

# Targeted stakeholder consultation 2022

## Rule of Law Report: topics for input

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## Questions on horizontal developments

### Pre-existing context

- Pre-existing issues related to transparency, accountability and exposing corruption - their implications are more poignant now, during the COVID-19 pandemic
- Pre-existing structural issues with the justice system and the fight against corruption – large protests since 2017 due to legislative changes that were tried through the Government and then through the Parliament
- Pre-existing structural issues with the media and civil society infrastructure – low level of sustainable funding; vulnerabilities related to local level due to the political influence and scarce available resources

## Important developments during 2021

- A major political crisis that affected any progress regarding any major topic on the political agenda. The newly formed center-right coalition between the National Liberal Party (PNL), Save Romania Union (USR) and Democratic Alliance of Hungarians in Romania (UDMR) was cut short with the dismissal of the Minister of Justice from USR and after three months of turmoil, a new majority was formed between PNL and the Social Democratic Party (PSD). The political crisis made difficult any discussions that implied the idea of any reform;
- For example, no progress has been made on the dissolution of the Special Section for investigating magistrates, on the contrary, any negotiation has brought more and more controversial amendments;
- Transparency issues have returned to the same state as they were before the state of emergency from spring 2020 - there has been no progress and no regress in the same time, just the same stagnation as in the years before the pandemic;
- A new wave of discussions on the primacy of European Law triggered in the public space, in the context of the CJEU opinion on the non-enforcement by the national judges of the Constitutional Court's decisions contrary to EU law. Among

those who deny the primacy of the EU law in this situation are also law professionals who disagree with the CJEU decision. The discussions went on until the MCV validity started to be questioned

(<https://www.juridice.ro/764413/mcv-cjue-si-ccr-de-ce-mcv-a-expirat-in-2010-si-o-analiza-a-suprematiei-si-primatului-in-raporturile-dintre-ordinea-juridica-nationala-si-ordinea-juridica-a-ue-partea-i.html>);

- A new National Anticorruption Strategy for 2021-2025 was adopted in December, on fast forward, because it was a milestone in Romania's Recovery and Resilience Plan (<http://legislatie.just.ro/Public/DetaliiDocument/249932>). While consultations were open for a few months, the strategy in itself did not receive significant attention, mostly due to the disappointment with previous strategies that showed no or little impact;
- The National Recovery and Resilience Plan seems to play the Holy Grail role - it has promises (reforms and investments) aimed at solving many issues related to rule of law; however, a strong monitoring capacity and availability of data needs to be ensured for independent civil society and media to monitor in due time the implementation of the measures and make sure that this opportunity does not transform into a corruption risk;
- Civil society seems more than ever disappointed with the political class and tired to hope that something can improve any time soon and for the first time in many years, the low level of trust in institutions seems to affect the perception about the European Union as well (<https://europa.eu/eurobarometer/surveys/detail/2552>);
- AUR (Alliance for the Union of Romanians), a far-right political party that entered the Romanian Parliament in December 2020 has started to capitalize from the discontent generated by the pandemic and by the political crisis, including through some of its members suggesting a RoExit;
- The tensions at regional level, especially in Ukraine, are affecting even more the information and public space, with disinformation playing a key role in undermining the trust in democratic institutions, rule of law, and the Western values in general.

# I. Justice System

## A. Independence

### ***1. Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)***

Although it is hard to say whether the appointment of high-ranking prosecutors played an important role in last year's political crisis, rumors have circulated in the media that the issue of political appointments was actually the source of the party's discord (example: The “unseen stake” of the appointment of chief prosecutors, the possible reason for the breaking up of the Government Coalition, Europa Liberă România).

Even more, the former Minister of Justice from USR, Stelian Ion, accused “signals” that were sent to him in order to stand aside from these appointments. Ion suggested that one of the reasons for his dismissal by the prime minister was that he started the selection procedure for the chief prosecutors in DIICOT and DNA without prior consultation with President Klaus Iohannis, the one who should validate these prosecutors in the office.

