 18.11.2021, the Section for Judges has approved to open a new similar procedure. Moreover, during 2021, the Section for prosecutors has admitted the request of 6 judges to be dismissed from this position and appointed as prosecutors.

B. Appointment of judges to the Constitutional Court

According to the Romanian Constitution, the Constitutional Court is the guarantor for the supremacy of the Constitution. Regulated under the European/Kelsenian model, as a special and specialised authority, distinct from the authorities exercising legislative, executive and judicial functions, the Constitutional Court plays a key role in ensuring the mechanism of checks and balances in the State governed by the rule of law. The adoption of the Kelsenian model is reflected in the manner of appointment and configuration of the status of constitutional judges, governed by the Constitution and Law no 47/1992 on the organisation and functioning of the Constitutional Tribunal, republished, as amended.

Thus, in accordance with Article 142 (2) to (5) of the Constitution, *“(2) The Constitutional Court consists of nine judges, appointed for a term of office of nine years, which cannot be prolonged or renewed. (3) Three judges are appointed by the Chamber of Deputies, three by the Senate, and three by the President of Romania. (4) The judges of the Constitutional Court shall elect, by secret vote, the president thereof, for a term of office of three years. (5) The Constitutional Court shall be renewed by one third of its judges every three years, in accordance with the provisions of the Court's organic law.”*

The qualification asked for the appointment is settled by Article 143 of the Constitution: *„Judges of the Constitutional Court must have graduated law, and enjoy high professional eminence and at least eighteen years of experience in the legal field or academic teaching activity.”*

Also the provisions of Article 68 of Law No 47/1992 are relevant, according to which *“(1) Three months before expiration of the mandate of each Judge, the President of the Court shall notify the President of the Chamber of Parliament which has appointed the Judge or, as the case may be, the President of Romania, soliciting the appointment of another Judge in his or her place; the appointment shall be made at least one month before the cessation of the mandate of the preceding Judge.*

(2) In case the mandate has ceased before the expiration of the duration for which the Judge was appointed, and the remaining period exceeds six months, the President shall notify the public authority provided under paragraph (1) above, within three days at the most from the date of cessation of the mandate, in order to appoint a new Judge. The mandate of the Judge thus appointed shall cease at the expiration of the mandate of the Judge replaced.”

As regards the election of the President of the Constitutional Court, Articles 7 and 8 of Law No 47/1992 are applicable, which read as follows:

“Article 7

(1) The Constitutional Court shall have a President elected by secret ballot for a period of three years, by majority of the Judges' votes, within five days from the renewal of the Court.

(2) The President's term of office may be renewed.

(3) For the election of the President, each group of Judges appointed by the Chamber of Deputies, the Senate, and, respectively, by the President of Romania may propose a single candidature. If at the first ballot no candidate gets a majority of votes, a second ballot shall be taken between the first two candidates qualified or selected by drawing lots, if all candidates have received the same number of votes. Proceedings for the election of the President shall be conducted by the Judge who is the eldest of age.

(4) The President shall appoint a Judge to replace him while absent.

Article 8.

(1) In case of vacancy of office, a President shall be elected to act up to the end of the period of three years provided under Article 7, paragraph (1).

(2) The election shall take place according to the procedure provided under Article 7, paragraph (3), within five days from the finding of the vacancy.”

For the case-law concerning the appointment of constitutional judges, in which the Constitutional Court has interpreted and applied the above-mentioned constitutional and legal texts, please note Decision No 475 of 29 June 2016, published in M. Of. 602 of 8 August 2016, Decision No 395 of 5 June 2019, published in M. Of. 502 of 21 June 2019 and Decision No 396 of 5 June 2019, published in M. Of. 502 of 21 June 2019.

2. Irremovability of judges, including transfers (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

Legislative developments

a) The Law no. 198/2021 enshrines the return to the previous legislative solution for the hearing of appeals in panels of two judges, unless the law provides otherwise.

The reasons behind this provision are: the courts' staff is undersized, the difficulties to compose the judge panels, the high volume of activity.

b) By Law no. 86/2021, the changes operated in 2018 regarding the minimum age of 20 years required for the retirement of magistrates were repealed. More precisely, the Law nr. 86/2021 repealed as of, January 1st, 2022, the provisions of art. I pct. 142 of the Law no. 242/2018, referring to art. 82 para. (3) of the Law no. 303/2004, according to which judges, prosecutors with seniority between 20 and 25 years only in these offices also benefit upon request, before reaching the age of 60, of the service pension.

c) In June 2021, the draft Law on amending and supplementing the Law no. 303/2004 on the status of judges and prosecutors and amending the Law no. 304/2004 on the judicial organization was adopted by the Parliament. The draft Law regulated a 7-year seniority requirement for prosecutors eligible for appointment to DIICOT and DNA, as well as a transfer procedure for judges and prosecutors.

The High Court of Cassation and Justice has lodged an objection of unconstitutionality against it as a whole. The Constitutional Court Decision no. 514/2021 admitted the objection of unconstitutionality (prior to promulgation) and found that only the provisions of Article II of the law (which established a 7-year seniority requirement for prosecutors eligible for appointment to the DIICOT and DNA) were unconstitutional.

d) The Law no. 313/2021, published on 28.12.2021, establishes rules for the transfer of judges and prosecutors from one court to another court or from one prosecutor's office to another prosecutor's office and for the appointment of judges at the prosecutors' offices attached to the courts of first instance and of prosecutors to the office of judges at the courts of first instance.

Following a motivated request, prosecutors may be appointed as judges at the first instance courts, through the decree of the President of Romania at the proposal of the Superior Council of Magistracy, under the conditions provided by the law. The proposal for appointment in judge position shall be issued by the Section for Judges of the SCM with the advisory (non-compulsory) endorsement of the prosecution office where the prosecutor functioned in, as well as of the court where he/she shall function.

3. Promotion of judges and prosecutors (incl. judicial review)

a) Promotion procedures of judges

During 2021, April - August 2021 a competition for effective promotion in non-leading positions was carried for a number of 278 positions for tribunals and 99 positions for courts of appeal, as approved by the Section for Judges decision no. 474/16.04.2021.

By the decision no. 1065/16.09.2021 of the Section for Judges, beginning with 15.10.2021 (with one exception - promotion beginning with 01.01.2022), a number of 116 judges were promoted, out of which 60 at the courts of appeal and 56 at the tribunals.

Analyzing these data there should be noted that the percentage of filling in these positions related to the number of applications for the competition is of 30%. Moreover, there should be mentioned that by the decision no. 1605/22.12.2021 the Section for Judges has approved the competition for on-the-spot promotion for judges, in non-leading positions, to be carried out during 27.12.2021-08.04.2022 for a number of 350 positions at the tribunals, 350 positions at the courts of appeals and 7 positions of judicial personnel assimilated to judges and prosecutors.

b) Promotion procedures of judges to the High Court of Cassation and Justice

In 2021, a number of 9 judges were promoted to the High Court of Cassation and Justice, as follows: 1 judge to the First Civil Chamber; 1 judge to the Second Civil Chamber; 2 judges to the Penal Chamber; 5 judges to the Administrative and Fiscal Contentious Chamber.

A contest for promotion to the position of judge at the High Court of Cassation and Justice has been underway in order to fill 12 vacancies for judges (July-December 2021): 2 vacancies to the First Civil Chamber; 2 vacancies to the Second Civil Chamber; 4 vacancies to the Penal Chamber; 4 vacancies to the Administrative and Fiscal Contentious Chamber.³ The contest has been finalized and all the positions have been filled.

For enhancing the accountability of the members of the Section for Judges of the SCM, who evaluate the candidates through the interview component of the competition, but also in order to better reflect the objective character of the points given to each candidate, evaluation sub-criteria (by regulation) were included in the assessment sheets, which are individual and nominal (the evaluation sheet for each candidate includes the name of the member of the Section for Judges who established the points and the signature of the respective member).

During the referred period, the procedure for occupying the position of president of the 1st Civil Section and president of the Criminal Section of the High Court of Cassation and Justice (HCCJ) was carried out and, by the decisions no. 1266 and no. 1267/16.11.2021, the Section for Judges of the SCM appointed the presidents of the two Sections of the HCCJ. Taking into account the concern to ensure transparency of procedures, interviews were transmitted online.

On 14 December 2021, the president of the High Court of Cassation and Justice has requested the Superior Council of Magistracy to organize a new contest for promotion to the position of judge at the supreme court in order to fill 8 vacancies for judges (including temporary vacancies): 2 vacancies to the First Civil Chamber; 3 vacancies to the Penal Chamber; 3 vacancies to the Administrative and Fiscal Contentious Chamber.

c) Promotion procedures of prosecutors

During 2021 the competition for promotion prosecutors in non-leading positions both effective and on the spot was carried out. Thus, by the decision no. 153/16.02.2021, the Section for Prosecutors approved the competition for effective promotion of prosecutors for a number of 82 positions. Following the competition 20 non-leading positions were occupied and other 3 requests have been enforced (2 prosecutors were promoted to the Prosecution Office of the HCCJ, 10 prosecutors were promoted to the prosecution offices of the courts of appeal and 11 prosecutors were promoted to the prosecution offices of the tribunals).

By the decision no. 722/13.07.2021 the Section for Prosecutors approved for the competition for promotion on the spot for non-leading positions for prosecutors to be organized on September 12th 2021; a number of 190 positions were open for competition (100 positions at the prosecution offices of the tribunals, 50 positions at the prosecution offices of the courts of appeal, 30 positions at the Prosecution Office of the HCCJ, 5 positions at the Prosecution Office of the HCCJ - Section for military prosecution, 5 positions Military Prosecution Office of the Military Court of Appeal). Following the competition 101 prosecutors were promoted for the level of prosecution offices of the tribunals, 51 prosecutors for the level of prosecution offices of the courts of appeal, 30 prosecutors for the level of Prosecution Office of the HCCJ, 5 military prosecutors were promoted at the level of Prosecution Office of the HCCJ - Section for military prosecution and 3 military prosecutors for the level of Military Prosecution Office of the Military Court of Appeal.

The large number of promotions-in-place and the lack of an obligation to attend actual promotion sessions are not motivating factors for career promotion/advancement. The promotion-in-place session in September 2021 revealed lower promotion averages for candidates admitted at PCA and PT level than in other sessions; another promotion session will be organised by the SCM in 2022.

4. Allocation of cases in courts

During the referred period there were no legislative updates in the matter of random allocation of cases in courts.

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

During the referred period there were no legislative developments in this matter, but it should be mentioned the active involvement of the Superior Council of Magistracy in accomplishing the constitutional role of guarantor of the

³ In 2021, 15 judges of the High Court of Cassation and Justice retired, as follows: 3 from the First Civil Chamber, 2 from the Second Civil Chamber, 5 from the Penal Chamber and 5 from the Administrative and Fiscal Contentious Chamber.

independence of the Judiciary; namely, during February – December 2021 a number of 36 decision in the matter of defending independence of the judicial system, respectively in the matter of defending professional reputation, independence and impartiality of individual judges and prosecutors.

6. Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

a) Aspects related to the disciplinary regime

By its Decision of **May 18, 2021**, Asociația „Forumul Judecătorilor din România” și alții, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, the CJEU ruled on a series of reforms in Romania regarding the judiciary organisation, the disciplinary rules for magistrates, as well as the patrimonial liability of the State and the personal liability of judges for judicial errors. A decision pronounced on 07.06.2021 by the Pitești Court of Appeal (Case no. 722/46/2021) found, on the basis of the CJEU decision of May 18, 2021, of the decision to establish the CVM for Romania, and of Article 19 (1)(II) of the TEU, that the SIJ is not justified by objective and verifiable imperatives related to the proper administration of justice and is not accompanied by specific guarantees that would allow, on the one hand, to avert any risk that this section may be used as an instrument of political control over the work of those judges and prosecutors, susceptible of jeopardizing their independence (...). The judge who pronounced this decision is the subject of a disciplinary investigation.

The **CCR decision no. 390/2021** rejected, as unfounded, the objection of unconstitutionality formulated by Asociația „Forumul Judecătorilor din România”, „Mișcarea pentru apărarea statutului procurorilor” in Case no. 45/46/2019 of the Pitești Court of Appeal - Second Civil Section for administrative and fiscal litigation, and it was found that the provisions of Article 88¹ (1)-(5), of Article 88²-88⁷, of Article 88⁸ (1)(a-c, e) and (2), as well as of Article 88⁹ of Law no. 304/2004 on the organisation of the judiciary are constitutional in relation to the criticisms made. In its reasoning, the CCR stated, inter alia, that the application of paragraph 7 of the operative part of the decision, according to which a court “is authorized to leave unenforced a national provision which falls within the scope of Decision 2006/928 and which it considers, in the light of a judgment of the Court, to be contrary to that decision or to Article 19 (1)(II) of the TEU” has no basis in the Romanian Constitution, as Article 148 of the Constitution enshrines the priority of the application of European law over the contrary provisions of domestic law. However, the CVM reports, drawn up on the basis of Decision 2006/928, by their content and effects, as established by the CJEU Decision of May 18, 2021, do not constitute norms of European law, which the court should apply as a matter of priority, removing the national norm. Therefore, the national judge cannot be put in a position to decide the priority application of certain recommendations to the detriment of national legislation, as the CVM reports have no regulatory nature, so they are not susceptible to conflict with domestic law. This conclusion is all the more necessary in the event that the national legislation has been declared in accordance with the Constitution by the national constitutional court, in the light of the provisions of Article 148 of the Constitution.

By the **CJEU Decision of December 21, 2021**, in the related cases C-357/19 Euro Box Promotion and others, C379/19 DNA - Serviciul Teritorial Oradea [Ro. National Anti-corruption Directorate - Oradea Territorial Service], C-547/19 Asociația „Forumul Judecătorilor din România”, C-811/19 FQ and others, and C-840/19 NC, it has been held that European Union law precludes the application of case law of the Constitutional Court in so far as the latter, in conjunction with national provisions on limitation, creates a systemic risk of impunity. The prevalence of the European Union law requires that national judges have the power to leave unenforced a decision of a constitutional court which is contrary to that law, especially without being exposed to the risk of incurring disciplinary action.

b) Increasing the transparency of disciplinary jurisprudence

According to the Superior Council of Magistracy, during the referred period there were no updates in this matter; nevertheless, important steps have been taken in terms of increasing the transparency of disciplinary jurisprudence⁴ at the level of the Council, by publishing, in anonymized format, the jurisprudence on disciplinary decisions that have become final and breaches of the code of ethics on the portal accessible only to magistrates. Furthermore, there were also published aspects regarding preliminary interpretations regarding incompatibilities and interdictions, in order for judges and prosecutors to learn about situations that could lead to possible incompatibilities and adjust their conduct accordingly.

c) Aspects related to the judicial review

According to art. 51 from the Law no. 317/2004 on the Superior Council of Magistracy, the judicial review of decisions on disciplinary liability of judges and prosecutors (recourse) is exercised by the Panels of 5 judges of the High Court of Cassation and Justice.

In 2021, the Panels of 5 judges solved, as last instance (recourse), 19 cases on disciplinary liability of judges and prosecutors (disciplinary action).

In 8 of the above-mentioned cases, the Panels of 5 judges upheld/applied a disciplinary sanction.⁵

7. Remuneration/bonuses/rewards for judges and prosecutors, including changes (significant increase/decrease over the past year), transparency in the system and access to information

There are no significant developments.

8. Independence/autonomy of the prosecution service

According to the Prosecutors Office attached to the High Court of Cassation and Justice there have been no decisions of the Constitutional Court or the High Court of Cassation with an impact on the independence of the prosecutor's office. The Plenum of the CSM has noted, through decisions adopted under Article 30 of Law no. 317/2004, the impairing of the independence of the judicial system as a whole, when dealing with cases with a wide social impact (10 August - the DIICOT case - decision of 13.05.2021, the Băneasa Farm case - decision of 29.06.2021, statements of the Minister of Justice on the criteria for transferring cases from one prosecutor's office to another - decision of 14.12.2021).

