

# Funky Citizens - rule of law in 2020 in Romania

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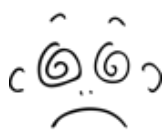
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The effects of the Covid-19 pandemic have been severe for the rule of law in countries in CEE where the institutions that should have ensured checks and balances are not yet consolidated. The main issues that appeared are:



**Limitations:** in Romania, the state of emergency (16 March – 15 May 2020) and the subsequent state of alert (ongoing) brought limitations to fundamental rights, to provisions related to transparency in the decision-making process, to the space for immediate oversight for the response to the healthcare crisis.



**Lack of predictability:** challenges to the rule of law were generated by the inflation of emergency regulations (227 Emergency ordinances were issued in 2020, at difference from 89 in 2019 and 114 in 2018); Romania already had issues with continued unpredictable policy-making and this problem was even more visible during the pandemic.



**Undermining legal certainty:** No matter the areas covered by emergency regulations, the legislators did not manage to “ensure that legislative initiatives do not undermine legal certainty by improving the quality and predictability of decision-making, including by appropriate stakeholder consultations, effective impact assessments and streamlined administrative procedures”.



**Electoral stakes:** 2020 was also an electoral year, with local elections on September 27 and general elections on December 6. The electoral fight undermined the oversight capacity of the legislature, with many of the decisions related to the pandemic becoming a ground for political fight and less a conversation about the most appropriate response.



**Partisan Ombudsman?** The role of the Ombudsman should have been of particular importance in this context because it is the only institution capable of attacking immediately an Emergency Ordinance to the Constitutional Court. It did so with regards to some limitations to fundamental rights, but its actions were accused of being politically motivated.



**Lack of transparency:** Covid-19 regulations brought limitations to access to information, transparency and social dialogue provisions at a time in which significant corruption vulnerabilities were generated by the huge amounts of funds allocated to respond to the healthcare crisis. Civil society organizations and journalists reacted on the topic and several investigations showed that the corruption risks materialized in specific cases.



**Poor access to justice:** all public services, including the justice system, had to adapt to an accelerated digitalization demand. However, the resources allocated for the digital transformation (infrastructure, training etc) did not match the needs and the access to public services, including the access to justice were severely affected.

In the larger picture related to rule of law in Romania, 2020 did not bring too many positive evolutions:

 <p><b>Controversial systemic changes</b></p> <p>The significant legal changes and political pressure on the judiciary in 2017, 2018 and in the largest part of 2019 have affected the efficiency, quality and independence of the justice system and its capacity to investigate and sanction high-level corruption. Practitioners from the judiciary and civil society strongly reacted against these changes. International and European partners like the Venice Commission, GRECO or the EC also criticized several provisions.</p>	 <p><b>Long term systemic issues</b></p> <p>Even before this point, as noted by the yearly CVM updates, the Romanian judiciary had major issues which were reflected in allegations related to political influence, provisions from the criminal codes that were declared unconstitutional by the Constitutional Court, human resources issues, a judicial practice that lacked coherence, scarce infrastructure investments, long duration for the proceedings in the courts etc.</p>
 <p><b>Action speaks louder than words</b></p> <p>The 2020 government as well as the 2021 ruling coalition claimed during the electoral campaign to support actions to prevent and sanction corruption and has shown verbal willingness to reverse some of the measures passed in 2017-2019. However, no real progress has been seen and Romania has not yet made any necessary legislative changes. At this point, no clear and specific roadmap or calendar is available with the changes related to the judiciary and the fight against corruption. After the heat of the electoral campaign has faded away, it seems that the reform of the judiciary is no longer a priority.</p>	 <p><b>Lack of trust, chaos, scandals</b></p> <p>In 2021, the Romanian judiciary is in no man's land. None of the pre-existing conditions that were used as a pretext for the 2017-2018 assault were solved. None of the effects of the 2017-2018 assault were mitigated. What is worse is that citizens and civil society seem to have lost their trust in the capacity of the justice system to deliver justice. Three major scandals from the last year show that the Romanian judiciary is beyond being reformed, that its stakeholders are unaware of the limits they should observe with regards to the independence of the judiciary and that there is little accountability towards the citizens that seek their justice in courts (classification of the case on the 10 August 2018 protest, the jail sentence for lawyer Robert Rosu, classification of the case on the surveillance of a private meeting between journalists and magistrates).</p>

## Independence



### **Appointment and selection of judges, prosecutors and court presidents**

At the beginning of 2020, the appointment and selection of high-ranking prosecutors were, for a short period, in the center of public attention. The procedures did not go as smoothly as provided by the law nor did they respect in full the spirit and the letter of some of the recommendations from the CVM.