Whether they are true or not, such accusations about political interference in the prosecutors' appointment are but to make the situation of the two institutions even more difficult in regards to the public's perception of their legitimacy.

As a result of the political crisis that followed, with the collapse of the ruling coalition, the prosecutors' appointments were suspended during the interim period.

The latest news came at the beginning of January 2022, with the current minister of Justice announcing his plans regarding the prosecutors' appointments. Actually, nothing much is happening, there are no discussions on the public agenda and no plans in sight for the changing of this prolonged interim period of the high-ranking prosecutors' offices. Moreover, the minister of Justice declared that there is no emergency on their appointment since there is no pressure on the system (“What plans does Predoiu have for the appointment of the chief prosecutors”, Presshub, 8 January 2022).

Even though the Venice Commission and the Mechanism for Cooperation and Verification strongly recommended reconsidering the central role given to the Ministry of Justice in the appointment and dismissal of magistrates, these provisions remain unchanged, since the Laws of Justice are still in force.

***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)***

One event that stirred up society was the dismissal of judge Cristi Danilet from the magistracy by the Superior Council of Magistrature, as a result of his activity on social media. The decision caused a strong reaction in public, even those who are not supporters of the judge's activity considered this sanction as a disproportionate one. The disciplinary offense for which he was accused was for manifestations detrimental to professional honor or probity or the prestige of the justice system. This is not his first sanction received from CSM. The judge is known in the society as being an active militant for the reform in the justice system and the dissolution of the Special Section.

Following this event, a lot of internal and external voices manifested their concerns regarding the independence of the justice system, including the US Embassy in Bucharest and the European Commission.

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

N/A

***4. Allocation of cases in courts***

At the end of December 2021, the Decision of the ECJ restarted a long standing debate on the allocation of cases in courts, a debate that lead to the possible prescription of several high-level corruption cases ([https://curia.europa.eu/jcms/jcms/p1\\_3597305/fr/](https://curia.europa.eu/jcms/jcms/p1_3597305/fr/)).

***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)***

***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)***

The social-democratic Government that ruled Romania between January 2017 and October 2019 changed the legislation on the judiciary, instituting a Special Section for investigating magistrates. Largely criticized by the professionals from the judiciary, by the civil society, international and European bodies like the Venice Commission or by the citizens that took over the streets, the Section is still existing.

The former ruling coalition started long talks on the dissolution of this section, but without success. Initially thinking that all coalition members wanted this section to be dismantled, then negotiations showed that the views of the members were different, which later ended with the dissolution of the coalition itself, but not of the Special Section.

The dissolution of the Special Section seems an endless saga that diminishes more and more the trust in the political class and increases citizens' confusion about the advantages or disadvantages of dissolving this section.

As there is no political or even judicial consensus on its dissolution, this topic seems to be on the political agenda as another subject nobody wants to deal with anymore, but there are still some European commitments that ask for it. As a result, on 21 January 2022, the Ministry of Justice opened another public debate on a draft law for “dissolving” this Special Section. However, the new draft seems to be a compromise between political actors, but that does not fulfill the CVM Recommendations and the Venice Commission Opinions. In practice, the so-called dismantling of the Section is just a re-branding process and does not solve the issues raised previously, in particular the need to have a re-establishment of the competences of specialised prosecutor's offices, such as DNA and DIICOT or the risks raised by the fact that the appointment and dismissal of the prosecutors that will continue to work on the ongoing cases will be carried by the SCM Plenary.

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

The remuneration of the judges and prosecutors still remains a contentious topic that appears on the public agenda once in a while, but without significant changes in the past year.

A key point last year was the Constitutional Court's decision on the unconstitutionality of the special pensions of magistrates by up to 85%.

The decision came after the Parliament decided to tax special pensions by up to 85% and the Romanian Ombudsman challenged the law at the Constitutional Court.

The latest update came in December 2021 when by a ministry order, the magistrates' salaries and special pensions were raised. Justice Minister, Catalin Predoiu, who signed the order, claims that the Ministry of Justice will thus avoid tens of millions of RON as expenses for trials filed by the magistrates for the recovery of certain salary rights.