The manner in which the Section for Judges assessed the exercise by the prosecutor of the possibility of challenging the judges, on the grounds of the infringement of the judges' independence (Judgment no. 825 of 29 June 2021), has led the Prosecutor General to lodge a preliminary complaint in order to distinguish the reasoned criticism inherent in this procedural incident (challenge) from manifestations concerning the functional independence of the judges.

The positions voiced through the media, on an individual basis, by one of the members of the SCM appointed on behalf of civil society were submitted for examination under Article 30 of Law 317/2004, and the request to defend the independence, impartiality and professional reputation of prosecutors was admitted⁶.

For further details on this subject please see Annex 1 (Decision of the Section for Prosecutors no.1030/ 09.11.2021).

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

During the reporting period, the profession faced several problems:

a) The Covid 19 Pandemic. The challenges for the participation of all parties in trials during the Pandemic continue to be tough. The rules were in principle observed at the level of the courts/ prosecutor's office.

⁴ <https://emap.csm1909.ro/>

⁵ The Panels of 5 judges: in **2** cases dismissed/annulled the disciplinary action, in **6** cases upheld the judgments rendered by the Chambers of the Superior Council of Magistracy dismissing/annulling the disciplinary action and in **3** cases quashed the judgments rendered by the Chambers of the Superior Council of Magistracy dismissing/annulling the disciplinary action and sent the cases to the Chambers of the Superior Council of Magistracy.

⁶ Decision no. 1030/09.11.2021 of the Section for Prosecutors, see premise: "OFF/ON The record" broadcast on 7 November 2021 on Aleph News TV at 19:50 hrs.

b) at the level of some courts, the “policy” of keeping the lawyer ex officio in parallel with the lawyer chosen by the party is maintained. UNBR protests against these behaviours, but the problem is far from being solved and affects both the rights of the lawyer, but especially of the litigant.

c) at the level of an ICCJ panel, a lawyer was convicted, at the end of 2020, for the consultancy and representation taken in the exercise of the profession (5 years in prison). He was convicted for the participating in the formation of an organized criminal group and for complicity to abuse of office. The decision came three years later after he was acquitted of all charges by the inferior courts, which established that there was no indication that the lawyer committed any of the crimes for which he had been charged.

In the same trial, another lawyer was sentenced to prison with suspension of execution also for committing crimes in the exercise of the profession - complicity to abuse of office against public interests.

NARB condemned the repression against a lawyer for his ordinary activities like assisting his client and sustaining legal advice. NARB insisted that the „policy” of identifying the lawyer with his client is extremely dangerous for the profession and can be an unacceptable precedent for the state of law and for the right to defence in Romania, as it was stated in The ONU Basic Principles on the Role of Lawyer, Havana, 1990. This is the largest international legal framework about the high importance of protecting the lawyer’s independence.

The American Bar Association, The International Bar Association, The Council of Bars and Law Societies of Europe, The European Bars Federation joined the campaign of The National Union of Romanian Bars - The defence of the defenders - on the threats generated by the identifying the lawyers with their clients.

At the last resort, on 23 November 2021 the imprisoned lawyer was released from prison after his appeal in cassation was admitted by the High Court of Cassation and Justice. The court ruled that all lawyer’s acts and deeds were carried out in the normal exercise of his profession. He has been found innocent on all counts. The cassation appeal of the other lawyer was rejected.

Details on all the mentioned problems can be found on the UNBR website, www.unbr.ro - <https://www.unbr.ro/apararea-profesiei/> or in the recent most newsletter: <https://www.unbr.ro/newsletter/newsletter-31-decembrie-2021/>.

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

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

<i>January 1st 2021 – December 22nd 2021 (Plenum, Section for Judges, Section for Prosecutors)</i>			
<i>TOTAL decisions</i>	<i>Defending the independence of the judiciary: PLENUM 7, out of which: 5 admitted and 2 dismissed</i>	<i>Defending professional reputation, independence and impartiality: SECTION FOR JUDGES 14, out of which: 7 admitted, 5 dismissed, 1 withdrawal and 1 Waived</i>	<i>Defending professional reputation, independence and impartiality: SECTION FOR PROSECUTORS 15, out of which: 11 admitted, 3 dismissed, 1 waived.</i>
<i>36 out of which: 23 admitted, 10 dismissed, 1 withdrawal and 2 Waived</i>			

B. Quality of justice⁷

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

⁷ Under this topic, Member States are not required to give statistical information but should provide input on the type of information outlined under section 2.

Superior Council of Magistracy – up-dates

In order to update the general information on the legal framework as presented in the previous reports, the following aspects/endeavors aiming the accessibility of courts as well should be mentioned:

Portal ReJust⁸, <https://rejust.ro>, was launched, an application created and developed by the Superior Council of Magistracy in order to allow both citizens and judicial practitioners an easier access to courts decisions rendered countywide.

On December 21st, 2021 the SCM has signed the Addendum No. 3 to the financing contract for the project “Professional Training and Capacity Building in the Judiciary”, funded under the Norwegian Financial Mechanism 2014-2021, where Ministry of Justice is the program operator, based on which there will be created 25 hearing rooms for minors at the level of the Romanian courts.

During the referred period the territorial jurisdiction of the first instance courts was redefined. Thus, on June 10th 2021, Decision no. 102/2021 of the SCM Plenum on determining the localities assigned to the first instance courts in each county was adopted, in order to redefine the territorial jurisdiction of the first instance courts. The decision was further amended and supplemented by SCM Decision no. 148/21 October 2021. This measure, by re-establishing the territorial jurisdiction of some courts, is intended to balance the workload at the level of first instance courts and to give prevalence to the principle of bringing justice closer to the citizen.

12. Resources of the judiciary (human, financial, material⁹)

A. Human resources

➤ Superior Council of Magistracy

a) Statistics in terms of exiting the magistracy in the referred period:

By the decrees of the President of Romania published in 2021, 264 judges have exited the profession as it follows: 256 retirements; 1 resignation; 6 judges were appointed in prosecutor positions; 1 person due to not presenting herself/himself, without justification, for the special expertise until the deadline of the suspension from office under art. 64 para. (4) of the Law no. 303/2004. Also, 6 other positions become vacant due to the decease of the judges.

b) Statistics in terms of occupancy rate in January 2021

- out of 5076 judge positions, 4523 were occupied (73% women and 27% men) and 553 were vacant,
- out of 143 positions of assistant-magistrate at the HCCJ, 112 were occupied and 31 were vacant.
More details can be found in the 2020 Report of the state of justice.

c) Statistics in terms of occupancy rate in December 2021

- out of 5072 judge positions, 4403 were occupied (74% women and 26% men) and 669 were vacant,
- out of 143 positions of assistant-magistrate at the HCCJ, 130 were occupied and 13 were vacant.

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

The situation of the positions on December 31, 2021 at the level of the Public Ministry is presented in the Annex 2. The occupancy rate¹⁰ for prosecutors remained low, from 85.26% (01.02.2021) to 79.26% (on 01.12.2021) for Prosecutor's Offices attached to Courts of Appeal and subordinate prosecutor's offices, while it has remained relatively constant, although critical, for the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anti-corruption Directorate and the Directorate for the Investigation of Organised Crime and Terrorism, respectively 76.72-77.97%. The overall occupancy rate for prosecutors was **79.51%** on 31.12.2021.

⁸ <https://www.csm1909.ro/PageDetails.aspx?FolderId=9185>
<https://rejust.ro/>

⁹ Material resources refer e.g. to court buildings and other facilities.

¹⁰ The data are processed by the Superior Council of Magistracy, published monthly.

<https://www.csm1909.ro/Pages.aspx?PageId=281&PageTitle=Locuri-vacante>

In 2021, 132 prosecutors were released into retirement.

Nine police officers were selected and seconded for the activity of executing technical surveillance mandates, and consultations took place with the Ministry of Justice and the Ministry of Internal Affairs regarding the appointment of police officers from judicial police to prosecutor's offices.

Other measures

The Government Decision no. 650/16.06.2021 supplemented by 90 the maximum number of posts of judicial police officers and agents and by 50 the maximum number of posts of specialized auxiliary staff for the National Anticorruption Direction, over a period of 2 years. According to the National Program for Recovery and Resilience it is expected to reach an occupancy rate of 85% of the prosecutor's positions within DNA by June 30, 2023.

The Government Decision no. 744/2021 supplemented by 96 positions the maximum number of positions for the Direction for Investigating Organised Crime and Terrorism Crimes (11 prosecutors, 45 experts and 40 clerks and officials).

On August 20th, 2021, the Ministry of Justice issued for public debates a draft Government Decision supplementing by 200 the number of court clerk positions. The intention is to supplement, on a step-by-step basis, the number of court clerk positions by 2370 additional positions.

During 2021 two selection procedures were carried out for European Prosecutors Delegated to Romania and a third one was launched on the 20th of January 2022.

B. Financial resources

Prosecutors Office attached to the High Court of Cassation and Justice

The budget credits approved for the Public Ministry for the year 2021 were of 1,925,849 thousand RON, out of which 1,908,254 thousand RON from the "State budget" source and 17,595 thousand RON from the "Non-reimbursable external funds" source. The payments reported by the Public Ministry at the end of 2020 totaled 1,839,610 thousand RON, of which 1,831,827 thousand RON from the "State budget" source, registering an execution rate of 95.99%, and 7,783 thousand RON from the "Non-reimbursable external funds" source, the execution rate being 44.23%.

In 2021, an investment for the headquarters of the Prosecutor's Office attached to the Răcari District Court (Dâmbovița County), amounting to 1,473,539 RON, was completed, other investment works being managed by Compania Națională de Investiții [Ro. National Investment Company] (ongoing works).

During 2021, the Prosecutor's Office attached to the High Court of Cassation and Justice attracted funds and carried out activities from **projects with non-reimbursable external financing** in a total amount of **27,451,000 RON**, distributed as follows:

1. from the European Social Fund - "Administrative Capacity Development" 2014-2020 Operational Program, funds were budgeted in the amount of **16,071,000 RON**, distributed as follows: national financing: 2,539,000 RON; non-reimbursable external financing: 13,315,000 RON; ineligible expenses: 217,000 RON.
2. from other community programs financed in the period 2014-2020 (grants from the European Commission), funds were budgeted in the total amount of **5,347,000 RON**, of which 2,780,000 RON from non-reimbursable external financing - external source, and 2,567,000 RON from the State budget, of which: national financing: 480,000 RON; non-reimbursable external financing: 1,647,000 RON; ineligible expenses: 440,000 RON.
3. from the Norwegian Financial Mechanism 2014-2021 Justice Program, funds were budgeted in a total amount of **6,033,000 RON**, of which: national financing: 831,000 RON (external source); non-reimbursable external financing: 4,697,000 RON (external source); ineligible expenses: 505,000 RON (State budget).

The projects carried out in 2021 by the Prosecutor's Office attached to the High Court of Cassation and Justice are presented in a detailed manner in Annex 3.

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

a) Professional training of judges and prosecutors

Initial training

In the initial professional year 2021, 210 persons were trained, of which 140 future judges and 70 future prosecutors. Exceptionally, no entry exam was organized in 2020 and no generation of first year was trained, consequently.

In 2021, the main challenge in the training process of future judges and prosecutors remained, in the current pandemic context, the efforts to adapt the initial training program to a distance learning format, without prejudice to the practical nature of training.

The initial training program included both legal and non-legal skills, grouped in a pole of disciplines dedicated to socio-human sciences, which addressed topics related to psychology, communication and personal development, sociology, critical thinking, professional ethics and deontology. The study of foreign languages also aimed at the acquisition of knowledge and the development of non-legal skills relevant to the exercise of the profession. The conferences and seminars took place online, the activity being focused on deepening knowledge of law, through practical applications, case studies, drafting procedural documents, case studies, organizing mock trials and simulations, the practical character being the essence of professional training.

The practical module addressed to second year judicial trainees took place online, while the traineeships provided by the initial training program - in courts, prosecutor's offices, other institutions - took place face-to-face in the available centers.

Continuous training

In carrying out its task of training members of the judiciary, NIM carried out and coordinated, during 2021, continuous training activities for judges and prosecutors, both at centralized and decentralized level, in a challenging pandemic context.

NIM's efforts have been focused in this context on reconfiguring some of its training activities from *face-to-face* to online format. To this end, it was necessary to identify IT solutions and adapt them to the security and educational requirements specific to the training organised by the Institute, to quickly familiarize training staff, NIM employees and magistrates with the technical requirements and methodology specific to online training.

NIM organised 95 continuous training activities in areas of interest such as: unifying judicial practice, hearing techniques in criminal proceedings, administration of evidence, recovery of crime damage, fighting corruption and economic and financial crimes, fight against trafficking in drugs, fight against trafficking in human beings, fight against cybercrime; fight against domestic violence, justice for minors, judicial management, techniques of drafting the act of justice, labour law, insolvency, ethics, personal development and NLP and training of trainers.

A number 26 training activities were organised in areas aimed at developing the concept of European legal culture at the level of the judiciary, such as: public procurement, procedural rules applicable in administrative disputes, tax procedure — in particular tax enforcement and value added tax (VAT); international judicial cooperation in civil matters and special procedures, judicial cooperation in civil and criminal matters, ECJ and ECHR case law, criminal enforcement law. Training sessions for judges, prosecutors and other professionals in the field of juvenile hearing techniques were also organised under this project.

A number of 24 training activities were organized aimed at increasing the level of professional training and implementing the guidelines of the new unitary communication strategy of the judiciary.

One of the main priorities of the Institute for 2021 was the training of magistrates in the field of investigating crimes related to sexual abuse of minor victims, with a focus on the effective handling of cases of crimes against freedom and sexual integrity against minor victims. At the same time, the 16th edition of the Summer School organised annually by the Institute was dedicated to justice for minors, with the objectives of training practitioners in specific techniques of hearing children, managing the cases of domestic violence, focusing on the best interests of the child, understanding the particularities of interaction with minors from an interdisciplinary perspective and promoting a child-friendly justice.

Last but not least, NIM launched a training program for trainers in the field of digital training tools, which had as main objectives to familiarize them with digital training tools, e-learning resources, remote learning platforms, facilitating the planning, organization, management and evaluation of training activities organised online.

b) Professional training of auxiliary personnel of courts/prosecution offices

Since its formation and to the present, the National School of Clerks (NSC) has recruited and provided initial training for approximately 2.000 clerks. In the accounting period of this report, due to the situation created by the COVID-19 pandemic, the admission examination into the NSC has been delayed, such that in 2020 the initial training of 80 clerks has been commenced, clerks that will be provided to the judicial system only in March 2021. In June 2021 initial training of a new generation of 120 clerks has been commenced, and they were assigned to their offices on the 22nd of December 2021. Even though 2021 has been a difficult year due to the Covid-19 pandemic, the National School of Clerks has been able to also organize face-to-face training sessions along the online sessions, and has registered 5.894 participations.

14. Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)¹¹

a) Ministry of Justice

According to the National Program for Recovery and Resilience the judiciary will receive an allocation of 148 MEURO, an amount dedicated to the digital transformation of the justice system.

ECRIS V is currently being developed through a project funded by POCA 2014-2020 with a completion horizon of December 2023. The project has funding of 25 MEURO.

b) High Court of Cassation and Justice

In June 2021, the President of the Supreme Court approved the Digitalization Plan of the High Court of Cassation and Justice, according to which the new website of the High Court of Cassation and Justice – www.iccj.ro – was launched. The new website contains a digital services platform (electronic file, electronic communication service for procedural acts, digital library).

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

1) Jurisprudence: The online publicly accessible database of jurisprudence of HCCJ contains: 5 January 2022 → 5.870 resumed relevant decisions; 5 January 2022 → 12.400 indexed decisions (the decisions are indexed by the Compartment for study and unification of jurisprudence established on 1 February 2021 within the HCCJ; the indexed decisions are published in the digital library starting with 15 September 2021); 5 January 2022 → 173.720 full text decisions (anonymized), decisions concerning preliminary ruling requests and decisions concerning the appeals in the interest of the law. On 24 December 2021, HCCJ launched the new jurisprudence search engine, which creates the possibility to search indexed jurisprudence by keywords and/or by subject matter.

