



Changes impacting non-governmental organizations

Legislative briefing

Context

The non-governmental sector has been the target of controversies; these have varied throughout the years, with the most recent peak being attained in 2017-2018, with the NGOs in stark opposition to legislative changes that threaten the rule of law. NGOs have been vilified, accused of following foreign orders, of operating against the best interest of Romania and its citizens and altogether acting for their own benefit and tricking well-meaning individuals into following their occult causes. The NGOs targeted by these narratives were always the ones that were critical to the Government and the politicians and that were spearheading public information and advocacy campaigns on political actions that were objectively detrimental to the functioning of a democracy respectful of the rule of law.

Law proposals in debate in 2023

The most recent proposal forwarded by members of the Parliament stems from both a crass misunderstanding of what the civil society does and from the wish to block the intervention mechanisms available to NGOs in specific cases of corruption, especially related to urban planning and/ or environmental harmful projects. Two parliamentary proposals have an important restrictive impact that stems from the presumption that NGOs act in ill-fate when they do strategic litigation, but their provisions hurt not only environmental activist, but all NGOs. To this end, the changes to GO no. 26/2000 adds new provisions that impose very restrictive obligations for civil society organisations and reporting requirements that echo Kremlin-propaganda against NGOs.

Legislative proposals

PLx [317/2022](#) - Changes to urban planning legislation and administrative litigation

Initiators: MPs from PNL. Main promoter is Mr. Daniel Fenechiu (PNL).

Status: At the President for signing into law. More than [110 NGOs petitioned him](#) to send the Law back to the Parliament.



Next steps: President can send it back to the Parliament for re-examination and/ or Constitutional Court (there was already a CCR notification by USR+FD that was rejected)

Resoning: The draft law claims that "...at the present time, in the context of the legal regulations in force, a major imbalance is generated between NGOs and investors. NGOs are given active procedural status, their interest is presumed, and fees are set modest stamp, they are set very permissive deadlines in which to challenge the documents in question. This profoundly unfair situation must be rebalanced by making these NGOs and their founding members responsible, (...) by establishing firm deadlines in which actions to challenge administrative acts can be initiated."

These claims are factually wrong - NGOs are treated exactly like any other litigant who must: prove its procedural capacity and legitimate private interest under the terms of ICCJ decision no. 8/2020; pay the judicial stamp duty established by GEO no. 80/2013.

Main problems: The accountability referred to in the draft law represents a sanction against non-governmental organizations, starting from the presumption of bad faith regarding all NGOs. The draft law establishes provisions only for NGOs that make it extremely hard for them to do strategic litigation. The argument is that NGOs block investments due to their environmental or urban planning concerns raised in court. But, in reality, their actions can act like early-warning mechanisms, especially since Romania now has to respect the "do no significant harm" principle for all investment from the Recovery and Resilience Facility and/ or other EU funds.

Specific issues:

- organizations have only 30 days to challenge in court building permits and urban planning documents suspected of being issued illegally;
- the right to go to court expires after 30 days from the date of the last Publicity Operation (from the publication of the notice of issuance of the act on the website or in a newspaper);
- the deadline for attacking urban planning documentation (such as PUZs or PUGs) has been reduced for NGOs by 5 times, from 5 years to 1 year.

L [857/2022](#) - Changes to GO 26/2000 on the functioning of NGOs

Initiators: MPs from PSD and PNL (subsequently, the PSD MPs withdrew their signatures following the protests of civil society). Main promoter is Mr. Daniel Fenechiu (PNL).

Status: Sent back to the Legal Commission of the Senate (LCS) from the Plenary, after many protests of NGOs. On March 7, there was a first meeting with the Commission and NGOs.



Next steps: New report from LCS -> Senat Plenary -> Chamber of Deputies (LCD + Plenary)
-> President and/ or Constitutional Court

Resoning: The legislative amendment starts from a premise that is as erroneous as it is outrageous, regarding the activity of NGOs. The statement of reasons that accompanies the legislative proposal, that Romania does not have highways or hydroelectric plants because the NGOs attack administrative acts. So, it would be good for them not to interfere in the mechanisms for verifying the legality of the construction of highways or hydroelectric plants or other construction projects, such as real estate, and, if they still dare to do it, to pay guarantees of up to at 50,000 lei. The statement of reasons starts from the thesis that NGOs act in bad faith.

Main problems: The proposal includes measures that seriously violate access to justice, the right to association and seriously limit the mission of non-governmental organizations to protect the public interest through strategic litigation. It also introduces reporting requirements that partially cannot be met and partially follow the narrative of a conspiracy financing that makes NGOs subject to smear campaigns.

Specific issues:

- Introducing the patrimonial liability of the members of the board of directors for any damage caused to third parties, if the action has been rejected by a final court decision, (while, on the other hand, there is no individual liability of a representative of the public administration, for example, in the case of a final decision that finds the illegality of an administrative act);
- It is proposed to prohibit a person from being part of the board of directors of an organization, if in the last 5 years he was a member of the board of directors of an association that was dissolved by court decision;
- The draft law proposes that these measures have a retroactive effect, in the sense that they also apply to pending cases.
- Initially, new conditions were introduced for an organization to be "entitled" to challenge an administrative act in court: the age of the organization (minimum two years), proof that "the association has actively pursued the goals mentioned in the statute that are related to the contested administrative act" (very subjective criterion) and the deposit of a deposit of 1% of the investment value (maximum 50,000 lei), by an organization, when an administrative act is challenged (which presupposes the realization of an investment) (Art. 274);
- After criticism, it is unclear if this article is maintained. Another provision on reporting requirements is included as well (Art. 275). It provides that the sponsorships and revenues obtained from the allocation of the 3.5% quota generate fiscal facilities, should be recorded in a Register and published (so that each individual or company that redirected such sums can be identified). The amounts obtained by allocating the 3.5% quota are directed through ANAF, which holds all these data, but without



transmitting the taxpayers' personal data to the beneficiary NGOs. Thus, NGOs do not own this data. For all the other forms of transparency there is already legislation in place (including a special register at ANAF), which makes this provision even more problematic because it seems to generate a witch hunt and no additional transparency.

Conclusions

The trend of attacking NGOs is not new, but it bears a particular importance when the space for civic action is shrinking in the following context:

- Romania has to implement projects worth billions of euros in the context of the Recovery and Resilience Facility. All of them have to respect the “do not significant harm” principle and should involve civil society in the design and monitoring of these projects. The legislative proposals seek to limit the very tools civil society has for acting as an early warning mechanism BEFORE the money is wasted or ends up in corruption schemes. (Our [latest call for involving civil society in RePowerEU](#))
- With five rounds of elections coming in 2024 (European, local, general, Presidential x 2) civil society will probably be very active in promoting civic engagement, demanding more solutions from the candidates and/ or keeping some of the current decision-makers accountable. A smear campaign against them seems to work as a preemptive strike.
- A huge Kremlin-inspired propaganda and disinformation against civil society, with a war on the border of Romania, makes the society vulnerable is NGOs are depicted as being public enemy no. 1.

For more details

Recommendations for NGOs active on the topic: [Declic.ro](#), [Foundation for the Development of Civil Society](#), [ONG-uri pentru cetățean](#)

Person of contact: Elena Calistru, elena@funky.org

Last update: 9 March 2023