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

The independence of the prosecution service is directly related to the discussions on the appointment of the high-ranking prosecution and, as well, on the discussion of the system's efficiency in some of the most important files in the past years.

Regarding this topic, we expressed our opinion in the section about the appointment of high-ranking prosecutors and in the one referring to the system's efficiency.

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

The most important issue on the public agenda that raised questions on lawyers' independence was the case regarding lawyer Robert Rosu who caused much disagreement among lawyers and other legal professionals. As stated in the previous contribution to RoL Report 2021, the issues related to this case were numerous and probably contributed to his acquittal verdict at the High Court of Justice in November 2021.

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

Several events contributed to the perception of the general public on the independence of the judiciary:

1. DIICOT and the citation of journalists for blackmail. In May 2021, journalists from Libertatea and Newsweek were called to DIICOT headquarters for questioning following a complaint by the mayor of Sector 4. The mayor accused without any proof that the journalists were involved in blackmail and organized crime. This accusation followed after the same mayor was disturbed that he was the object of investigations and opened tens of cases against journalists, and, in particular, against journalists from Libertatea (<https://www.libertatea.ro/stiri/anul-se-incheie-cu-trei-procese-pierdute-de-primarul-psd-daniel-baluta-pe-20-21-si-23-decembrie-in-fata-jurnalistilor-de-investigatie-3907434> ). Even though SLAPPs become rather frequent in Romania, this kind of reaction of DIICOT was out of the ordinary, in particular because the press revealed that the case prosecutor was married to the lawyer of one of the relatives of the mayor of Sector 4.
2. The arrest of a well-known activist, Cristian Dide, for sending packages with CBD products (with a concentration legal in other EU states) to the DIICOT Iasi prosecutor's office, as a gesture of civil disobedience to show how easy it was to buy such products online. First detained for 24 hours, and then arrested preventively for 30 days, many people saw the move as disproportionate. Afterwards, on 18 December, the Iasi Court decided to extend the preventive arrest for another 30 days. The general message received by the public was not that the judicial authorities have carried out an act of justice, on the contrary, the message received was that this was an act by which the judicial system wanted to teach the protester a lesson for his defiant action. Moreover, he was put under surveillance and he has been wiretapped for three months, raising concerns about the access of prosecutors to his conversations with other activists, as well as with journalists, lawyers etc.
3. DIICOT Brăila prosecutors and the harassment of journalist Alin Cristea, including through search warrants in his home, the home of his parents, and the editorial

office of the newspaper debraila.ro. The prosecutors have opened a criminal investigation case against the journalist and the publication debraila.ro for committing the crime of distributing or possessing child pornography materials, after the publication of an article on the physical aggression of a minor. Besides the searches, prosecutors confiscated telephones, computers and other equipment, blocking the publication from appearing and violating the confidentiality of journalistic sources. Several reports from other media outlets show that the journalist has criticized the head of the Brăila Police. A DIICOT Brăila prosecutor contacted the journalist to defend the police chief, and the DIICOT's action in force followed a few days later.

## B. Quality of justice

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

No significant changes since the previous report.

### ***12. Resources of the judiciary (human/financial/material)***

Several investments and reforms for the judiciary were included in Romania's National Recovery and Resilience Plan. The measures include the adoption of a new strategy for the development of the judiciary 2022-2025, which will include measures (management, investments, concrete actions, etc.), which are the responsibility of the institutions in the judiciary. The strategy will include two pillars: the first is to strengthen independence justice as a fundamental element of the rule of law, and the second pillar will include consolidation policies of institutional capacity. The second pillar will include quality and efficiency policies the judiciary, such as: the policy of optimizing the functioning of the courts, digital transformation etc

While these are a good starting point, it is unclear whether they will actually become reality. Romania has a long history of poor absorption of the EU funds and it should be noted that the mere allocation of much needed resources is not enough and that real

budget credibility must be ensured. Adequate monitoring of the implementation of measures and contracting of investments should be ensured, including through mechanisms that could involve civil society in this monitoring process.