2) Collections of relevant decisions: In 2021, HCCJ published the following collections of relevant decisions on the website of the supreme court in the digital library: the Bulletin of Jurisprudence for 2020, the Bulletin of Cassation no. 2/2020 and no. 1/2021 and the Bulletin of Jurisprudence in the matter of the disciplinary liability of judges and prosecutors for 2020.¹²

3) Decisions concerning preliminary ruling requests and decisions concerning the appeals in the interest of the law: HCCJ included in the digital library of the supreme court both decisions concerning preliminary ruling requests and decisions concerning the appeals in the interest of the law.

Other relevant elements refer to:

1) Electronic document filing form

Starting with 19 November 2021, the parties and their representatives have the possibility to submit documents in electronic format to the Chambers of HCCJ and the Panels of 5 judges, by using the „Electronic document filing form” from

¹¹ Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, accompanying the Communication on Digitalisation of justice in the European Union, COM(2020) 710 final and Figures 39 to 47 of the 2021 EU Justice Scoreboard, does not need to be repeated.

¹² The English version of the Bulletin of Jurisprudence in the matter of the disciplinary liability of judges and prosecutors for 2020 is available on the website of the High Court of Cassation and Justice in the digital library (<https://www.iccj.ro/en/digital-library/bulletin-of-jurisprudence-in-the-matter-of-disciplinary-liability/>).

the website of the supreme court.¹³ By using the Form, the parties and their representatives also have the possibility to request „Electronic communication of procedural acts (by e-mail).”

2) Form for the transmission of the public interest information requests, complaints and petitions

Starting with 19 November 2021, persons may submit to the HCCJ, in electronic format, requests and complaints based on the provisions of Law no. 544/2001 on free access to information of public interest, as subsequently amended and supplemented, as well as petitions based on the provisions of Government Ordinance no. 27/2002 on the regulation of the petitions settlement activity, as subsequently amended and supplemented, by using the „Form for the transmission of the public interest information requests, complaints and petitions” from the website of the supreme court¹⁴.

c) Superior Council of Magistracy

1) Launching ReJust portal <https://rejust.ro>. The ReJust portal is an application designed and developed by the SCM, to allow citizens and practitioners of the judiciary easier access to the judicial decisions of the national courts. The portal includes **both final judgements and minutes of the proceedings, as well as other court rulings in anonymized form**, thus allowing users to know not only the final solution, but also the way in which certain exceptions or applications were resolved during the trial, as well as the manner in which the administration of evidence was ordered in certain types of cases.

Moreover, information is also available and accessible with regard to other decisions issued by the courts in the same casefile, thus allowing the user to easily comprehend the whole case, including the solutions given in appeals. Documents (first instance rulings, final decisions, minutes of the proceedings) come from all first instance courts, district courts and courts of appeal, any interested person having access to judgements rendered at the level of all jurisdictions that they can use as judicial practice in other disputes or for the purpose of carrying out specialized studies.

2) In the framework of the project “*Professional Training and Capacity Building in the Judiciary*¹⁵”, funded under the Norwegian Financial Mechanism 2014-2021, the SCM adopted actions in the course of 2021 **to endow courts at national level with 500 workstations and 100 videoconferencing systems**, thus creating the necessary premises and framework for optimizing the work of courts in the national and international context generated by the SARS-CoV-2 pandemic, which revealed a strong need for digitalization in the judiciary.

3) Also, in December 2021, Addendum No. 3 to the financing contract for the above-mentioned project was signed, with the aim of **developing 25 hearing rooms for minors at the level of the Romanian courts**, which will include equipping these spaces with IT equipment, thus adding a practical component aiming to contribute to the improvement of the process of reform of the juvenile justice system in Romania. The audio-visual systems will facilitate a better organisation of specific activities in judicial proceedings involving minors, allowing all interested parties to attend the hearing in real time without being actually present in the room with the minor, which is particularly important in criminal judicial proceedings, which make it compulsory for them to attend the hearing. Also, the provision of IT equipment will ensure the technical prerequisites for recording the hearing, which is of great importance in order to avoid repeated hearings of the child, especially in criminal cases.

4) Another aspect to be considered is the development of new facilities associated with the **electronic file for the Registry of SCM Disciplinary Sections**, with tools such as: electronic subpoena, transfer to the session folder of sections, etc. The electronic file can be accessed by the parties and the members of the Plenary using the EMAP portal.

5) The implementation by IT specialists of the Superior Council of Magistracy of **secure remote technologies in the work of the Superior Council of Magistracy** must also be mentioned. Thanks to these facilities, the employees of the institution were able to work from home and the institution was able to meet the needs of the justice system and the justice system/petitioners also during the Covid-19 pandemic.

¹³ <https://www.iccj.ro/acasa/dosar-electronic/>

¹⁴ <https://www.iccj.ro/compartimentele/biroul-de-informare-si-relatii-publice/formular-de-depunere-a-documentelor-in-format-electronic/>

¹⁵ <https://sites.google.com/csm.csm1909.ro/mfn-2014-2021>

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

Prosecutors Office attached to the High Court of Cassation and Justice

The Ministry of Justice is implementing the project "Development of the case management electronic system ECRIS V" - SIPOCA code 871. The preparation of the specifications for the acquisition of the ECRIS V development service is underway, based on the documentation completed within the second pillar of the project "Development and implementation of an integrated strategic management system at the level of the judicial system" - SIPOCA code 55. However, the technical team identified a number of issues that require further analysis, namely: judicial statistics, single portal (courts-prosecutor's offices) and architectural details for the two components. Moreover, working options have been formulated with a novelty element consisting of: common web portal and statistics - courts and prosecutor's offices; data warehouse for statistics and data center at the level of the judicial system.

Statistical data on the activity of the Public Ministry, as well as data on criminal activity are included in the annual activity reports which are accessible to the public on the website of the Prosecutor's Office attached to the High Court of Cassation and Justice, in editable format.

Within the project developed by the Superior Council of Magistracy - SIPOCA 761, „Management optimization in the judicial system. Prosecutor's offices component", there was a consensus on the need to interconnect the criminal cases records between the prosecutor's offices and the police; the possibilities determined by the specifics of the communications network of the General Inspectorate of Romanian Police were examined by an inter-institutional technical team, and will be developed in 2022 towards the identified direction. The Prosecutor's Office attached to the High Court of Cassation and Justice claims, in its relationship with the Ministry of European Investments and Projects, that the General Inspectorate of Romanian Police should be treated as a beneficiary institution, together with the Public Ministry, for accessing non-reimbursable funds necessary for the digitization of the criminal justice activity.

Superior Council of Magistracy

1) Within the project "*Optimising management at the level of the judiciary. The component regarding courts*¹⁶" (SIPOCA Code/MySMIS: 751/129513), implemented by SCM, is currently developed an IT application for managing administrative work at court level. Through its functionalities and implementation across the entire network of courts, the decision-making process will be facilitated and accelerated, better human resources management will be achieved and the information flow between the courts will be improved, all these improvements being directly positive in the relationship with the litigants.

2) The project "*Optimising management at the level of the judiciary. The Public Prosecutor's Office component*¹⁷", SIPOCA/MySMIS code: 761/133850, is implemented by the Superior Council of Magistracy in partnership with the Prosecutor's Office attached to the High Court of Cassation and Justice, with the general objective of improving the managerial capacity of the Public Ministry, as an essential part of the justice system in criminal matters, by implementing standard integrated management tools at the level of the territorial units of the prosecutors' offices, in order to create the necessary premises for a predictable process of management decision-making, especially with regard to human resource components, capacity to manage the workload, correct estimation of human resource needs and distribution of tasks at the level of prosecutors within the same territorial unit. Within this project a software will be developed for calculating the complexity and workload at the level of the prosecutor's offices, which will contribute to the achievement of Strategic Objective A.3 Optimisation of the organisation and functioning of the courts and prosecutor's offices mentioned in the Action Plan of the Strategy for the Development of the Judicial System 2015-2020, measure A.3.12. - Develop an appropriate calculation methodology on the optimal workload of prosecutors and judges. The implementation of the IT module aims to achieve the following benefits: (1) The implementation of an automatic mechanism for the automatic extraction of data from ECRIS necessary to calculate the scores associated with the indicators established by the methodology for calculating the volume and complexity of the activity of prosecutors; (2) Implementing an automatic

¹⁶ <https://sites.google.com/csm.csm1909.ro/sipoca751/sipoca-751>

¹⁷ <https://sites.google.com/csm.csm1909.ro/sipoca761/sipoca-761>

mechanism for calculating the scores associated with the indicators established by the methodology for calculating the volume and complexity of prosecutors' activity and presenting the scores obtained based on the implementation of the methodology to the stakeholders — prosecutors with executive functions and prosecutors with positions of management; (3) The availability of mechanisms for analysing the volume and complexity of the activity of prosecutors and prosecutors' offices for prosecutors with management positions; (4) Endowing the prosecutors with management positions with modern tools for performing analysis of the volume and complexity of the activity, graphical representation of information in the form of dashboards to ensure aggregated display of information.

3) Within the project *“Efficiency — Elimination of factors that cause inflation of cases, the identification of normative elements and agglomeration tendencies¹⁸”*, code SIPOCA/MySMIS 752/129914”, implemented by the Superior Council of Magistracy in partnership with the General Secretariat of the Government it will be developed and updated the STATIS software by elaborating a computer module of judicial statistics on case inflation and repetitive causes with their real-time highlighting. The purpose of updating the STATIS system is to develop a mechanism for early identification of litigation inflation caused by regulatory deficiencies, as well as repetitive cases, in order to relieve courts in non-criminal matters. Updating the STATIS module will allow early warning of the institutional actors responsible for legislative initiative and administrative management of the judiciary, logistics and material resources, so that these phenomena, which are likely to seriously affect the efficiency and quality of justice and access to justice of the public, are censured, managed and remedied in a timely manner.

4) In the project *“Strengthening the organisational and administrative capacity of the Superior Council of Magistracy¹⁹”* Code SIPOCA/ MySMIS: 760/135225, it should be mentioned that on October 19th, 2021 the Commission for Human resources and organisation of the SCM has approved the proposal, developed within this project, for developing an IT solution, namely the following. Within activity A1 of the Project – creating and implementing a digital solution for managing the activity of the technical staff and for relations with other institutions/organisms inside and outside the judicial system, the development of an application was foreseen, designed to improving the activities of all the SCM technical specialised compartments and also the relations with other institutions within the Judiciary but also outside the judicial system.

The IT solution will allow an efficient management of aspects/issues in terms of personnel, logistics and operational procedures improving the activities flow, the administrative capacity of the Council to answer to any requests coming from the members of the judicial body and reducing the periods of time dedicated to solving such requests.

The new application called CSMapp shall replace the current one – EMAP and when developing it the functions and modules of the current EMAP shall be taken over. Due to its functionalities, CSMapp shall be designed to be widely used within the Council's activities and shall contribute to reaching all requirements in terms of speed and flexibility translated in the dynamics of the activities of the specialised compartments and in improving the flow of procedures with the need to adapt the operational procedures as well to the new functionalities.

16. Geographical distribution and number of courts/jurisdictions (judicial map) and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

Judicial map includes 15 courts of appeal, 42 tribunals and 176 first instance courts operate in Romania. There are also 4 specialised tribunals, the Tribunal for Minors and Family Brasov, the Specialised Tribunal Cluj, the Specialised Tribunal Mureş and the Specialised Tribunal Argeş. On the territory of Romania there are also military courts, namely the Bucharest Military Court of Appeal, the Bucharest Territorial Military Tribunal and 4 military tribunals in the municipalities of Bucharest, Cluj-Napoca, Iași and Timișoara.

¹⁸ <https://sites.google.com/csm.csm1909.ro/sipoca752/sipoca-752>

¹⁹ <https://sites.google.com/csm.csm1909.ro/sipoca760/sipoca-760>

In 2021, there was a concern to *balance the staffing schemes* by establishing the constituencies of the first instance courts, based on the analysis carried out at the level of the SCM, including through *the reallocation of towns*. The measure resulted in the adoption of the Decision No.102/2021 of the Plenum.

Specialised panels functioned in 2021 to the High Court of Cassation and Justice, as follows:

- 2 specialised intellectual property panels within the First Civil Chamber;
- 7 specialised panels for litigations with professionals within the Second Civil Chamber;
- 8 specialised panels for the trial of cases with minors and in the matter of offences provided by Law no. 78/2000 within the Penal Chamber.

C. Efficiency of the justice system²⁰

17. Length of proceedings

a) Prosecution Office attached to the High Court of Cassation and Justice

Law no. 130/2021 amending and supplementing Law no. 135/2010 on the Criminal Procedure Code states that:

Article 391 (1) *The deliberation, drafting and issuing of the judgement shall be done within a maximum of 60 days after the closing of the debates.*

(3) *In duly substantiated cases, if the deliberation, drafting and rendering of the judgement cannot take place within the time-limit laid down in paragraph 1, the court may postpone the judgment successively, each postponement not exceeding 30 days. In each case, the deliberation, drafting and issuing of the judgment may not take place later than 120 days after the closing of the debates.*

In the fourth quarter of 2021, the Judicial Inspection carried out a thematic control in all prosecutor's offices, not yet completed, on the compliance with the provisions of the judge of rights and freedoms in cases in which decisions to admit appeals on the duration of the criminal trial were ordered, according to Article 488¹ of the Criminal Procedure Code. Details on the impact of the activities of the Judicial Inspection on the day-to-day work of prosecutors' offices are presented in the Annex 4.

b) High Court of Cassation and Justice

In 2021, as part of efforts to ensure the reasonable length of proceedings, the High Court of Cassation and Justice has formulated and submitted to the Ministry of Justice proposals to amend the legislation in order to reduce the jurisdiction of the Administrative and Fiscal Contentious Chamber.

The above-mentioned proposals have been materialized in Government Emergency Ordinance no. 102/2021 amending and supplementing Law no. 213/2015 on the Policyholders Guarantee Fund, by which recourses in matters governed by this law have been excluded from the jurisdiction of the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice.

The Government Emergency Ordinance no. 102/2021 created the premises for reducing the length of proceedings at the level of the Administrative and Fiscal Contentious Chamber of the supreme court.

c) Superior Council of Magistracy

With regard to the length of proceedings, in Annex 5 and 6 are mentioned statistical data on the average length of settlement (in months) by procedural stage and subject matter, at global level and by type of courts, with the remark that at this time the statistical data generated from the STATIS application are valid only for the first 10 months of 2021, currently the data being aggregated for the whole year 2021. These 10 months sufficiently highlight the statistical trend of the average settlement time, no major changes being possible to occur following the aggregation of statistical data for the last two calendar months of 2021.

²⁰ Under this topic, Member States are not required to give statistical information but should provide input on the type of information outlined under section 2.

II. ANTI-CORRUPTION FRAMEWORK

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

18. List any changes of relevant authorities (e.g. national agencies, bodies) in charge of prevention, detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and practical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable).

National Integrity Agency

Human resources	By the end of 2021, 111 positions were occupied out of 200 positions provided by Law: Management: 2 , Integrity Inspectors: 45 , Persons with administrative responsibilities, supporting the Integrity Inspection activity: 46 , Administrative personnel: 18
Financial resources	ANI's final budget for the year 2021 following the budgetary rectifications and the distribution of credits to the reserve fund was of 36.725.000 Lei . The allocated resources were sufficient to allow the implementation of the Agency's objectives.

19. Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

The National Integrity Council

The National Integrity Council was appointed for a 4-year mandate in March 2020 and is currently composed of 12 full members and 11 substitute members. In April 2021, the Council launched the selection procedure of the President of National Integrity Agency, which was finalized on the 24th of June 2021. Through the Senate's Decision no. 89/30.06.2021, the President of NIA was appointed for a 4-year mandate.