The appointment of prosecutors in high-ranking offices such as the National Anticorruption Directorate and the Directorate for Investigating Organized Crime and Terrorism remains a big point of contention for public opinion – recent years have seen a marked drop in public trust regarding the effectiveness and the independence of these institutions.



The public attention was stirred at the beginning of 2020 when former Minister of Justice, Cătălin Predoiu, proposed the next general prosecutor – Georgiana Scutea – and the next prosecutor in chief for the Directorate for Investigating Organized Crime and Terrorism – Georgiana Hosu.

Following these proposals, the Superior Council for Magistracy (SCM) declared its negative opinion on the appointment of these two prosecutors. However, the President of Romania signed the appointment decrees nonetheless, despite the negative opinion of SCM, on the basis that “he considers the

candidates as very well prepared and negative opinion seemed, partially, pretty superficial”. The President’s attitude did not remain unnoticed by some magistrates – the Romanian Judges Forum took a stand against it, criticizing the way President Iohannis ignored the European Commission reports regarding the compliance with negative opinions of SCM.

A few months down the line, the newly appointed prosecutor of DIICOT signed her resignation. While she was in charge, the “10<sup>th</sup> of August” file was partially closed and her husband was the subject of a suspended sentence.

The instability regarding the appointment of high-ranking prosecutors for strategic institutions in the fight against corruption and organized crime has had a big impact on the public mentality regarding the capacity of these prosecutors to function effectively.

Right now, the leadership of the Directorate for Investigating Organized Crime and Terrorism is left uncovered, calling into question the proper management of the institution’s activities.

The lack of public trust in this institution has deepened both with the appointment of the former leadership but also with the ordinance of partially closing the “10<sup>th</sup> of August” file. The ordinance triggered many reactions from civil society ([here](#) and [here](#)), regarding the instrumentation of the case and the subjectivity of the ordinance which ignored the way the protesters were aggressed at the 10<sup>th</sup> of August protest.

The last update regarding this file came on the 2<sup>nd</sup> of March 2021, when the Bucharest Court rejected DIICOT’s request to reopen the case. **The decision is final.** The purpose of this was to investigate the heads of the gendarmerie who coordinated the intervention at the anti-corruption protests on 10<sup>th</sup> of August, 2018 in Bucharest’s Victoria Square. About 100.000 people took to the streets and the gendarmerie intervened with tear gas, injuring several people.

Following this final decision, Romanian President, Klaus Iohannis, asked the Ministry of Justice to explain publicly how the 10<sup>th</sup> of August file had come to be closed. The Romanian President

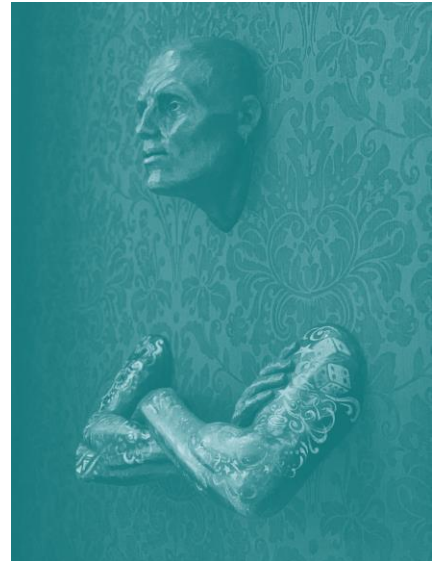
seems to have forgotten his role in appointing chief prosecutors to the institutions that closed with no resolve the 10<sup>th</sup> of August file.