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

No significant changes since the previous report.

***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)***

No significant changes since the previous report.

***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)***

No significant changes since the previous report.

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

No significant changes since the previous report.

## C. Efficiency of the justice system

***17. Length of proceedings***

Some of the most important files are still not completed, such as the Revolution file, Miners’ riots, 10th August and Colectiv files. From time to time news comes into the public sphere and we find out that some of the files were either disjoined, evidence was

rejected or some decisions were postponed. Even in the other files, there have been no big changes in this respect. This still remains one of the major issues of the system.

## II. Anti-corruption framework

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

***18. List any changes as regards 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 technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measures taken to effectively and timely cooperate with OLAF and EPPO (where applicable).***

No major changes were made since the last report and the same issues remain valid for most of the institutions with roles in the fight against corruption - sloppy legislation, lack of human resources, scarce technical resources etc.

Romania's National Recovery and Resilience Plan (NRRP) has measures and investment allocated to the fight against corruption. The proposed reform has two major components, namely:

1. Adoption and implementation of a new national anti-corruption strategy;
2. Strengthen the capacity of public authorities involved in the fight against corruption - in the recovery of property damage and injury, including by extending the institutional mandate of the ANABI, as well as increasing DNA capacity.

The objective of the reform is to strengthen the anti-corruption policy of the Romanian state by supporting the three key dimensions, namely prevention, control, damage recovery and improve the administrative and operational capacity of anti-corruption institutions and recovery of criminal assets.

The measures include several promises related to other institutions as well - for example, to allocate the necessary resources for the optimal functioning of DNA, including from the perspective of the new headquarters, EPPO support structure, Technical Service and supplementation of judicial police officer posts.

**The major challenge in this regard is to have an actual implementation and reach the milestones in the National Recovery and Resilience Plan (NRRP). At this point, there were several issues with the way in which the implementation has kick-started, including on the transparency side**

**(<https://funky.org/solicitare-dezbatere-publica-implementarea-pnrr-trebuie-sa-respecte-principiul-transparentei-pana-la-capat/>). While the Government promised to have a Monitoring Committee for the NRRP, we believe that involving civil society and especially independent civil society in monitoring the measures related to the fight against corruption is crucial, as well as the full transparency of the progress.**

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

Major concerns remain with regards to the political influence related to several authorities with responsibilities in this area. Several new developments worth mentioning are related to authorities that became even more vulnerable in the past year such as the Permanent Electoral Authority - investigative reporters have revealed severe corruption allegations related to the president of the Authority that should be in charge, among other things, with the prevention and detection of corruption related to political parties and campaigns financing

(<https://www.riseproject.ro/parlamentul-si-a-amintit-hidra-din-aep/>).

***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 National Anticorruption Strategy 2016-2020 included objectives and measures to act on the deeper causes of corruption, the approach not being limited to combating the phenomenon. The program document included measures aimed at preventing corruption, promoting organizational integrity, anti-corruption education and, last but not least, recovering the debts of crime. 2021 was a year of evaluation for this Strategy and

drafting of a new one, an evaluation that could be summarized by the following major points:

- The measures implemented were shadowed by the attack on the judiciary and the anticorruption framework between 2017-2019, which made preventive measures such as the codes of conduct or other administrative measures very unimportant in comparison with the major legislative shifts or pressure put on the judiciary
- Many of the vulnerable sectors continued to be so and some became even more vulnerable to corruption (the healthcare sector), leading to the need to maintain them as key sectors for the new strategy;
- The implementation timeframe for the NAS overlapped with the years of degradation of the anticorruption and integrity systems, which shows, once again, that we cannot take progresses for granted, that constant investment still needs to be made in the basics of anticorruption, and that political will (or the lack of it) can affect in just a few months years of progress.

Unfortunately, even after two electoral years (2019, 2020) in which political leaders were elected on promises to restore the fight against corruption, the action was absent and new challenges appeared due to the Covid-19 pandemic.