Furthermore, throughout 2021, the main activities of the Council were: to approve the External Audit Report of the Management of National Integrity Agency for 2020, to analyze the legal integrity framework, as well as to debate on the overall activity of the National Integrity Agency.

The External Independent Audit Report

The annual external independent audit report acts like an objective mirror of the performance of National Integrity Agency's management and activity in general since it covers investigation activities, administrative activities of NIA, PREVENT, internal control Legal department and also does a follow-up on the National Anticorruption Strategy Integrity Plan and NIA's strategy's action plan implementation. Although it was an unusual year in the context of the current COVID-19 pandemic, with many challenges and restrictions, the External Audit Report of the Management of National Integrity Agency for 2020 maintains the tone from the previous reports.

The auditors noted that throughout 2021, NIA's efforts were focused on:

- Achieving an 84% "implemented" and "partially implemented" status of the recommendations related to the improvement of the activities formulated in the prior years' audit reports. This rate of implementation indicates a high degree of implication and efficiency of NIA's management;
- Continuing the implementation of measures established by the Strategy for preventing and sanctioning conflicts of interest, incompatibilities and unjustified assets for the period 2016-2020, as well as the measures included within NIA's Integrity Plan regarding the implementation of the National Anticorruption Strategy for 2016-2020;
- Developing a platform for electronic submission of assets and interest disclosures (e-DAI);
- Continuing the implementation of the project EMOD and LINC;

- Carrying out the processes to publish the list of important public positions, as required by the adoption of Emergency Ordinance no. 111/2020 regarding the amendment and completion of Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as finalizing and publishing on the Agency's website the list of important public positions;

- Carrying out awareness and prevention activities by increasing the level of transparency and prevention of incompatibilities and conflicts of interest. ANI launched on its website a dedicated section for local and parliamentary elections held in 2020;

- Implementation of the National Integrity Agency Short-Term Strategy for 2020 - 2021;

Furthermore, the Report also included shortcomings, such as: insufficient workspace and file storage space; shortage of human resources; difficulties in the evaluation activity carried out by the integrity inspectors due to the lack of directly accessible electronic information/communication with other institutions.

20. Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators.

The results of the former SNA were taken into consideration and included in the new SNA 2021-2025.

B. Prevention

21. Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application.

There are no legislative developments compared to the previous contributions (legislative aspects related to incompatibilities, revolving doors, codes of ethics/deontology/conduct remain available). Please see the information provided *in extenso* for 2020 Rule of Law Report.

1) National Integrity Agency

a) Follow-up on ANI's cases

Throughout 2021, the National Integrity Agency **has finalized 1.329 cases, both with findings and closed files. With regard to NIA's findings, the integrity inspectors ascertained 198 cases, as follows: 162 integrity incidents and 36 cases regarding possible criminal offences.**

On December 31st 2021, NIA had **2.307 ongoing investigations** and **the average case load was of 77 files/integrity inspector (45 integrity inspectors).**

➤ Cases ascertained by ANI:

In 2021, NIA ascertained **162 integrity incidents**, as follows: 96 cases of incompatibility, 58 cases of administrative conflicts of interest and 8 cases of unjustified wealth amounting to over 4 million RON (more than 933.000 Euros), as follows:

- **96 Incompatibilities:** 1 Secretary of State; 1 County Council Vice-president; 1 County Councilor; 3 Mayors; 6 Deputy Mayors; 28 Local councilors; 15 Persons with management and/or control positions; 25 Public servants; 16 Public servants with special statute.
- **58 Administrative conflicts of interest:** 1 General Councilor; 10 Mayors; 4 Deputy Mayors; 31 Local councilors; 5 Persons with management and/or control positions; 7 Public servants.
- **8 Unjustified wealth amounting to over 4 million RON (more than 933.000 Euros):** 1 Person with management and/or control position; 3 Public servants; 4 Public servants with special statute.

At the same time, the integrity inspectors have identified **36 cases regarding possible criminal offences** (criminal conflict of interest, using the office to favor people, false statement, breach of fiscal legislation, breach of criminal legislation etc.) **in the case of 33 persons**, which were sent to the prosecution bodies, for further investigation, as follows: 1 General Councilor; 7 Mayors; 2 Deputy Mayors; 11 Local councilors; 8 Persons with management and/or control positions; 4 Public servants.

➤ Administrative fines

In 2021, **950 administrative fines** were applied (for failure to submit assets and interest disclosures in legal terms, for non-disciplinary sanctions applied after the ascertaining act remained final, for failure to comply with the legal provisions by

the head of institution and for the persons responsible of ensuring the implementation of legal provisions regarding assets and interest disclosure within public entities).

➤ **Definitive and irrevocable cases**

Throughout 2021, **224 cases** have remained definitive and irrevocable – in favor of NIA (either through Courts' decisions that confirmed NIA's ascertainment or through not challenging of the evaluation report by the evaluated person), as follows: **161 cases of incompatibility; 57 cases of administrative conflicts of interests; 6 cases of unjustified wealth.**

b) Stage of legislative proposals aiming to amend integrity framework

Currently, 6 legislative proposals aiming to amend the integrity framework are pending before the Parliament procedures²¹. In one case, ANI issued a favorable point of view regarding the legislative proposal, while in 4 cases, ANI issued negative points of view regarding the legislative proposals. In addition, one legislative proposal (drafted by the Romanian Ministry of Justice) is on the inter-ministerial approval circuit and will subsequently enter the Parliamentary procedures. Throughout 2021, 6 legislative proposals have been rejected by the Parliament²². For further details please see Annex 7.

2) General Secretariat of the Government

At the level of the General Secretariat of the Government, was elaborated the Code of Ethical Conduct and Integrity of civil servants and contract staff within the General Secretariat of the Government, as well as for the structures without legal personality within the Government working apparatus. The Code has been up-dated in July 2021 and it's available on the GSG web page²³. Also, the procedure regarding the activity of the ethics and integrity advisor at the level of the General Secretariat of the Government was elaborated and approved. It includes the Reporting of the ethics and integrity activity, as well as uniform and coherent mechanism for implementing the Code of Ethics and Integrity. The role of the ethics and integrity advisor is to improve the activity and climate within the institution by preventing violations of the rules of conduct, and the rules of ethical and professional conduct provided by the Code are mandatory for the GSG staff.

22. General transparency of public decision-making (e.g. public access to information, including possible obstacles related to the classification of information, transparency authorities where they exist, and framework rules on lobbying, including the transparency of lobbying, asset disclosure rules, gifts and transparency of political party financing)

There are no changes compared to the previous contributions (rules related to transparency of public decision-making, public access to information, declaration of gifts, asset disclosure rules, lobbying, transparency of political party financing remain available). Please see the information provided *in extenso* for 2020 Rule of Law Report.

National Integrity Agency

Asset and interest disclosures

In May 2021, the National Integrity Agency launched the new online platform **e-DAI**, through which hundreds of thousands of civil servants, dignitaries and other categories of officials provided by law fill-in and submit their assets and interest disclosures, in digital format, as provisioned by Law no. 105/2020.

The Romanian Government adopted the Emergency Ordinance no. 127/2021, taking into consideration the financial and technical impossibility of several authorities and public institutions to ensure electronic signatures to all deponents, in the sense that:

- ❖ By December 31st 2022, the assets and interest disclosures can be filled out and submitted in electronic format, hand-signed or certified with electronic signature;
- ❖ Starting with January 01st 2023, the disclosures will be filled out and submitted exclusively in electronic format, certified with electronic signature.

²¹ Pending before Parliament: PI-x nr. 573/2021; PI-x 135/2020, PI-x 179/2018, PI-x 200/2021, PI-x 398/2021, PI-x 415/2019

²² Rejected by the Parliament: PI-x 309/2015, PI-x 310/2015, PI-x 543/2015, PI-x 471/2018, PI-x 670/2020, PI-x 565/2020

²³ https://sgg.gov.ro/1/wp-content/uploads/2016/04/Codul_etica.pdf

At the same time, **the legislative intervention aims at establishing a unitary and coherent procedure for submitting electronically the asset and interest disclosures.**

In order to raise awareness in the process of electronically filling-in and submitting assets and interest disclosures, NIA has sent 444 information notes (112 in May, 162 in September and 170 in December) before public institutions and authorities, associative structures, county councils and prefects.

Moreover, NIA has developed user manuals dedicated to both the responsible person and the deponent, as well as a series of video tutorials, all of which are available in the e-DAI section. The National Integrity Agency also posted on the website and on its official YouTube account a series of e-DAI platform presentation videos, in order to facilitate the process of filling in and submitting asset and interest disclosures electronically.

At the same time, integrity inspectors were appointed to meet the needs of the persons filling in and submitting disclosures, together with experts within the Information Technology Service that provide technical support on the use of the e-DAI platform. Since the launch of the e-DAI platform: No. of users registered as deponents: 81.309, No. of institutions with at least one account created: 2.555, No. of filled-in asset disclosures: 4.818, No. of filled-in interest disclosures: 3.772, No. of support requests sent through the e-DAI platform: 509, No. of feedbacks sent through the e-DAI platform: 11.

23. Rules and measures on preventing conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned) PREVENT System results:

Throughout 2021, the PREVENT system **analyzed 7.803 procurement procedures**, in order to identify possible conflicts of interest. Out of these reviewed procurement procedures, 5.079 were public stand-alone procurement procedures (without batches) and 2.724 were public procurement procedures with batches (containing 39.817 batches).

From the total of 7.803 procurement procedures, **approx. 20% public procurement procedures referred to European funds**. Furthermore, in the same reporting period, the integrity inspectors **issued 26 integrity warnings, amounting to approx. 133,4 million RON (approx. 27 million EURO)**.

For 10 integrity warnings, the leader of the contracting authority eliminated the causes that generated the potential conflict of interests. In 16 cases, the National Integrity Agency shall apply the provisions of art. 9 from Law no. 184/2016, meaning that ex-officio procedure of evaluating the conflict of interests will be initiated the after finalization of the awarding procedure provided by law, if the causes that generated the conflict will not be eliminated.

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

Also, the integrity inspectors **sent before the National Agency for Public Procurement (ANAP)**, in accordance with the cooperation agreement signed between the National Integrity Agency and ANAP, a number of **2 irregularities** regarding possible relations between members of the contracting authority and persons within the tenders, exclusively for the persons who are not required to submit assets and interest disclosures.

During the reported period, PREVENT system **analyzed 1.537 contracting authorities, 10.804 companies, as well as 200.990 persons and representatives of the public institutions and the tenders.**

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

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

As a Member State of the European Union, Romania has the obligation to transpose Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law. A draft law on the transposition of the Directive has been drafted by the Ministry of Justice. Given that the Directive requires Member

States to establish independent and autonomous external reporting channels for the receipt and handling of information on breaches by designating competent authorities to receive reports, provide feedback and follow up on reports, this draft law designates the National Integrity Agency as the competent authority for the purposes of the above.

At the same time, the draft law recognizes, in view of the specific legislation, the quality of competent authorities to the other external channels (as is the case, for example, of the Financial Supervisory Authority, the Romanian Naval Authority, the Competition Council and the National Bank of Romania), but also the possibility for the National Integrity Agency to submit the reports, depending on their object, for competent settlement to other authorities.

The adoption of the draft law is in progress at the level of Government and, according to the National Recovery and Resilience Plan, it is to be adopted by Parliament of Romania in Q1 of next year.

The draft bill can be found and consulted at: <https://www.just.ro/proiect-de-lege-privind-protectia-avertizorilor-in-interes-public/>

25. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to disbursement of EU funds, other).

National Anticorruption Strategy 2021- 2025

With the implementation period for National Anticorruption Strategy 2016 – 2020 having come to an end and following extensive stakeholder consultation, Romania has drafted the National Anticorruption Strategy 2021 – 2025 (NAS 2021-2025). On December 17th 2021, the National Anticorruption Strategy was approved through the Government Decision no. 1.269 (published in Official Gazette no. 1218/22.12.2021). The Strategy will examine the manifestation of corruption at the national level and presents an integrated, cross-institutional vision of the anti-corruption measures and responsibilities to be undertaken by Romanian institutions.

General objective no. 4 *Strengthening integrity in priority areas of activity* includes specific objectives: increasing integrity, reducing vulnerabilities and corruption risks in the public healthcare system, in the national education system, in the local public administration, in the field of public procurement, in the business environment, increasing the transparency of political advertising and the integrity of political parties financing, as well as the integrity of elections and referendums, increasing integrity, reducing vulnerabilities and corruption risks in the activity of members of Parliament, in the field of environmental protection, in the field of cultural heritage protection. For further details please see Annex 8.

26. Measures taken to assess and address corruption risks in the context of the COVID-19 pandemic

Prevention of conflicts of interest in direct procurement procedures

As a consequence to the State of Emergency Decree issued in the context of the COVID-19 pandemic, public authorities and legal entities in which the state is the major shareholder, **were allowed to directly purchase without publishing into the Public Procurement Electronic System (SEAP/SICAP) materials and equipment necessary to combat this pandemic**, exceeding the value threshold (which is around 27.000 EUROS) established by the Law on public procurement for publication in the electronic system. This meant that these direct purchases were not run through the electronic system, and thus have not been scrutinized by the PREVENT System.

To address the issue of scrutinizing the procedures carried out through **direct procurement**, NIA has developed a mechanism meant to analyze, based on information available from public sources, data sets on these procedures. The goal of this mechanism is to identify potential conflicts of interest in these procurement procedures that bypassed PREVENT scrutiny. With the help of a risk matrix, NIA has analyzed **908 direct procurement procedures** and will subsequently take the measures provided by law, were applicable.

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

National Anticorruption Strategy

The NAS 2021 -2025 includes general and specific objectives to prevent corruption in public and private sector: increasing the implementation of integrity measures at organizational level, reducing the impact of corruption of citizens, strengthening institutional management and administrative capacity to prevent and combat corruption, strengthening integrity in priority areas of activity, strengthening the performance of fighting corruption by criminal and administrative means. For further details please see the Annex 8.

National Integrity Agency

a) Prevention and awareness measures taken in the context of the 2021 Partial Local Elections

In order to increase the level of prevention and awareness in the context of the June 2021 partial local elections, the National Integrity Agency created on its website a special section dedicated to the electoral process, with the following features: Single point for assets and interest disclosures submitted by candidates - 360 disclosures published; Contact form dedicated for reporting the irregularities with regard to the disclosure filled-in and submitted by candidates; Dedicated section on the main legislative texts; Publication of the *Guideline on incompatibilities and conflicts of interest* and the *Guideline on filling in assets and interest disclosures*; Section for downloading the assets and interest disclosures in electronic format – e-forms.

At the same time, the National Integrity Agency constantly updated the list of persons under the interdiction to occupy a public office for 3 years, according to art. 25, para. (2) of Law no. 176/2010, published on a different section on NIA's website.

Moreover, before the partial local elections were held, the nominal list of persons under the interdiction from holding an eligible position for a period of 3 years following the end of their office was sent before the Central Electoral Bureau and Permanent Electoral Authority.

Prevention and awareness activities for submission of annual assets and interest disclosures

On June 08th 2021, previous to the deadline for submitting the annual assets and interest disclosures by the persons provisioned by art. 1, para. (1) of Law no. 176/2010, NIA issued a press release containing a series of useful information on the process of submitting these disclosures, as well as regarding the *e-DAI* platform. At the same time, NIA created a dedicated e-mail address where interested persons could send requests regarding the filling-in and submitting assets and interest disclosures (completareDAI@integritate.eu), managed by 2 integrity inspectors appointed to issue prompt responses.

b) Points of view issued by NIA

Between the 1st of January and the 31st of December 2021, the Agency issued 1. 814 points of view on the legal provisions referring to possible incompatibilities and/or conflicts of interest situations or regarding ways of filling in and submission of asset disclosures (*Conflicts of interest – 373, Incompatibilities – 1085, Filling-in and submission of disclosures – 220, Other cases – 136*).