### **Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors**

The wide-spread early retirement of judges and prosecutors continues to be a subject on the public agenda, due to the regulations that made it possible. Recently, the subject also appeared on the public agenda after the Ministry of Justice announced new regulations regarding a minimum age for retirement from the judiciary system. [According to the Superior Council of the Magistracy](#), the week, when this announcement was made, **four times more judges and prosecutors asked to retire**, compared to the same period a year before.

This issue will continue to be a hotly debated subject on the table of the Ministry of Justice and other interested parties until better structural and systemic solutions will be found. Sources within the judiciary assessed that a mass retirement of judges will lead to the extension of trials by years.

On the other hand, as the [Ministry of Justice declared](#), judges and prosecutors need to be provided with decent work environmental conditions (not to work in crowded places) and, even more, to work in an independent manner, not to be pressured by political influence.





## Promotion of judges and prosecutors



## Allocation of cases in courts

2020 came to a close with an emergency ordinance in which the Government postponed the entry into force of the three judges panels that judge appeals in courts. [According to the Minister of Justice](#), the decision was taken following multiple requests from the Superior Council of the Magistracy.

Right after the adoption of the emergency ordinance, the Association of Magistrates in Romania and Judges' Association for the Defense of Human Rights drew attention to the fact that by adopting this emergency ordinance in this field, the Government violated the sovereign will of people, expressed in the 2019 *"the referendum on justice"*. The referendum took place on the same day as the European Parliament elections and one of the questions was:

"Do you agree with the ban of the adoption by the government of emergency ordinances in the area of crime, punishment and judicial organization and the extension of the right to appeal directly to the Constitutional Court?"



The Băneasa Royal Farm

At the end of 2020, another issue was raised considering the quality of justice in Romania and, among other issues, the way in which cases are allocated in courts. This subject came into attention with the "Ferma Băneasa" case which involved a high-ranking lawyer and a member of the royal family being sentenced to prison. Right after the sentences, different reactions appeared in the public's focus, such as the way the case was allocated to the High Court of Cassation and Justice. One of the most important voices who criticized the way in which the case was investigated and the procedural mistakes was the [National Union of the Bars of Romania](#).



Following criticism, the High Court of Cassation and Justice opened an investigation in the way the case was allocated, following a decision that the allocation was done according to the law.

Apart from procedural suspicions that were raised by the instrumentalization of this case, the situation showed us, once again, how divided the judicial system is and how difficult it is to create a dialogue between *guilds* within the judiciary system. On one side, the National Unions of Bars of Romania criticized the way the case was investigated and the procedural mistakes that were made, and, on the other side, a part of the magistrates criticize the way their *guild* is criticized. For example, the Romanian Judges Forum and the Justice Initiative Association called on the Superior Council of Magistracy to take a stand against the way some lawyers, and other persons, understand to use their right to criticize a final court judgment.

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



The SCM headquarters

According to the Romanian Constitution, the Superior Council of Magistrature is a public institution that acts as a guarantor of the independence of the justice system. Past years have seen its independence put under question and its credibility suffered heavily due to internal conflict and its actions or inactions.

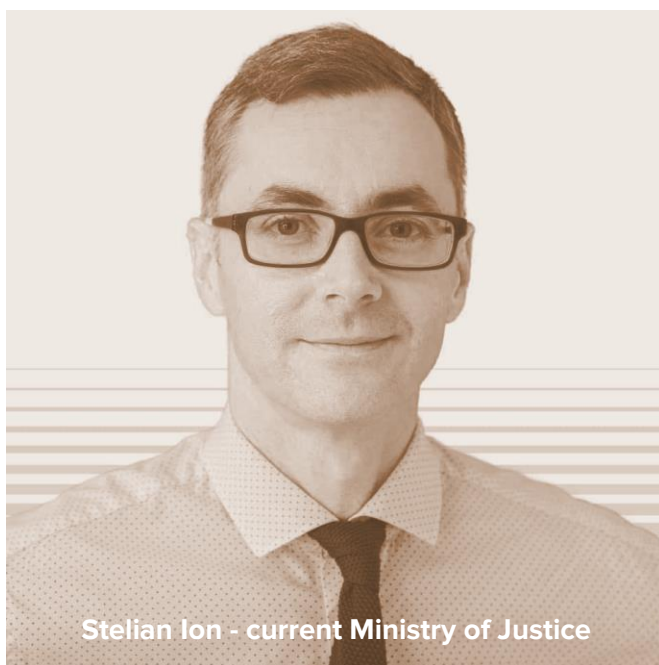
Even within the judiciary system and more exactly, between the magistrates, the body is often positioned in contradiction with other magistrates. This attitude was clearly seen recently in the negative SCM opinion of the dismantling of the Special Section, in contradiction with the voices of other magistrates and the reports of European institutions.