## 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.***

No major changes. On the contrary, the state of reporting on the National Anticorruption Strategy 2016-2020 says more than we could: <https://sna.just.ro/vizualizare-date/>.

***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)***

A general degradation of the application of transparency of public decision-making provisions was registered in the past year. Using as a pretext the pandemic, 2021 continued to register numerous trespassing when it comes to public access to information or public participation.

As an example, we mention the analysis we conducted together with International Budget Partnership on the openness of measures taken during the pandemic by the central government, which shows Romania scoring some of the lowest points in the EU when it comes to transparency, participation and oversight:

<https://funky.org/clasament-global-cat-de-responsabile-au-fost-guvernele-cu-masurile-fiscale-luate-de-urgenta-in-pandemie/>.

Another example, at a lower level, is related to the annual process of adopting the local public budgets in 2021. The legislation provides for a mandatory timeframe for the publication of the draft budget, as well as for a public debate. A study of Funky Citizens on all municipalities in Romania (109) shows a dramatic picture (<https://funky.org/transparenta-bugetelor-de-municipii/>):

- At more than 5 months after the beginning of the fiscal year, 6 budgets were not even available on the website of the local governments and 47 of them were published after the legal deadline
- 20 municipalities did not even publish a notice of the mandatory public debate on their website and only 41/109 have organized a public debate

This shows a lack of enforcement for the basic requirements of transparency laws in Romania, at the most basic level of budget adoption.

***23. Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)***

No significant changes, but promises are made in this regard within the framework of the National Recovery and Resilience Plan.

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

Romania already has a regulation in place in this regard since 2004. The law is not well known or not particularly well enforced. However, at the moment, discussions are (or should) revolve around the transposition of the EU directive on the protection of whistleblowers.

On the 1<sup>st</sup> of April 2021, the Romanian Ministry of Justice organized an online meeting to debate the transposition of the EU directive on the protection of whistleblowers. The meeting took place on the 8th of April at the request of several civil society organisations.

Since that moment no further major actions have been taken, the transposition being still in progress. Promises are made in this regard within the framework of the National Recovery and Resilience Plan.

**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 the disbursement of EU funds, other).**

Public procurement is a major area of concern. Public procurement for healthcare is an even greater concern. Our assessment stems from our experience and from realities we face daily – transparency, accountability and exposing corruption are major issues when it comes to public spending and especially public spending for the health sector. These are evergreen topics, but their implications started to be more poignant now, during the COVID-19 pandemic. In the past 2 years, we saw more and more cases where the authorities did not follow the rules, hid the truth, used the health crisis to impose less transparent procedures, and wasted public funds on non-essential items. In our activities, we aimed at these issues and kept advocating for more transparency, explaining its benefits and fostering whistleblowing. A more detailed analysis and recommendations in a comparative framework can be found here:

<https://funky.org/recomandari-pentru-o-mai-mare-transparenta-a-achizițiilor-publice/>

In this regard, our organization is strongly committed to promoting open contracting as the main solution to tackle corruption risks. In the past year, we have received signals

that some members of the Parliament and some local authorities would be willing to commit to such openness as well

(<https://funky.org/open-contracting-raportul-webinarului-pentru-autoritati-locale/>).

Public expenditure and discretionary spending are also a major concern, the fiscal and budgetary policy being opaque and vulnerable to corruption. During 2021, we have performed several analyses that show several major issues:

- The general lack of openness of the fiscal policy is a major concern; the national budget was subject to public debate from Sunday morning until Monday and approved in the Parliament on fast-forward, without any respect for the national legislation or for the European and international standards for that matter (even though this might seem like a macro policy in which corruption cannot appear, the 2022 fiscal year budget showed a possible misallocation of funds to a political party, which led to that allocation being ruled unconstitutional by the Constitutional Court)
- Several budgetary programs and allocations are discretionary, leading to strong corruption risks. In particular, it is the case for the Reserve Fund (we have conducted a thorough analysis on the matter that shows a strong political dependency of the allocations of funds: <https://funky.org/fondul-de-rezerva-cum-se-cheltuie-discretionar-si-netransparent-pestre-un-miliard-de-euro/>) and the case of programs like Anghel Saligny or National Plan for Local Development I & II that raise several questions with regards to the transparency of the allocations (<https://funky.org/am-solicitat-avocatului-poporului-sa-sesizeze-curtea-constitution-ala-cu-privire-la-oug-saligny/>)
- The National Recovery and Resilience Plan faces major vulnerabilities to corruption if full transparency is not ensured and monitoring capabilities are not available to independent and non-political civil society organisations and media. Together with the European Semester reports, the status reports on the NRRP must be subject to intense and full public scrutiny, in order to avoid in due time any corruption risks.

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

No significant changes since the previous report.

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

No significant changes since the previous report.

## C. Repressive measures

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

No significant changes since the previous report.

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

N/A

**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)**

No significant changes since the previous report.

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

In September 2021, the government adopted the National Strategy on the Recovery of Crime Claims for the period 2021-2025. The Strategy is also included in the National Recovery and Resilience Plan and resources are allocated for improving the

infrastructure of the National Agency for the Management of Seized Assets (ANABI). However, progress still needs to be proven in meeting the promises in the Strategy and in the NRRP, as well as the political will to support the work started by the Agency.

## III. Media freedom and pluralism

### A. Media authorities and bodies

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

N/A

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

At the end of 2021, in December, the newly established majority PNL-PSD-UDMR adopted in the Chamber of Deputies. as the first forum, an amendment of the National Audiovisual Council (CNA) Law by which the person who was dismissed from this position would be allowed to return to the position of president of the institution, as this is the case of Monica Gubernat, brought down just several months before by the previous coalition of PNL and USR. While a final vote will be casted in the Senate, this shows the high politicization of this body.

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

CNA's activity can be evaluated by the way in which the institution intervened in the infodemic fueled by toxic information in some television programs. In 2020, the CNA shyly began sanctioning programs that promoted false information about the pandemic and, respectively, the medical solutions to combat the pandemic. In 2021, the magnitude of the messages promoting false information from a medical science perspective increased, but CNA seemed to become a bit more active. From our monitoring at

Factual.ro, it can be seen that in the audio-visual media, the volume of messages containing false information has decreased considerably but there are, however, a few islands left to spread misinformation about the pandemic. However, the lack of contextualization is still a problem which can lead to “information laundering”. An extensive study we have published in December 2021 also briefly covers several examples on how disinformation and extremist information is mainstreamed through this phenomenon (<https://funky.org/analiza-propaganda-anti-occidentala-in-2021/>).

## 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)***

This is a huge problem that was constantly underlined by media investigations (in particular, Cristian Andrei from Radio Free Europe:

<https://romania.europalibera.org/a/probleme-legea-privind-finantarea-partidelor/31654733.html> ) that show that:

- Political parties are allocated on a monthly basis huge amounts of money as subsidies, and a significant part of these resources goes to state advertising
- Political parties refuse to publish their contracts or to submit them to the media, even though they are subject to FOIA
- This is a disproportionate sum of quasi-state advertising (funds are coming from the state budget) that is affecting the entire advertising market (<https://www.libertatea.ro/stiri/psd-si-pnl-au-cheltuit-mai-mult-decat-coca-cola-si-dacia-renault-pe-publicitate-3927454>)

**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 appointment, dismissal) and safeguards for their operational independence (e.g. related to reporting obligations), - procedures for the concession/renewal/termination of operating licenses - 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**

No significant changes since the previous report.

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

No significant changes since the previous report.

## C. Framework for journalists' protection

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

Several practices have led to a degradation of the framework that should guarantee journalist's independence and safety. Examples include, but are not limited to:

DIICOT treating several journalists as criminals and impeding their activity - as previously mentioned at point 10, one last-minute event comes from Braila, where a journalist was put under criminal prosecution following the publication of a material on a subject related to the physical assault of a minor. This comes along with other cases in which DIICOT called the journalists from Libertatea and Newsweek to respond to accusations of blackmail. It also follows along the bizarre lines of another case which we have noted in our previous contribution, related to the DIICOT closing, then partially reopening a case in which magistrates and journalists were under surveillance.