According to the applicable legal provisions, analyzing the causes referring to possible incompatibilities and/or conflicts of interest situations, the National Integrity Agency issued 115 points of view, regarding situations that are prone to generate a conflict of interest and 436 points of view, regarding situations that are prone to generate an incompatibility situation.

c) Training sessions

In November 2021, NIA carried out a series of training sessions aimed to facilitate the transitioning process to the electronical filling in of asset and interest disclosures through the *e-DAI* platform. At the same time, during the training sessions, topics of interest related to the legal regime of incompatibilities and conflicts of interest were addressed and debated. Throughout the sessions, NIA's experts trained 349 designated persons and deponents within public institutions and authorities such as the Ministry of Justice, the National Agency of Civil Servants, the National Agency for Public Procurement, the Romanian Court of Accounts, the Romanian National Bank, etc.

d) NIAct

The National Integrity Agency submitted a request for funding through European funds of a project *on updating the integrity legislation and providing support to authorities and deponents in the transition to the digitization declaring of assets and interests* entitled NIAct. The project application is pending for approval at the financing authority (POCA Management Authority). The project aims to make an inventory of all normative acts and to update the legal integrity framework (incompatibilities, conflicts of interest and unjustified assets, as well as the system of declaring assets and interests).

C. Repressive measures

28. Criminalization, including the level of sanctions available by law, of corruption and related offences including foreign bribery

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

Relevant legislative developments

On 17.11.2021, the Law approving GEO no. 6/2016 on some measures for the enforcement of technical surveillance warrants ordered in criminal proceedings was adopted. The Law was challenged with an objection of unconstitutionality by the Ombudsman and by senators and deputies. The consideration of the objections was postponed to 26.01.2022.

Law no. 101/2021 was adopted for the approval of GEO no. 111/2020 on amending and supplementing Law no. 129/2019 on preventing and combating money laundering and terrorist financing, as well as amending and supplementing some normative acts, for supplementing Article 218 of GEO no. 99/2006 on credit institutions and capital adequacy, for amending and supplementing Law no. 207/2015 on the Fiscal Procedure Code, as well as for supplementing Article 12 (5) of Law no. 237/2015 on the authorisation and supervision of insurance and reinsurance activity.

Law no. 102/2021 on supplementing Article 49 of Law no. 129/2019 on preventing and combating money laundering and terrorist financing, as well as on amending and supplementing some normative acts transposed the provisions of Article 6 (1) (b) and Article 10 (1) (b) of Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law measures.

The CCR, by its decision no. 102/2021, admitted the exception of unconstitutionality and found that the phrase "with the exception of circumstances relating to the existence of the offence" in the provisions of Article 52 (3) of the Criminal Procedure Code is unconstitutional (marginal title of the article: Preliminary issues).

Law no. 55/2021 amended and supplemented Law no. 241/2005 on preventing and combating tax evasion, by introducing some cases of reduction of penalty and non-punishment (Article 10 (1), (1¹) and (1²)).

29. Data on investigation and application of sanctions for corruption offences²⁴ (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of the EU funds

A. Data from the National Anticorruption Directorate

A number of 317 cases concerning 730 defendants were sent to the court. Of these, 565 were prosecuted by indictment and 165 by plea agreements. Defendants sent to the court include 5 members of the Parliament (1 former deputy, 2 ministers, 1 former prim-minister, 1 senator), 1 President of the Chamber of Deputies, 3 secretaries of State, 1 vice-president of ANAF. In the cases sent to the court, the prosecutors ordered precautionary measures in the amount of approximately 127,5 million Euro.

²⁴ Please include, if available the number of (data since 2019): indictments, first instance convictions, first instance acquittals, final convictions, final acquittals, other outcomes final (i.e. excluding convictions and acquittals), cases adjudicated (final), imprisonment/custodial sentences through final convictions, suspended custodial sentences through final convictions, pending cases at the end of the reference year.

A number of 255 final judgements were pronounced by the courts and 427 defendants were convicted. Of these, 87 defendants were convicted to prison sentences with execution in detention (20%); 297 defendants were convicted to prison sentences with suspension of execution (69%) and 43 were convicted to criminal fines or postponement of punishment (11%).

B. Data from the Prosecution Office attached to the High Court of Cassation and Justice

a) Prosecution of petty corruption offences: non-specialized prosecutor's offices (without DNA)

In the period 01.02.2021 - 31.12.2021, a total of **1,493** cases involving petty corruption offences were solved, of which **201** indictments and plea agreements were issued, by which **253** defendants were sent to trial.

Capacity of defendants sent for trial: *justice* - 2 officers of the court; *police* - 41 police agents, 2 penitentiary agents, 1 border police force, 1 local police force; *military* - 1 non-commissioned officer, 2 gendarmes, 1 fire worker; *public administration* - 4 mayors, 1 deputy mayor, 1 secretary general of an administrative-territorial unit, 2 foresters, 1 chief architect, 1 inspector from the Romanian Automobile Registry, 4 anti-fraud inspectors; *health* - 8 doctors, 3 nurses; *other civil servants* - 5; *other areas* - 3 driving instructors, 2 legal advisers, 2 engineers.

Data on the number of indictments/plea agreements and the number of defendants brought to trial, broken down by category of offence: *conflict of interest*: 3 indictments/PA²⁵; *bribe taking*: 45 indictments/PA, concerning 64 defendants; *bribe giving*: 98 indictments/PA, concerning 109 defendants; *influence peddling*: 36 indictments/PA, concerning 45 defendants; *buying of influence*: 4 indictments/PA, concerning 7 defendants; *Articles 6-7 of Law 78/2000*: 3 indictments/PA, concerning 6 defendants; *Articles 10-13² of Law 78/2000*: 12 indictments/PA, concerning 21 defendants.

Data on preventive measures: 22 defendants were placed under pre-trial detention, of whom 4 for bribe taking, 8 for bribe giving, 7 for influence peddling and 3 for corruption offences under Articles 6-7 of Law 78/2000.

Data on how the complaint was made: of the total number of petty corruption cases solved, 524 were formed by ex officio referrals, out of which 72 cases ended in indictments. The proportion of cases with a judicial outcome (ex officio referral) is 13.74%.

b) Judgements of petty corruption

For the period 01.02.2021 - 31.12.2021, there were 142 final judgments, by which 151 individuals were convicted. Twelve defendants were finally acquitted, of which 5 for bribe taking, 4 for bribe giving and 3 under Article 13² of Law no. 78/2000. In view of the application of Law no. 130/2021, referred to in paragraph C.17, it is not yet possible to draw a conclusion on the lack of speed of proceedings, difficulties in pending corruption cases or on the fact that there is a relevant number of cases in which the proceedings have been finalized and a time limit has been granted for a ruling [/the issuing of the judgment].

Capacity of convicted defendants: *police* - 11 police officers, 2 border police officers, 1 local policeman; *health* - 6 doctors, 4 nurses; *education* - 1 teacher; *public administration* - 3 mayors, 1 official from the Romanian Automobile Registry, 1 inspector from the Territorial Labour Inspectorate, 1 forester; *other civil servants* - 7.

Penalties applied: *bribe taking* - 6 sentences of imprisonment (maximum of 6 years and 8 months of imprisonment) and 29 sentences with suspended execution under supervision; *bribe giving* - 7 sentences of imprisonment (maximum of 4 years, 5 months and 10 days of imprisonment) and 69 sentences with suspended execution under supervision; *influence peddling* - 7 sentences of imprisonment (maximum of 6 years and 594 days of imprisonment), 17 sentences with suspended execution under supervision and 1 with deferred execution of sentence; *buying of influence* - 5 sentences of imprisonment (maximum of 7 years and 8 months) and 5 sentences with suspended execution under supervision; *Article 13 ind. 2 of Law no. 78/2000* - 1 sentence of imprisonment (4 years and 4 months) and 1 sentence with suspended execution under supervision; *Article 13 ind. 1 of Law no. 78/2000* - 1 sentence with suspended execution under supervision; *conflict of interest* - 1 sentence of imprisonment (1 year).

²⁵ PA - Plea agreement

C. High-level corruption cases – High Court of Cassation and Justice

Penal Chamber:

During 2019 - 2021: the Penal Chamber solved, as first instance, 12 high-level corruption cases (indictment issued by the National Anticorruption Directorate), out of which 5 cases have not been solved in last instance by the end of 2021.²⁶ At the end of 2021, 13 high-level corruption cases were pending in the Penal Chamber, the majority (9 cases) registered in 2021.

Panels of 5 judges:

During 2019 - 2021: the Panels of 5 judges solved, as last instance, 21 high-level corruption cases (indictment issued by the National Anticorruption Directorate), out of which:

- in 5 cases the defendants who determined the jurisdiction of the High Court of Cassation and Justice were convicted to imprisonment with execution (in 4 of these cases, 1 other defendant was convicted to imprisonment with execution, 8 other defendants were convicted to suspended imprisonment, 3 other defendants were acquitted and, for 1 other defendant, the criminal proceedings were ceased);
- in 2 cases all defendants were convicted to suspended imprisonment;
- in 1 case the defendant who determined the jurisdiction of the High Court of Cassation and Justice was convicted to suspended imprisonment (in case, 2 other defendants were acquitted);
- in 12 cases all defendants were acquitted;
- in 1 case the defendant who determined the jurisdiction of the High Court of Cassation and Justice was acquitted (in case, 1 other defendant was convicted to imprisonment with execution and 2 other defendants were acquitted).

At the end of 2021, 12 high-level corruption cases were pending in the Panels of 5 judges (on appeal). Of the 12 high-level corruption cases, 7 cases were suspended as a result of the referral to the Court of Justice of the European Union [concluded in 4 cases by Judgment of the Court (Grand Chamber) of 21 December 2021] and 4 cases were registered at the Panels of 5 judges in 2021.

The decisions rendered by the Panels of 5 judges (anonymised) are published on the website of the High Court of Cassation and Justice within the digital library.

30. Potential obstacles to investigation and prosecution as well as to the effectiveness of sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, pardoning)

a) National Anticorruption Directorate

- Difficulties in recruiting prosecutors within the National Anticorruption Directorate, mainly due to:
 - increasing the seniority required by law, through the amendments made in 2018 on Law no. 304/2004 from 6 years to 12 years;
 - the establishment, through the amendments made in 2018 on Law no. 304/2004, of an atypical selection and appointment procedure, different from the one applied to the other specialized prosecutor's office;
 - the lack of any financial incentive for the appointment of prosecutors in this structure. Thus, at present there is no differentiation in terms of salary between a DNA prosecutor and a prosecutor at the basic level of the Public Ministry, given that, through various legal actions, all prosecutors and judges in Romania, regardless of the hierarchical level and the complexity of the activity carried out, obtained the salary coefficient specific to the highest level of the judicial system.

²⁶ As concerns the types of solutions ordered in these 5 cases, according to the statistics: in 2 cases the defendants who determined the jurisdiction of the High Court of Cassation and Justice were convicted (in these cases, 10 other defendants were convicted and 4 other defendants were acquitted); in 2 cases the defendants who determined the jurisdiction of the High Court of Cassation and Justice were acquitted (in 1 of these cases, 4 other defendants were acquitted); in 1 case, for the defendant who determined the jurisdiction of the High Court of Cassation and Justice, the criminal proceedings were ceased (in case, 1 other defendant was acquitted and, for 2 other defendants, the criminal proceedings were ceased or it was ordered the acquittal for different offences).

- Non-repeal so far of the Section for the Investigation of Criminal Offenses. No prosecutors or judges have been prosecuted for corruption offenses since its inception.

b) Prosecutors Office attached to the High Court of Cassation and Justice

By Decision no. 231 of 06.04.2021, the Constitutional Court found that the provisions of Article 13 (5) of the Government Emergency Ordinance no. 43/2002 on the National Anti-corruption Directorate, according to which, in the event that the case is disjoined (split/divided) in the course of criminal proceedings, the prosecutor of the National Anti-corruption Directorate may continue to conduct criminal proceedings in the disjoined case as well, are unconstitutional.

It was held in the grounds of that decision that the provisions of Article 13 (5) of GEO no. 43/2002 violate the principle of legality as they are contrary to Constitutional Court Decision no. 302 of 4 May 2017²⁷ and implicitly distort the competence of the courts to decide in the first instance the disjoined criminal cases.

At the same time, the Court reasoned that these provisions lack predictability since they presume the subjective assessment of the prosecutor of the National Anti-corruption Directorate as to whether the disjoined case should be kept to be dealt with or referred to the competent prosecutor's office in accordance with the provisions of the Criminal Procedure Code, so that the defendant cannot anticipate, through a combined interpretation of the criminal procedural provisions incident to the case, even by using the services of a lawyer, how the criminal case in which he has the aforementioned capacity will be dealt with.

The above considerations were also taken into account by the Constitutional Court in Decision no. 380/2021, which declared unconstitutional the provisions of Article 11 (3) of Government Emergency Ordinance no. 78/2016 on the organisation and functioning of the Directorate for the Investigation of Organised Crime and Terrorism, according to which, in the event that the prosecutor of the Directorate for the Investigation of Organised Crime and Terrorism orders a disjunction in the course of criminal proceedings, (s)he may continue to conduct criminal proceedings in the disjoined case as well.

As a result of these decisions, DNA and DIICOT can no longer carry out criminal prosecutions in disjoined cases, which do not concern offences that are given to them under exclusive jurisdiction, so such cases will be declined to ordinary prosecutors' offices, with the consequence of inevitable delays in carrying out investigations, as these cases are generally complex or at an advanced stage of criminal prosecution.

In order to strengthen the capacity to investigate corruption offences, the POHCCJ participates as a partner in the project "ANTICOR_INT - Integrated development of anti-corruption tools", the actions in 2021 aiming at 9 regional discussion sessions, focused on transfer of best practices.

c) High Court of Cassation and Justice

Potential obstacles in the area of corruption offences are of a legislative nature and consist mainly of delays in alignment of criminal legislation and criminal procedural legislation with the decisions of the Constitutional Court. These delays may lead to an inconsistent jurisprudence in criminal proceedings, including in the area of corruption offences.

31. Information on effectiveness of administrative measures and sanctions, in particular recovery measures and administrative sanctions on both public and private offenders

The National Agency for the Management of Seized Assets (ANABI) remains fully operational. The mission of ANABI is to ensure an effective execution rate of the confiscation orders issued in criminal matters through an efficient management of seized assets that are distributed to the Agency by prosecutors and judges. ANABI is further developing its activity. Based on the lessons learned, the Agency, with support from the Ministry of Justice, promoted a National Strategy for Strengthening the Asset Recovery System. The strategy and its action plan, covering the period between 2021 and 2025,

²⁷ This decision established that the legislative solution contained in the provisions of Article 281 (1) (b) of the Criminal Procedure Code, which does not regulate in the category of absolute nullity the violation of the provisions relating to the material competence and the capacity of the person of the prosecution body, is unconstitutional.

were adopted by Government Decision no. 17/2021²⁸. The main changes provided by the strategy are the following: identification of assets in foreign jurisdictions – including offshore through ANABI; all these steps can be done by involving ANABI – as an ARO Office – in the early stages of criminal cases. Currently, in exercising the legal mandate to identify assets abroad, ANABI actively cooperates with over 70 jurisdictions, including offshore type; immediate and direct access of the competent judicial authorities and ANABI to the public registers relevant for issuing seizure orders (bank account register for example); carrying out financial investigations by specialists, which implies a consolidation of the structures with this mission within the prosecutor's offices and judicial police units; integrated task force approach to ensure the allocation of adequate resources in a short term for the identification, takeover, expertise, evaluation, management or interlocutory sale.

The strategy aims at extending the institutional mandate regarding the assets that can be managed or sold by ANABI during the criminal proceedings and includes measures for the dissemination of good practices through working methodologies, which emphasize the importance of planning the precautionary measure, the cost analysis related to this planning, as well as the specifics of certain assets with special legal regime. In addition, the strategy includes an objective on setting up a National Mechanism for Crime Prevention, with a view to support victim protection and assistance, crime prevention and education and also strengthening the administrative capacity of the institutions empowered to identify, manage and sell seized assets.