When the system is so divided and the opinions in contradiction, we know that, in the end, the decision to dismantle the Special Section for Investigation of the Magistrates will end up being a political one.

## **Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges Remuneration/bonuses for judges and prosecutor**

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

Recent years have heavily affected the judicial system and its perceived independence – it will not only need legislative changes, but also strong political will and proof that there will be legislative stability and no abuses. However, a few months ago, discussions about the justice laws were opened again when the former Ministry of Justice, Cătălin Predoiu, put into debate the justice reform laws. The recommendations of the CVM, GRECO, and the Venice Commission were finally taken into account without using as a pretext the narratives that claimed that these recommendations have a non-binding character for the decision-makers.

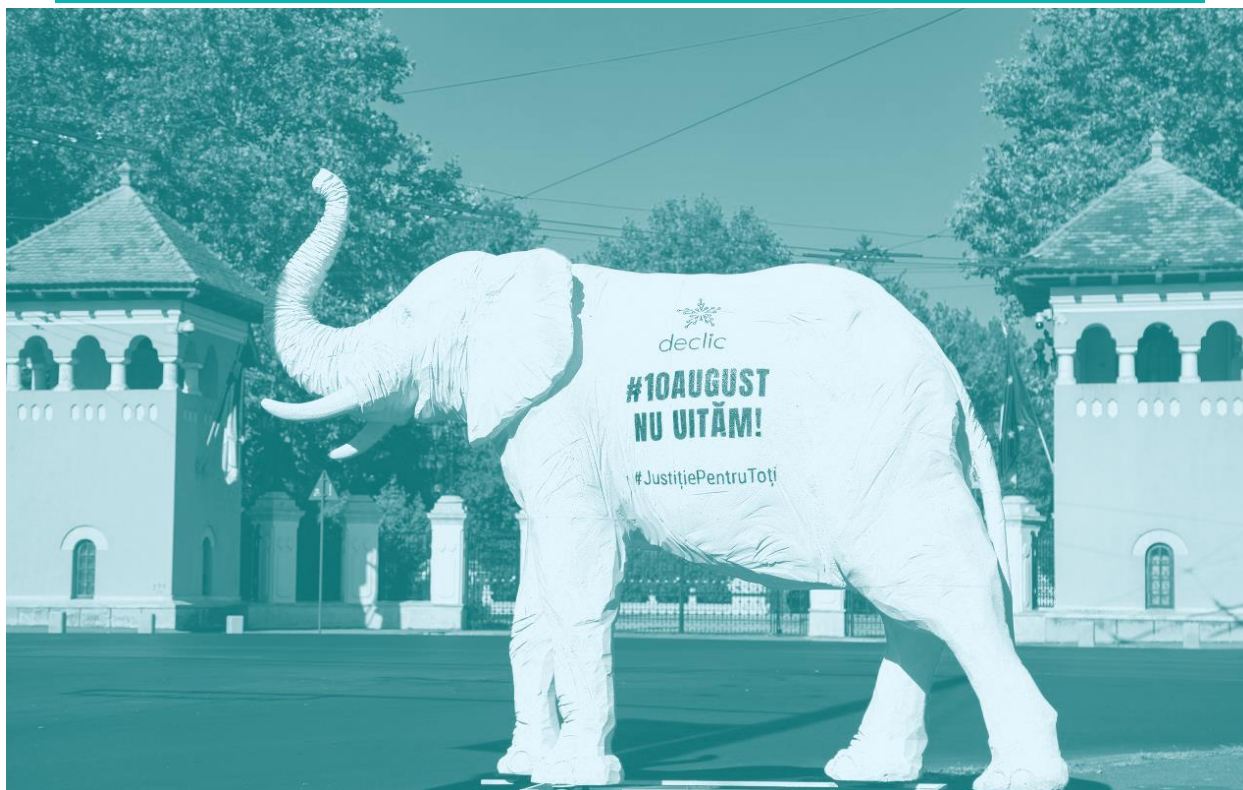


At this moment, the current Ministry of Justice, Stelian Ion, is continuing the former minister's project on dismantling the Special Section investigating the offenses committed by magistrates. The Superior Council of Magistracy gave its negative opinion on the dismantling of the Special Section, but the opinion is consultative. However, the disruptive opinion on this matter within the judiciary on one side and political parties on the other side fosters even more confusion among the public.

If the proposals of the Ministry of Justice are adopted and will align the laws of justice with the European recommendations, it will be a strong

external signal on the question of independence. However, it is important to note that this will be a lengthy process and it is unclear whether there is enough political will to correct the legislative and institutional framework that can ensure the independence of the prosecution service, given the unsolved issues as well as the newly created issues that affected that independence.

## Independence of the Bar (chamber/association of lawyers) and of lawyers



Protest in front of the Presidency, featuring a pink elephant (in the room), in relation to the 10<sup>th</sup> of August file

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

There's an elephant in the room when we talk about the independence of the judiciary - the shady relationship with the intelligence community. The problem is not new at all but was never publicly addressed by major institutions, remaining an always-present suspicion, especially because the civil oversight from the parliamentary committees is superficial. Besides this long-standing problem, the last year brought several new ones:

1. At the end of 2020, a lawyer, **Robert Roșu**, was sentenced to 5 years in jail in a case that involved corruption and money laundering offenses. This led to significant protests from the lawyers, as well as from some professional associations. As a reaction, some associations of judges and prosecutors demanded a reaction from the Superior Council of Magistracy because they considered it unacceptable to have such criticism towards a definitive decision of a court. Several lawyers argue that their reaction is within the limits of the freedom of expression and that

it sets a troubling precedent for their profession. To this day, the motivation of the court was not yet published so it is hard to have an objective opinion.



2. At the beginning of 2021, a case against the surveillance of two journalists and two magistrates was dismissed after an investigation of DIICOT (led by prosecutor Robert Fleckhammer) that was accused of [treating with superficiality the probes and the case](#). The surveillance was made by 10 people and the videos were used in a character assassination campaign on a TV station owned by a former politician investigated for corruption and that fled the country. The journalists contested the decision but with no results yet.



3. The most resounding case that affected the trust of citizens in the judiciary is the decision to classify the file on the 10 August 2018 protest. On March 3, 2021, The Bucharest Tribunal definitively rejected the DIICOT request to reopen the file that was open after on August 10, 2018 the peaceful protest in Victoriei Square was brutally repressed during the Dăncilă government.

Following the court's decision, the former heads of the Gendarmerie, who coordinated the repression, are no longer investigated. DIICOT prosecutors partially closed the case on July 15, 2020, claiming that the repression of the protest was not prepared in advance, as stated by some of the demonstrators who made criminal complaints against the gendarmes, so the heads of the Gendarmerie cannot be blamed for what followed. Last September, the DIICOT asked the court to confirm the reopening of the case after and after a back and forth between various institutions from the judiciary, the Bucharest Tribunal finally gave this decision.



## Quality of justice

### Digitalisation<sup>1</sup>

Digitalisation of the justice system was for sure one of the subjects last year, once the pandemic started. In the first part of the year 2020, in May, the subject has been declared as a commitment for the Ministry of Justice in the [Ministerial Order No 1582 of 08.05.2020](#). The changes to the justice laws, including the law on the organization of the judiciary, could have been a good opportunity to talk more about the system's digitalisation.

Apart from the necessity caused by the pandemic, the initiative also reflects the progressive attitude in order to accelerate the internal mechanism of the justice system, due to the agglomeration of activities. The Romanian Judges Forum made multiple public calls during the year regarding the digitalisation, due to the urgency caused by the pandemic.