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

No significant changes since the previous report.

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

The enforcement of the access to information legislation is a constant vulnerability of the Romanian institution - the issues are generated both by the lack of political will to put transparency and access to information at the core of the principles of interaction with the society and the media, but also by the low administrative capacity of institutions to properly respect the observance of this law (i.e. there is usually just one person in charge with providing access to information per institution). There is also a lack of resources in the media (and in particular local media) to push for the proper enforcement of the regulations. These were issues that we have constantly advocated in joint actions in civil society and media.

The situation did not improve as compared to last year when we saw that in the emergency state the authorities abused measures limiting access to information. The state of alert means, in fact, the same situation in which public authorities respond late or with incomplete information by calling confidentiality provisions when this is not the case.

Information on public procurement made during the pandemic was among the most difficult information to be obtained from the public authorities. Even at the national level, the authorities have hardly or not provided at all information on who are the parties involved in major purchasing contracts.

Here, in this folder (Cerere 1 - <https://drive.google.com/drive/u/2/folders/1OdXDLyoeuTriojy1UrPwEOSdWKtTNNPG> ), one can see what an answer to a simple question can look like. The answer is from a national authority involved in purchasing materials to combat the pandemic and the question was simple: who was the supplier and who signed the contract for this contract.

The lack of transparency of the national authority, Unifarm, made a journalist to sue the authority, together with the Health Ministry (in the same folder - Cerere\_Ana Poenariu). The journalist's request is simple: to require the defendants to provide all the public information already requested, that is, the list of purchases made by Unifarm in the context of the pandemic, in 2020 and 2021, in which it should be specified the products purchased, the value of each purchase, the quantity, supplied and date of purchase.

This example shows that if the transparency of national public authorities is so difficult to be obtained, it is even more difficult to get that information from small public authorities, at the local level, where the culture of transparency is even more opaque.

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

Please also see point 10 above as well as our previous contribution on the RoL Report 2022.

## 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***

This remains a major issue, in particular due to the lack of enforcement of existing legislation. Besides the previously mentioned examples (please see point 22 above), we must note the worsening of the trend of "governance by GEO" (Governmental Emergency Ordinance), an inclination that leaves no room for a transparent and predictable decision-making process. provides time for public debate and are given... urgently). The National Recovery and Resilience Plan also promises changes (reforms and investment) in this area.

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

The role of parliament is reduced, with the executive having a dominant position in regulation. After the first session of the new Parliament, we have conducted an analysis of its activity (the next Report is planned for the 1 February 2022) that revealed that, for example:

- In terms of finance legislation, 25 of the 51 draft laws concern the approval of a GEO, including one that approves state aid for the Oltenia Energy Complex.
- In the Covid-19 category, only 11 of the 42 initiatives do not approve a GEO, which is understandable given the need for emergency responses though
- It is also worth mentioning that, of the 474 legislative initiatives included in this analysis, almost 40% were initiated by the Government.
- Out of the 474 draft laws, 140 (30%) are aimed at approving a GEO and 174 (37%) went through a fast-track procedure

The full analysis is available in Romanian here:

<https://funky.org/analiza-cu-ochii-pe-parlament/>

#### **44. Regime for constitutional review of laws**

No significant changes since the previous report.

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

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

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

No significant changes since the previous report, it remains a major challenge.

## **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 institutions**

No significant changes since the previous report.

#### **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 two years.**

No significant changes since the previous report.

## C. Accessibility and judicial review of administrative decisions

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

No significant changes since the previous report.

### ***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).***

No significant changes since the previous report.

### ***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***

No significant changes since the previous report.

## 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 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.)***

No significant changes since the previous report.

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

No significant changes since the previous report.

## 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.)***

No significant changes since the previous report.