With a view to extending the institutional mandate of ANABI, a draft law is being prepared by a working group, formed of ANABI and MoJ specialists. The draft will be put on public consultation by the end of January 2022. The entry into force of the law amending the powers of ANABI, by June 30, 2022, is a milestone provided in the National Recovery and Resilience Plan (PNRR) for Romania. Moreover, as regards the Agency, PNRR provides an increase of 50% of the value of seized assets managed by the National Agency for the Management of Seized Assets and the construction of 5 warehouses for the storage of seized property made operational.

Also, in the process of transposing Directive (EU) 2019/1153 on facilitating the use of financial information for the prevention, detection, investigation or prosecution of certain crimes, including those of a terrorist nature, the Government adopted an Ordinance²⁹ that empowered the Agency to directly access the bank account registry in carrying out its function of identification facilitate the tracing and identification of proceeds from, and other property related to crime that could be subject to freezing, seizure or confiscation orders issued by a competent judicial authority during criminal proceedings.

III. MEDIA PLURALISM AND PLURALISM

A. Media authorities and bodies³⁰

32. Measures taken to ensure the independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

National Audiovisual Council

In 2021, the provisions of art. 20 of the Audiovisual Law no. 504/2002 were applied for the first time. According to art. 20, within the parliamentary control activity, the activity of the Council is analyzed by the Parliament through the debate of the annual report, together with the budget execution. The rejection by the Parliament of the annual activity report entails, by right, the dismissal of the President of the Council. In 2021 the rejection of the annual report led to the dismissal

²⁸ Government Decision no. 917 of August 25, 2021 - <http://legislatie.just.ro/Public/DetaliiDocument/245986>

²⁹ Government Ordinance no. 9 of August 30, 2021 on laying down rules facilitating the use of financial information and financial analysis for the prevention, detection, investigation or prosecution of certain criminal offences - <http://legislatie.just.ro/Public/DetaliiDocument/245921>.

³⁰ Cf. Article 30 of Directive 2018/1808

of the President of the Council. In this context, the powers of the President were taken over by the Vice-President, who in certain cases delegated the powers to other members of the Council.

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

There are no up-dates on these aspects.

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

There are no up-dates on these aspects.

B. Transparency of media ownership and safeguards against government or political interference

35. Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

During 2021 the National Audiovisual Council collaborated with the institutions authorized to manage the pandemic situation, following the requests received and the debates from the public meetings. Thus, the Council sent recommendations to broadcasters on the spots in support of the vaccination campaign against Covid-19, being messages of public interest.

36. Safeguards against state/political interference, in particular:

- *safeguards to ensure editorial independence of media (private and public)*
- *specific safeguards for the independence of governing bodies of public service media governance (e.g. related to the appointment, dismissal) and safeguards for their operational independence (e.g. related to the reporting obligations)*
- *procedures for the concession/renewal/termination of operating licences*
- *information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance*

There are no up-dates on these aspects.

37. Transparency of media ownership and public availability of media ownership information, including on media concentration (including any rules regulating the matter)

The Ministry of Culture drafted the Law amending and supplementing Law no. 504/2002 of the audiovisual and Government Ordinance no. 39/2005 on cinematography in order to transpose the Directive (EU) 2018/1808 on audiovisual media services. The draft law was adopted by the Chamber of Deputies on December 7, 2021 and submitted to the Senate, as a decision-making chamber.

The transposition of the Audiovisual Media Services Directive into the national laws of the EU Member States will play a vital role in strengthening media pluralism, especially from a media ownership perspective, and will be a real support in the rapid recovery of the sector in the context of the Covid-19 pandemic.

As already stated in the previous contribution to the 2021 Rule of Law Report, general rules governing transparency of media ownership are provided by the Constitution³¹, by the Audiovisual Law no. 504/2002³² and by the Law 31/1990 on company law³³.

C. Framework for journalists' protection

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

Prosecutors Office attached to the High Court of Cassation and Justice

The Prosecutor's Office attached to the High Court of Cassation and Justice conducts investigations in a case having as object the notification for deprivation of liberty of a team of RAI 1 journalists, the person concerned acting as senator (case no. 336/ P/2021). The criminal prosecution is undertaken by a prosecutor, and will involve elements of international judicial cooperation, as the injured persons are foreign nationals and have their workplace in a non-EU State.

39. Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

The general framework will apply in these cases. There are no special rules to ensure journalists protection.

40. Access to information and public documents (incl. procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities)

General Secretariat of the Government

The General Secretariat of the Government carried out different activities aimed at both improving law enforcement in this area and highlighting working practices, and developing a culture of transparency for open governance at central and local level, as follows: monitoring and evaluation of the application by the authorities of the legal provisions regarding the application of Law no. 544/2001 on free access to information of public interest, elaboration of summaries and recommendations regarding the annual reports on the implementation by the public administration of Law no. 544/2001 on free access to information of public interest, supporting the increase of the capacity of public administration authorities and institutions to apply the provisions of the legislation on free access to information of public interest, administration of the online platform RUTI - Single Register of Transparency of Interests - ensuring the transparency of the decision-making act by involving the whole society).

41. Lawsuits (incl. SLAPPs – strategic litigation against public participation) and convictions against journalists (including defamation cases) and measures taken to safeguard against abusive lawsuits

Ministry of Culture: According to the report "Journalism in 2021: A Race with Obstacles and Fewer Winners"³⁴, coordinated by the Center for Independent Journalism, the pandemic has further made media institutions more vulnerable, due to increased financial instability and dependence on controversial sources of income. At the same time, the report highlights the need for the adoption of European legislation to prevent SLAPPs.

³¹ Art. 30 (5): The law may impose upon the mass media the obligation to make public their financing source.

³² Art. 10 (3) g): The Council shall be required to ensure the transparency of the organization, functioning and financing of the mass media in the audiovisual sector.

³³ Art. 185 (3): (...) Legal publicity is achieved by mentioning in the trade register the submission of annual financial statements, accompanied by the report of the board of directors, respectively of the directorate, the report of the auditors or the report of the financial auditors, as well as by publishing the economic-financial indicators.

³⁴ [Jurnalismul-in-2021.-O-cursa-cu-obstacole-si-cu-tot-mai-putini-castigatori-raport.pdf](#)

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

A. The process for preparing and enacting laws

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

a) General Secretariat of the Government

The second Annual Report on Regulatory Impact Assessment, which examines the quality of the rationale for legislation adopted by the Government in 2020, has been finalized. It shows a slight improvement, with a 14-percentage point increasing of satisfactory impact assessments and a 21-percentage point decreasing of the unsatisfactory impact assessment compared to 2019. The report for the legislation adopted in 2021 will be finalized in the second quarter of 2022. National Recovery and Resilience Plan includes measures aimed at strengthening the capacity of ministries to develop impact assessments, but also the establishment of a specialized structure with the role of overseeing the quality of legislation.

b) Committee on Legal Affairs, Discipline and Immunities - Chamber of Deputies

The legal framework for lawmaking process is represented by the provisions of Articles 73 - 78 of the Constitution of Romania and the legislative procedure is carried out in accordance with the provisions of Articles 92 - 115 of the Rules of Procedure of the Chamber of Deputies. For further details on the framework, use of impact assessment, stakeholders/public consultation please see the Rules of Procedure of the Chamber of Deputies³⁵ (already presented in the previous contribution for the 2021 Rule of Law Report).

c) Committee on Legal Affairs, Appointments, Discipline, Immunities and Validation – Senate

A legislative proposal pending before the Senate Committee on Legal Affairs, Appointments, Discipline, Immunities and Validations aims to complete Law no.24/2000 on legislative technique, in order to provide that the grounds for regulatory acts must be based on an assessment of the impact on public health³⁶. According to the initiators, the assessment of the impact of public policies on health leads to the awareness of its central role and the appropriate positioning of public health in the decision-making chain for any sectoral field. For further details on the framework, use of impact assessment, stakeholders/public consultation please see the Rules of Procedure of the Senate, available at http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?id=26144.

The Permanent Bureau of the Senate, in its meeting of 8 November 2021, adopted the point of view of the Legal Affairs Committee, according to which the Senate, as the decision-making chamber for the draft Justice Laws and for the draft law on the abolition of the SIIJ, will legislate in compliance with the principle of loyal cooperation set out in the EU Treaty, the supremacy of European law, as well as the decisions of the CJEU. Based on respect for the principle of loyal cooperation and the constitutional obligations laid down in Article 148(2) and (4) of the Romanian Constitution, the Senate of Romania, as a Chamber of Parliament, having the constitutional role of decision-making Chamber in the debate and adoption of draft laws and legislative proposals for the ratification of treaties or other international agreements and legislative measures resulting from the application of these treaties or agreements, as well as draft organic laws provided for in Article 73 (3) (l) of the Romanian Constitution, remains consistent with its commitment to ensure, in the performance of its constitutional duties, the respect of the three principles that derive from the binding nature of European law: the

³⁵ http://www.cdep.ro/pls/dic/site2015.page?den=act4_1&par1=0

³⁶ https://www.senat.ro/legis/lista.aspx?nr_cls=L517&an_cls=2021

principle of the prevalence of European law, the principle of the direct effect of European law and the principle of the effectiveness of European law.

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

Legislative Council

Type of legislative act	Basic acts	Modifying acts	Total
Law	243	80	323
Government Emergency Ordinance	63	82	145
Ordinance	4	15	19
Total	310	177	487

The large number of emergency ordinances may be explained partially by the need for swift measures to prevent and combat the Sars-Cov-2 virus pandemic and to provide financial support to economic operators affected by the pandemic. However, as stated in the opinions of the Legislative Council, not all draft emergency ordinances presented substantiated reasons to justify an extraordinary situation, the regulation of which could not be postponed. As a comparison, in 2019, prior to the pandemic, only 89 emergency ordinances were issued.

The Legislative Council - if it results that the proposed regulation does not address an extraordinary situation whose regulation cannot be postponed - points this out in its opinion. In practice there were situations when European Union directives were transposed by emergency ordinance, in case where the initiation of the infringement procedure was imminent (for example, Government Emergency Ordinance No. 92/2021 on waste management).

It has to be mentioned also that there is no deadline for the completion of the procedure for the adoption by Parliament of emergency ordinances, although they are drafted and adopted by the Government in the emergency procedure (in which case the Legislative Council has the legal obligation to issue its opinion in 24 hours). For example, the Government Emergency Ordinance no. 57/2019 on the Administrative Code has not yet been approved so far by law by the Parliament. In 2021 a number of 6 legislative interventions were operated on the G.E.O. no. 57/2019, of which 4 by emergency ordinances.

There are also situations of frequent changes of certain normative acts (for example, National Education Law no.1/2011 –14 legislative interventions in 2021 (of which 7 by emergency ordinance) or Law no. 227/2015 on the Fiscal Code – 11 legislative interventions in 2021 (of which 4 by emergency ordinance).

Regarding the systematization, unification and coordination of legislation, an objective resulting from Article 79 paragraph (1) of the Constitution, the Legislative Council also has other administrative levers, in addition to its advisory opinions on draft legislative acts.

a) Thus, pursuant to Article 2 paragraph (1) letter g) of Law no. 73/1993 for the establishment, organization and functioning of the Legislative Council, this institution reports quarterly the delays in the issuance by the competent public authorities of normative acts.

b) At the same time, considering the attribution provided in art. 5 paragraph (5) of Law no. 73/1993, the Legislative Council signals twice a year to the Parliament or to the Government the delays in the republication of the legislative acts.

The Strategy for de-bureaucratization and digitization the activities of the Legislative Council provides, subject to the identification of the necessary funds, the digitization of the process of generating the consolidated versions of the texts of the normative acts to be republished.

The Legislative Council may carry out at the request of the Chamber of Deputies or of the Senate or on its own initiative studies to systematize, unify and coordinate legislation. These studies may also examine the extent to which normative acts subject to examination are still applicable, so that obsolete regulations can be subject to a process of reorganization of legislation or expressly repealed.

The Legislative Council is currently in the process of implementation of the necessary measures to carry out such studies on its own initiative. In principle, the purpose of studies for the systematization, unification and coordination of legislation is to formulate legislative proposals that the Legislative Council can submit to Parliament and, where appropriate, to the Government.

The Legislative Council also intends to develop a software application that will facilitate the drafting of legislative acts in compliance with the norms of legislative technique. The specialists of the Legislative Council have already developed a guide for the elaboration of normative acts, including draft models of normative acts to be adapted to different situations that may occur in practice.

Thus, some requirements imposed by the norms of legislative technique (such as the correct indication of the title of the normative act on which the legislative intervention is made, the nature of the legislative interventions and the structural elements on which it is intervened) would be incorporated in algorithms, such as the draft act normative generated by the application should comply with those requirements.

This objective is included in the Strategy for de-bureaucratization and digitization of the activities of the Legislative Council, its achievement being conditioned by obtaining the necessary funding.

General Secretariat of the Government

In 2021 there is a decrease in the number of emergency ordinances. If in 2020 they represented 13.77% of the total of legislation adopted, in 2021 the percentage is 8.6% (145 emergency ordinances out of a total of 1685 draft normative acts adopted by the Government).

44. Regime for constitutional review of laws

The powers of the Constitutional Court are laid down in Article 146 of the Constitution and in Law No nr.47/1992 on the organisation and functioning of the Constitutional Court and can be classified, according to their content, into two broad categories: Those concerning the review of constitutionality of legislative acts and those relating to the verification of the constitutionality of certain activities, conduct and attitudes.

Statistical data (situation of files and decisions of the Constitutional Court in the period 01.02.2021-20.12.2021)³⁷

	Total	Objections of unconstitutionality Article 146 (a)	Review of Parliament's Standing Orders Article 146 (c)	Exceptions of unconstitutionality Article 146 (d)	Legal disputes of a constitutional nature Article 146 (e)	Review of Parliament's Resolutions Article 146 (l)
No. settled cases	1964	15	1	1941	2	5

	TOTAL decisions	Decisions of admission of the referrals of unconstitutionality	Decisions of dismissal of the referrals of unconstitutionality
No of decisions pronounced	756	42	714

**45.
COVID-**

³⁷ 1.02.2021 is the reference date for our previous Report on the Rule of Law

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

- judicial review (including constitutional review) of emergency regimes and measures in the context of the COVID-19 pandemic

a) Superior Council of Magistracy

The *state of alert* has been maintained in Romania throughout the year, several government decisions being adopted to extend the alert for periods of 30 days. The latest legislative act in this regard is Decision No.1242 of 8 December 2021 on the extension of the state of alert on the territory of Romania as of 9 December 2021, as well as setting out the measures to be applied during its duration to prevent and combat the effects of the COVID-19 pandemic.

Referring to the measures taken within the Judiciary, SCM has adopted a series of decisions in order to insure a proper unitary implementation of the preventive measures as well as guarantees in this matter for all those accessing the judiciary. The aim of these measures was to ensure both a safe and a proper access to justice. The measures emplaced last year have been applied all along the current year as well in accordance to the evolution of the pandemic.

There should also be mentioned that on April 29th 2021, the Law no. 114/2021 on several measures for the Judiciary in the context of the COVID 19 pandemic situation, was published in the Official Gazette no. 457. The normative act regulates temporary measures for the Judiciary, to be enforced during the alert state as well as during a period of 30 days following the alert state, in order to allow, on the one hand, an adequate protection in what concerns the judicial activities in the context of the COVID-19 pandemic, safeguarding the right to health, the right to physical integrity, the right to life, and on the other hand to allow carrying on in optimal circumstances the activity of the Judiciary.

b) High Court of Cassation and Justice

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

The judicial review of the administrative acts issued based on the art. 15 from the Law no. 136/2020:

- is exercised in first instance by the administrative and fiscal contentious chambers of the courts of appeal and in last instance (recourse) by the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice;
- is exercised in last instance (recourse) by Panels of 5 judges constituted within the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice.

In 2021, the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice solved, as last instance (recourse), by final decision, 21 cases concerning administrative acts issued based on the art. 15 from the Law no. 136/2020.³⁸ In 6 cases concerning administrative acts issued based on the art. 15 from the Law no. 136/2020, the Panels of 5 judges of the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice annulled the administrative act (1 case)/upheld the judgments rendered in first instance ordering the annulment of the administrative act (5 cases).

Constitutional Court

Relevant case-law on the emergency regime in the context of the COVID-19 pandemic

In 2021, the Constitutional Court ruled consistently with that case-law, giving effect to those held in 2020 on the constitutional regime of emergency and alert states.

Shared powers of the legislature and the executive to take extraordinary measures

³⁸ In 1 case the Administrative and Fiscal Contentious Chamber quashed the judgment rendered in first instance and ordered the retrial by the court of first instance, in 13 cases it dismissed the action for annulment/upheld the dismissal of the action for annulment of administrative acts issued based on the art. 15 from the Law no. 136/2020 and in 1 case it dismissed the recourse against the judgment of the first instance declining jurisdiction.

The finding, by Decision No 457 of 25 June 2020, that the legal provisions establishing Parliament's power to approve the state of alert adopted by the Government were unconstitutional led, in 2021, to the finding that a decision of the Parliament approving such a Government decision was unconstitutional.

Thus, by **Decision No 672 of 20 October 2021, published in Official Gazette No 1030 of 28 October 2021, the CCR upheld a referral of unconstitutionality brought by 50 parliamentarians and declared that Decision No 5/2020 of the Romanian Parliament approving the state of alert and the measures introduced by Government Decision No 394/2020** on the declaration of the state of alert and the measures applicable during that decision to prevent and combat the effects of the COVID-19 pandemic were unconstitutional. The Court held, in essence, that the contested decision, based on a legal provision declared unconstitutional, is itself devoid of constitutional basis. The Court also stated that the unconstitutionality of Decision No 5/2020 of the Romanian Parliament has no impact on the existence of Government Decision No 394/2020, a separate legislative act adopted in accordance with Article 4 (1) of Law No 55/2020 and which continues to produce legal effects in the form not amended by the provisions of Decision No 5/2020. of the Romanian Parliament. Moreover, in the Romanian constitutional system, the review of Government decisions, which are acts implementing the law, does not fall within the jurisdiction of the Constitutional Court, but of ordinary courts, by way of administrative litigation procedure.

Conditions for restricting the exercise of fundamental rights and freedoms (Article 53 of the Constitution)

The Court reiterated in several decisions the case-law of 2020, in which it ruled on the conditions for restricting the exercise of rights and freedoms in the context of the pandemic.

Thus, for example, by **Decision No 416 of 10 June 2021**, published in Official Gazette No 814 of 25 August 2021, the CCR found that, according to the mentioned rules, the state of alert can be declared for a limited period of time, which may not exceed 30 days, and may be extended whenever an analysis of the risk factors indicates the need to maintain the amplified response for an additional period of time, which may not exceed 30 days. The emergence, evolution and termination of the COVID-19 pandemic are not aspects/circumstances that can be characterised by certainty, and the elements that influence these deployment steps are not predictable/quantifiable, so that the legislator is objectively unable to regulate a maximum duration for which the state of alert can be declared in the event of the COVID-19 pandemic. At the same time, the provisions of Article 3 (3) of the same law provide that the state of alert shall cease, before the expiry of the period for which it has been declared or extended, when the analysis of the risk factors indicates that it is no longer necessary to maintain an amplified response. This implies that the competent bodies constantly consider whether the conditions which required the establishment of the state of alert are maintained or have disappeared, with the possibility of deciding to end the state of alert before the expiry of the period for which it was declared.

As regards the **specific measures taken in the context of the pandemic** and the impact on fundamental rights under Article 53 of the Constitution, the CCR ruled indirectly, when, by **Decision No 381 of 8 June 2021**, published in Official Gazette No 836 of 1 September 2021, decided on **criticisms relating to the compulsory use of protective mask**. Dismissing as unfounded the exception of unconstitutionality, the Court held that the wearing of a protective mask forms part of all the measures governed by Law No 55/2020 in order to prevent and combat the effects of the COVID-19 pandemic. As stated in the explanatory memorandum to the abovementioned law, the national legislator, in view of the exceptional severity caused by the spread of the coronavirus and the negative consequences for public health, considered that its legislative intervention was necessary, in accordance with the constitutional provisions of Article 53, in order to regulate measures designed to combat the effects of the pandemic. The measure was recommended or imposed in most countries whose population was affected by the spread of SARS-CoV-2. Accompanied by other hygiene measures and social distancing, the wearing of protective masks contributes to the objective of preventing intra-community transmission of the coronavirus. As the scale, the evolution of the pandemic and the insufficiency and/or inadequacy of response capabilities require all efforts to be concentrated and all measures taken to tackle the effects of the COVID-19 pandemic, making the wearing of the mask mandatory is a justified and necessary measure to protect people's right to life and health. The Court also held that, in so far as the obligation to carry the protection mask was imposed solely on the basis of the law, throughout the period of the state of alert determined by the COVID-19 pandemic, a situation would be reached in

which one and the same measure would be applied without distinction, without allowing the authorities to select the need and scope of that obligation, so as not to be disproportionate to the objective pursued.

Quality of legislation adopted in the context of the pandemic

In this regard too, the Constitutional Court of Romania reiterated its settled case-law on the quality requirements of the legislation, applying it with reference to the concrete criticisms made in the files closed in 2021.

Thus, in a case where the link between the requirements concerning the **clarity and predictability of procedural legal rules and the exercise of the right of free access to justice was at issue, the Constitutional Court of Romania upheld the exception of unconstitutionality** of the provisions of Article 72 (2) of Law No 55/2020 regarding certain measures for preventing and fighting against the effects of the COVID-19 pandemic, with reference to Article 42 (3) of the Government Emergency Ordinance No 21/2004 on the National Emergency Management System, as well as the legislative solution in Article 72 (1) of Law No 55/2020, according to which the provisions of that law are supplemented by the rules of common law applicable in the field concerning the resolution of actions brought against the Government's decisions establishing, prolonging or terminating the state of alert, as well as the orders and instructions establishing measures during the state of Alert. To this effect, by **Decision No 392 of 8 June 2021**, published in the Official Gazette No 628 of 12 July 2021, **the Constitutional Court of Romania found, in essence, that the access to justice was infringed by the fact that the person interested to lodge appeal against one of the Government's decisions, orders or instructions issued under Law No 55/2020 cannot identify applicable ordinary procedural rules so as to comply with them.** The Court held that ensuring an effective right of access to justice must also be assessed in the light of the effects of the judgment on the rights of the person who has brought an action to justice. With reference to the ECHR case-law concerning the "close link between the requirements of clarity and predictability of procedural legal rules and the exercise of the right of free access to justice", that is to say, the effectiveness of access to justice, the Constitutional Court of Romania held that "the mere general reference made by the provisions of the law under consideration to the ordinary procedural rules on the matter, whereas the provisions of Law No 554/2004 on administrative litigation are expressly excluded from application, does not meet the conditions of clarity and predictability necessary to ensure the right of free access to justice, and the constitutional provisions of Articles 21 and 52 are therefore defeated".

These recitals were reiterated by the above-mentioned **Decision No 416 of 10 June 2021**, in which the Court recalled that, in accordance with the provisions of Article 147 (4) of the Constitution, its decisions are generally binding and have powers only for the future, having the same effects for all public authorities and all individual subjects of law, causing the legislator's obligation to agree the unconstitutional provisions with the provisions of the Fundamental Law. At the same time, the Court found that **the concrete regulation of the elements determining the effectiveness of the access to justice in the event of appeals against Government's decisions establishing, prolonging or terminating the state of alert and against subsequent acts constitutes a positive obligation falling within the competence of the legislator**, which is required to intervene by adopting a legislative framework which respects the principle of proportionality of restricting the exercise of certain fundamental rights or freedoms.

In the same case, resolved by **Decision No 416/2021**, which also raised the question of **an alleged lack of clarity of the regulations, in conjunction with the requirements of restricting the exercise of certain rights and freedoms**, with reference to the provisions of Article 8 of Law No 55/2020, which essentially regulate the possibility of suspending, during the state of alert, the consumption of food and alcoholic and non-alcoholic beverages in the common dining areas in restaurants, hotels, motels, hostels, cafés or other public establishments, both inside and outside the terraces, the Constitutional Court of Romania rejected as unfounded the exception of unconstitutionality. **The Constitutional Court of Romania held, in essence, that the measure regulated by the criticised Article falls within the category of sectoral measures adopted in the economic field to reduce the impact of the type of risk according to the law, complying with the restriction of the exercise of economic freedom provided for by Article 45 of the Basic Law and the requirements of Article 53 of the Constitution** (being established by a primary regulatory act, adopted by the Parliament). The Court further found that the **provisions of Article 8 of Law No 55/2020 comply with the requirements of clarity and predictability**, the concepts used in Article 8 of Law No 55/2020 having a clear and easily identifiable content by the addressee of the rule.

Similarly, the Constitutional Court of Romania found, by **Decision No 391 of 8 June 2021**, published in the Official Gazette of Romania, Part I, No 719 of 22 July 2021, that the provisions of Articles 65 - 66 of Law No 55/2020 regulating acts of an administrative nature are constitutional, finding that they are clear, precise and predictable, the meaning of which may be determined by the addressees of the law by simple grammatical interpretation of the texts under consideration.

In the latter case, as well as in others, criticisms of the constitutional procedure for the adoption of legislative acts (bicameralism, endorsement) were raised, but were held to be unfounded. Of course, the examples of case-law are much more, but we have not proposed here to carry out a comprehensive treatment, confining ourselves to just a few examples aimed at highlighting the main substantive issues raised before the constitutional court.

In order to facilitate access to the relevant case-law, a special heading was created on the CCR's website, i.e. COVID-19 DECISIONS, where all relevant decisions in this area are selected and posted, which can be consulted by any interested person³⁹.

- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of the COVID-19 pandemic

Legal, disciplinary and immunities Commission (Chamber of Deputies) and Committee on Legal Affairs, Appointments, Discipline, Immunities and Validation (Senate) examined and adopted emergency ordinances to establish social protection measures for employees and other professional categories in the context of the prohibition, suspension or limitation of economic activities, caused by the epidemiological situation generated by the spread of the SARS-CoV-2 coronavirus, as well as to extend certain deadlines in the budgetary-fiscal field.

In this section some examples of legislative acts have to be mentioned: Government Emergency Ordinance no. 68/2021 on the adoption of measures for the implementation of the European framework for the issuance, verification and acceptance of the European Union digital certificate on COVID in order to facilitate free movement during the COVID-19 pandemic; Government Emergency Ordinance no. 67 /2021 was issued in order to take measures to ensure the continuation and relaunch of economic activity during the COVID-19 pandemic; Government Emergency Ordinance no. 48/2021 for the amendment of the Government Emergency Ordinance no. 130/2020 on some measures for the granting of financial support from non-reimbursable external funds, in the context of the crisis caused by COVID-19, as well as other measures in the field of European funds; Government Emergency Ordinance no 49/2021 on the regulation of measures for the recovery of doses of vaccine against COVID-19, purchased by the Romanian State through the Ministry of Health.

B. Independent authorities

46. Independence, resources, capacity and powers of national human rights institutions (NHRIs), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions⁴⁰

Ombudsman

The Ombudsman exercises a general mandate to defend the rights and freedoms of individuals in their relations with public authorities, following the model of Ombudsman in Western Europe.

The Ombudsman institution is regulated in Chapter IV, Title II of the Constitution, gives it particular legal features. Art. 2 of Law no. 35/1997 on the organization and functioning of the Ombudsman provides that: the Ombudsman is a public authority autonomous and independent from any other public authority; in the exercise of its attributions, the Ombudsman does not substitute itself to the public authorities; the Ombudsman may not be subject to any mandatory or representative mandate; no one may compel the Ombudsman to obey his/her instructions or orders; it has its own budget

³⁹ https://www.ccr.ro/decizii-covid-19/?_page=2

⁴⁰ Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>

which is an integral part of the state budget; the Ombudsman and its deputies are not legally responsible for the opinions expressed or for the acts they fulfill, in compliance with the law, in the exercise of the attributions provided by law. The Ombudsman is accountable only to the Parliament, through its obligation to submit reports to the Parliament. The reports may contain recommendations for amending legislation or other measures to protect the rights and freedoms of individuals. Through the special reports submitted to the Parliament, the Ombudsman has the opportunity to highlight the serious shortcomings and dysfunctions in the administration and to draw the public's attention to them. The Ombudsman exercises its attributions ex officio or at the request of the persons harmed in their rights and freedoms, within the limits established by law.

The Constitution obliges the public authorities to provide the Ombudsman with the necessary support in the exercise of its duties. In order to fulfill its constitutional and legal role, the Ombudsman solves the petitions by any natural person, regardless of citizenship, age, sex, political affiliation or religious beliefs.

In order to resolve the problems referred to it, the Ombudsman has the right to request the public administration authorities, to take the appropriate measures to protect the rights and freedoms of individuals, as well as to notify the public authorities, hierarchically superior, in connection with the lack of reaction of those summoned to take the necessary measures.

The Ombudsman has the right to make its own inquiries, to ask the public administration authorities for any information or documents necessary for the investigation, to hear and take statements from the heads of public administration authorities and from any official who can give the necessary information to resolve the petition.

Also, in the exercise of its attributions, the Ombudsman issues recommendations. Through these recommendations, the Ombudsman notifies the public administration authorities on the illegality of administrative acts or facts. This mode of action expresses the particular nature of the Ombudsman's role; thus, it is strong not because of its authority or because of confrontations or threats, but because of its power of persuasion and public denunciation.

The competence of the People's Advocate in resolving petitions regarding the judicial authority is materialized in its legal possibility to address, as the case may be, the Minister of Justice, the Public Ministry or the President of the Court, who are obliged to communicate the measures taken. It is a legal way in which the People's Advocate can intervene in the situations of bureaucracy generated by the non-application of art. 21 of the Constitution, which took over the provisions of art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the right of the parties to a fair trial and to the settlement of the case within a reasonable time.

The Ombudsman can be involved in the constitutionality review of laws and ordinances by the Constitutional Court. Thus, Ombudsman may refer to the Constitutional Court the unconstitutionality of laws adopted by the Parliament, before their promulgation by the President of Romania; it may raise before the Constitutional Court exceptions of unconstitutionality concerning laws and ordinances in force; it may formulate, at the request of the Constitutional Court, points of view on exceptions of unconstitutionality of laws and ordinances, which concern the rights and freedoms of citizens. It is clear that, through this important function, the Ombudsman has a serious and effective lever for fulfilling its constitutional role. The Ombudsman may also refer a matter to the competent administrative court according to Article 3 of Law No 554/2004 on administrative disputes. It may bring an appeal in the interest of law before the High Court of Cassation and Justice, according to Article 514 of the Code of Civil Procedure or Article 471 of the Code of Criminal Procedure, in order to ensure the uniform interpretation and application of the law by all courts. In order to facilitate access to the Ombudsman for all citizens, both in urban and rural areas, 14 offices have been set up at territorial level, operating within the territorial jurisdiction of the courts of appeal, in Alba-Iulia, Bacău, Braşov, Constanţa, Cluj-Napoca, Craiova, Galaţi, Iaşi, Oradea, Piteşti, Ploieşti, Suceava, Târgu-Mureş and Timişoara. As regards the situation of the recommendations issued by The Ombudsman in the last 2 years, we inform you that all the requested information can be found on the institution's website at: <https://avp.ro/index.php/activitatea-avp/recomandari/>.

The National Council for Combating Discrimination

Competences

National Council for Combating Discrimination is the state authority in the field of discrimination which investigates and penalizes acts of discrimination, autonomous, with legal personality, under parliamentary control and guarantor of the observance and application of the principle of non-discrimination, in accordance with the internal legislation in force and with the international documents to which Romania is a party⁴¹. The Council is responsible for the application and the control of the observance of the legal provisions in its field of activity. The Council shall develop and implement public policies on non-discrimination. In doing so, the Council shall consult with public authorities, non-governmental organizations, trade unions and other legal entities pursuing the protection of human rights or having a legitimate interest in combating discrimination.

In the exercise of its attributions, CNCD carries out its activity independently, without being restricted or influenced by other institutions or public authorities. In order to combat acts of discrimination, CNCD exercises its powers in the following areas: prevention of acts of discrimination; mediating acts of discrimination; investigating and sanctioning acts of discrimination; monitoring cases of discrimination; providing specialized assistance to victims of discrimination.

Legislative proposals regarding the modification of the number of members of the Board of Directors of the National Council for Combating Discrimination: In July 2021, a legislative proposal⁴² to amend and supplement O.G. no. 137/2000 aimed at amending Article 23, by establishing the composition of the Board of Directors of 11 members (compared to the current number of 9 members) of which one representative of the Parliamentary Group of National Minorities in the Chamber of Deputies. The proposal was adopted by the Chamber of Deputies on 15.12.2021 and submitted to the Senate, with a deadline for tabling amendments on 9.02.2022.

Budget and staff related aspects: In 2020, the total budget of the National Council for Anti-Discrimination was 8,990,000 lei and the amount spent was 8,230,000 lei. The Council staff comprised 96 approved positions, of which 72 were funded in 2020 and 68 were filled. The average age of employees is 44 years and the share of employees with higher education is 94.12%. In 2021, 97 positions were approved, of which 73 positions were funded and 70 occupied. The total budget of CNCD in 2021 was 9,731,000 lei.

Court of Auditors

In recent years, an extensive reform process has been launched within the Court of Auditors, one of the main tools used in this process being the Operational Program for Administrative Capacity (POCA), namely the SIPOCA 744 Project "The Court of Accounts of Romania - SAI for the citizen" whose implementation started on 9 September 2019. The overall objective of the project is to strengthen the institutional capacity of the Court of Auditors to carry out external public audit work in line with international standards in the field and society's expectations. The specific objectives of the project are to improve strategic planning at the Court level, to update the regulations in the field of external public audit and to strengthen the professional capacity in the field of external public audit.

The project has carried out in 2020-2021 a Functional Review at the level of the institution, which was conducted by the US Supreme Audit Institution - Government Accountability Office (US GAO) through its Center of Audit Excellence and a Peer-Review on the quality of audit reports, involving partners from the Supreme Audit Institutions of Poland, the Netherlands and Austria.

More information on the two evaluation reports can be found on the website of the Court of Auditors - www.curteadeconturi.ro - in the section "About us" subdivision "Projects financed by European funds"/CCR-SAI for citizens.

Draft law on the organization and functioning of the Court of Auditors

The EU-funded project has started to develop a draft law in line with the constitutional role, the provisions of international auditing standards and the mission and vision defined in the Court's institutional strategy. The work is carried out with the

⁴¹ Art. 16 of Law no. 324/2006 for modifying and completing the Government Ordinance no. 137/2000 for preventing and sanctioning all forms of discrimination, published in Official Gazette no. 626 of 20 July 2006.

⁴² http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=19456

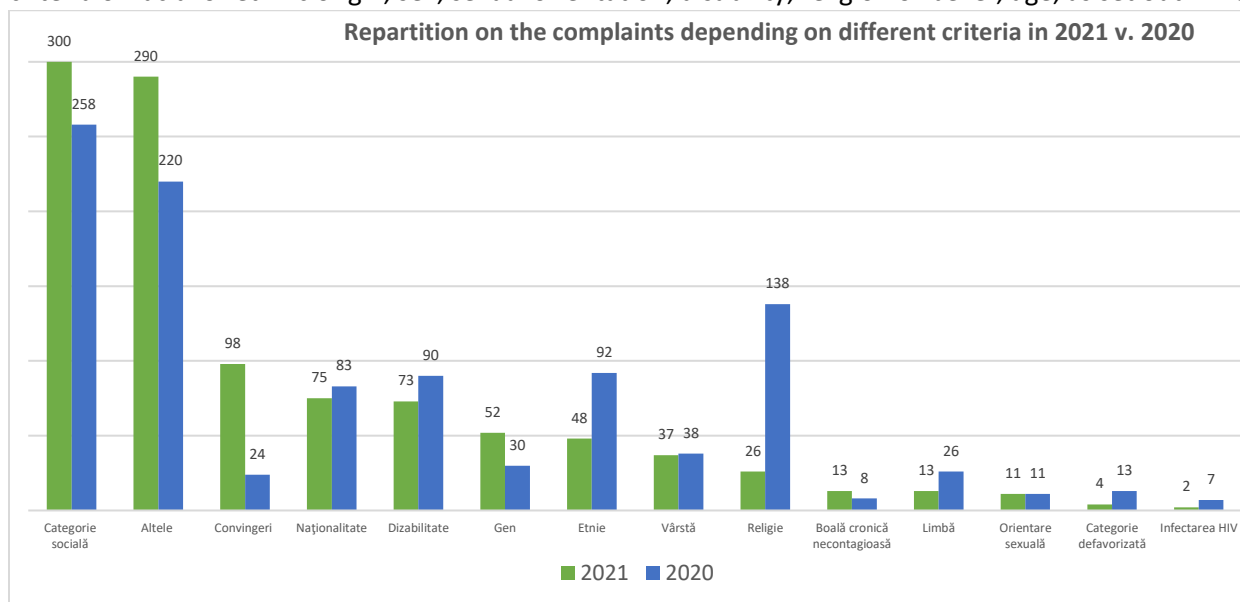
technical assistance and experts of the World Bank who provide the main guidelines to be followed in the drafting of the draft law, and the Court's internal experts, who participate in this process and know the specifics of the institution and the national regulatory framework, will translate these guidelines into a draft law.

The project is also undertaking a review of audit regulations in partnership with the World Bank. This is being done by reviewing and updating and, where necessary, reorganizing and simplifying the methodologies, audit manuals, regulations, etc., which underpin the external public audit activity in Romania in relation to international auditing standards.

47. Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past 2 years

National Council for Combating Discrimination

The number of complaints addressed to CNCD is on a relative upward trend, as shown below. In 2021, 1043 complaints were registered compared to 1039 complaints registered in 2020, 904 registered in 2019 or 822 registered in 2018. A significant percentage of complaints to the CNCD fall outside the criteria of discrimination provided by European Union Directives, such as Directive 2000/43 /EC, Directive 2000/78 /EC, Directive 2004/113 /EC or Directive 2006/54 /EC. These complaints concern differentiated treatment based on social, socio-professional or similar criteria, but differ from the criteria of racial or ethnic origin, sex, sexual orientation, disability, religion or belief, age, as set out in EU Directives.



Court of Auditors

In 2020, 1,546 financial audit assignments, 53 performance audit assignments (17 themes) in priority areas and 1,426 compliance audit assignments were reflected in the Annual Public Report. At the same time, 3,899 monitoring actions were carried out on the implementation of measures ordered by decisions of the Court;

In 2021, 1,718 financial audit missions, 67 performance audit missions in priority areas and 459 compliance audit missions were carried out. At the same time, 4,900 monitoring actions were carried out on the implementation of the measures ordered by decisions.

In the institutional reform process currently underway at the Court of Auditors, it is envisaged that all summaries of audit reports will be made public in the future.

C. Accessibility and judicial reviews of administrative decisions

48. Transparency of administrative decisions and sanctions (including their publication and rules on collection of related data)

Relevant information from public authorities reported within the National Anticorruption Strategy 2016-2020, under the measure "Publication on the website of each control authority of the full list of fines or other administrative measures imposed": "The Ministry of Transport reported that the measure was achieved by incorporating the data into the activity reports published on the websites of the institution's control authorities. On the official website of the Permanent Electoral Authority and in the Official Journal of Romania, reports are published on the Authority's controls on compliance with the legal provisions on the financing of political parties and electoral campaigns. The statements of fines imposed on political parties following controls carried out in previous years can be consulted at www.finantarepartide.ro."

49. Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

a) High Court of Cassation and Justice

1. Judicial review of the administrative acts

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

As concerns the judicial review of the Governmental Decisions exercised in last instance (recourse) by the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice based on Law no. 554/2004 on administrative contentious, according to the statistics, in 2021, there were 62 cases solved, as last instance (recourse), by final decision. The Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice:

- in 2 cases admitted the recourse and annulled the Governmental Decision;
- in 13 cases upheld the judgments rendered in first instance ordering the annulment of the Governmental Decision;
- in 40 cases upheld the judgments rendered in first instance dismissing the action for annulment of the Governmental Decision;
- in 7 cases ordered the retrial by the court of first instance.

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

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

According to the statistics of the Administrative and Fiscal Contentious Chamber of the High Court of Cassation and Justice regarding the cases concerning the evaluation reports of the National Integrity Agency, in 2021, there were 176 cases solved, as last instance (recourse), by final decision, as follows:

- in 29 cases the evaluation reports of the National Integrity Agency were annulled;
- in 2 cases the evaluation reports of the National Integrity Agency were partially annulled;
- in 136 cases the evaluation reports of the National Integrity Agency were upheld;
- in 9 cases the Administrative and Fiscal Contentious Chamber ordered the retrial by the court of first instance.

b) Superior Council of Magistracy

A person who is harmed by the lack of a right recognised by law or by the lack of a legitimate interest through the issue a unilateral administrative act, dissatisfied with the reply received to a prior complaint or who has not received any reply within the time limit laid down in Article 2 paragraph (1) letter (h), may apply to the competent administrative court for annulment in whole or in part of the act, compensation for the damage caused and, where appropriate, compensation for

non-material damage. A person may also apply to the administrative court if he or she considers that he or she was harmed by the lack of a legitimate right or interest through the act of the court which failed to solve the case within the time limit or by unjustifiably refusing to solve a claim, as well as by refusing to carry out a particular administrative operation necessary for the exercise or protection of the right or legitimate interest.

Prior procedure. Before applying to the competent administrative court, a person who considers himself harmed in a right or legitimate interest by an individual administrative act addressed to him must request the issuing public authority or the superior authority, if that exists, within 30 days from the date of service of the act, for the revocation, in whole or in part, of the act. For grounded reasons, the injured party, the addressee of the document, may lodge a prior complaint, in the case of unilateral administrative acts, after the period provided for in paragraph (1), but no later than 6 months after the date of issue of the document.

Competent court. Disputes concerning administrative acts issued or concluded by the local and county public authorities, as well as those relating to taxes, contributions, customs debts and their accessories of up to RON 3,000,000, shall be settled in first instance by the administrative-fiscal tribunals, while those concerning administrative acts issued or concluded by the central public authorities, as well as those relating to taxes, contributions, customs debts, as well as their ancillary debts, exceeding RON 3,000,000, shall be settled in substance by the administrative and fiscal divisions of the courts of appeal, unless otherwise provided for by a special organic law.

The appeal against the judgments of the administrative-fiscal courts shall be heard by the administrative and tax chambers of the courts of appeal, and the appeal against the judgments of the administrative and tax chambers of the courts of appeal shall be heard by the Section for Contentious Administrative and Fiscal litigations the High Court of Cassation and Justice, unless otherwise provided for by special organic law. An appeal may be lodged against the judgment of the first instance within 15 days of notification. The appeal shall suspend enforcement and shall be adjudicated as a matter of urgency.

Extraordinary Remedies. The appeals provided for by the Code of Civil Procedure may be used against the final decisions of the administrative courts. It constitutes a ground for revision, in addition to those provided for by the Code of Civil Procedure, the delivery of judgments which have become final in breach of the principle of priority of European Union law, laid down in Article 148 paragraph (2) in conjunction with Article 20 paragraph (2) of the Romanian Constitution, republished. The request for review shall be made within one month of the date of notification of the final decision and shall be dealt with as a matter of urgency, with priority.

Suspension of the enforcement of the act. In duly justified cases and in order to prevent imminent damage, after referral, in accordance with Article 7, to the public authority which issued the act or to the hierarchical superior authority, the injured party may ask the competent court to order the suspension of the execution of the administrative act unilaterally, until the decision of the court of first instance.

Suspension of the enforcement of the unilateral administrative act may be requested by the applicant, on the grounds set out in Article 14, also by applying to the competent court for the annulment, in whole or in part, of the contested act. In this case, the court may order the suspension of the contested administrative act until the case has been finally settled. The application for suspension may be lodged together with the main proceedings or through a separate action pending the outcome of the action as to the substance of the case.

50. Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

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

D. The enabling framework for civil society

51. Measures regarding the framework for civil society organisations (e.g. access to funding, legal framework, incl. registration rules, measures related to the dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations, etc)

General Secretariat of the Government

The General Secretariat of the Government publishes and permanently up-dates (SGG) is the Register of associations and foundations: <https://sgg.gov.ro/new/relatia-cu-societatea-civila-2/> . In 2021, 26 registration applications were processed in this Register. The GSG manages the CONECT platform - Catalog of non-governmental organizations (<http://conect.gov.ro/w/>), dedicated for encouraging the development of non-governmental organizations, public participation and volunteering. There are currently 413 NGOs registered in the platform.

The GSG received during 2020 56 applications from the NGO for obtaining the public utility status based on GO no. 26/2000. The applications were forwarded to the competent authorities.

Over 70 participants from public authorities (ministries, mayors, county councils) participated to the communication sessions that took place in November 2021. The participants were informed about the obligations of public institutions and authorities in applying GO 26/2000, respectively the creation of internal structures dedicated to the relationship with the associative environment, the obligation to keep a record of the associations and foundations and to organize common activities.

SGG carried out the annual update of the situation of the structures for the relationship with the civil society within the ministries and organized activities in order to standardize practices and align with legal standards (working meetings with ministry representatives, written information).

Other relevant activities: the pilot program "Coordinating the management of innovative processes of ministries and county councils to streamline the participation of civil society in public administration decisions", the pilot program "Transparency of granting non-reimbursable financing from public funds according to law no. 350/2005 at the level of the ministries and county councils", Developing the capacity to implement open governance practices in the Romanian public administration by implementing the project "Capacity building in the field of public governance - a coordinated approach of the Center of the Government of Romania" - funded by EEA / Norwegian Financial Mechanism, Establishing strategy and policy coordination, including in the field of environmental transition, and strengthening the Government's capacity to more effectively coordinate and collaborate with civil society by implementing the "Enhancing policy coherence, transparency and coordination at the Center of Government" project - funded by the technical support instrument of the European Commission.

Activities included in the National Recovery and Resilience Plan: GSG is responsible for the implementation of the 14 Component Good Governance. One of the objectives is to improve governance with a predictable, informed and participatory decision-making system through better coordination, formulation and implementation of government policies, increased transparency and trust in the public sector. Reform 1 aims at enhancing the predictability and efficiency of decision-making processes by strengthening the capacity for policy coordination and impact analysis at the level of the government and coordinating ministries, as well as by strengthening the tools to increase the quality of public consultations at all levels of the administration.

52. Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders

Please see point 51.

E. Initiatives to foster a rule of law culture

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

The Committee on Legal Affairs, Discipline and Immunities (Chamber of Deputies)

The Romanian Parliament aims to initiate activities to awaken the citizen's interest in the transparent process of political activity. In this sense, at the level of the Romanian Parliament meetings, round tables, conferences were organised and will continue to be organised with a view to identifying ways to better know and improve the legislative framework. The Parliament always offered to the citizens, the interested institutions, the representatives of professional and non-governmental organizations, of the academic environment the possibility to take actively part in the debates on the legislative activity. The functioning of the rule of law is ensured by combining the activity of drafting laws, by respecting the Constitution, the fundamental rights and freedoms of citizens, free access to justice, proper functioning of parliamentary control and ensuring the principle of legal certainty.

Committee on Legal Affairs, Appointments, Discipline, Immunities and Validation (Senate)

On 26 January 2021, members of the Commission's Bureau discussed the latest developments in the Parliament with the experts of the CVM in a meeting held via videoconference.

At its meeting of 2 February 2021, the Legal Affairs Committee on Appointments, Discipline, Immunities and Validations considered and adopted the minutes on the 2020 Rule of Law Report and at its meeting of 18 November 2021, the Commission considered and adopted the minutes on 2021 Rule of law Report.