At the moment, progress has not been made in this regard and digitalization is still pending. It is also unclear whether any funds will be available in this direction through the National Recovery and Resilience Plan, an intention which was stated by the Minister of Justice.

## Efficiency of the justice system

### Length of proceedings

The length of proceedings was and still is of major concern. The pandemic made things worse because, despite the numerous demands of the practitioners, the measures to fight the spread of the virus were timid (and lead to a significant number of Covid-19 cases in courts and prosecutor's offices) and the digitalization is still at the very beginning. Besides all the cases that were affected by the pandemic, it is worth noting that the Romanian judicial system was already non-efficient from this point of view. As an example, on March 3, 2021, a former minister (Elena Udrea) was sentenced in the first instance for a corruption case related to the funding of the 2009 electoral campaign.

Besides the impact on the justice seekers, the length of proceedings also leads to the statute of limitations becoming a real issue for some important cases, [including for high-level corruption](#). Some of the major causes for the lengthy proceedings in the Romanian courts are: the caseload per judge was even more exacerbated by the early retirement made possible by the justice legislation; the constant changes in the legislation, the re-classification of some issues, the decisions of the Constitutional Court and other issues that create unpredictability; the scarce infrastructure (including the digital one); procedural issues.

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<sup>1</sup> (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)



## Other - rule of law issues

The most important development in the past is probably the 10 August file, which is relevant in showing several major issues with rule of law in Romania:



Politicians (including the President, as well as the Minister of Justice and other leaders from the ruling coalition) severely criticized the decision of the court, demanding for immediate measures to find the truth about what happened on 10 August. However, the same politicians either named the chief prosecutors under whom the case was investigated (Mr. Iohannis) or have the legal capacity to change the legislation to avoid anomalies that lead to impunity.

Several associations of magistrates and the Superior Council of Magistracy criticized these statements from politicians, considering that they interfere in the justice system and that they affect with their statements the independence of the judiciary. However, none of the associations or organizations from the judiciary showed any tendency towards self-criticism or understanding for their role to also show what went wrong or to educate the public with regards to the impact of some procedures to a certain decision.

Civil society reacted strongly and demanded justice after this decision added the repression of the protest to a long series of unresolved cases (the investigation into the crimes during the Revolution in 1989, the violence from the University Square when the mine workers were called to Bucharest and beat innocent protesters, the Colectiv case that was open after a fire killed 65 people in a club in Bucharest).



Bottom line, decision-makers do not seem to understand in full their role in ensuring an independent justice. They also do not seem to acknowledge that they are responsible for correcting an interrupted and incomplete reform process and the trauma left by strong attacks against the judiciary without violating the separation of powers.

The judiciary seems to have appreciated the support it received from the civil society during the attack in which it was targeted. However, they do not seem to understand that they also need to find a just equilibrium between their rightful claim to independence and the need to be accountable towards the citizens because justice must be a public service. Criticism is normal in a free society and the limits of attacks against the independence of the judiciary must be mainly set by educating the public and communicating transparently and swiftly, especially when the citizens have such a strong interest in a case.

## Anti-Corruption Framework

### List of relevant authorities <sup>2</sup>

1. Prosecutors' offices;
2. National Anticorruption Directorate;
3. General Directorate of Anti-corruption inside Ministry of Internal Affairs;
4. National Integrity Agency;
5. Court of Accounts;



### Integrity framework<sup>3</sup>

**Law 144/2007** regarding the establishment, organisation and functioning of the National Integrity Agency; d functioning of the National Integrity Agency;

**Law 78/2000** for the prevention, discovery and punishment of corruption acts, with subsequent amendments and supplements;

**Law 115/1996** for the declaration and control of assets of the officials, magistrates, of persons holding management and control positions and of public officials - after the publication of Law no. 176/2010;

**Law 176/2010** regarding the integrity in exercising the public officials and dignities, in order to modify and complete law no **144/2007** regarding the establishment, organization and operation of the national integrity agency as well as for the modification and completion of other normative acts;

**Law 184/2016** to establish a mechanism to prevent conflict of interests in public procurement contract awarding

### General transparency of public decision-making <sup>4</sup>

<sup>2</sup> (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).

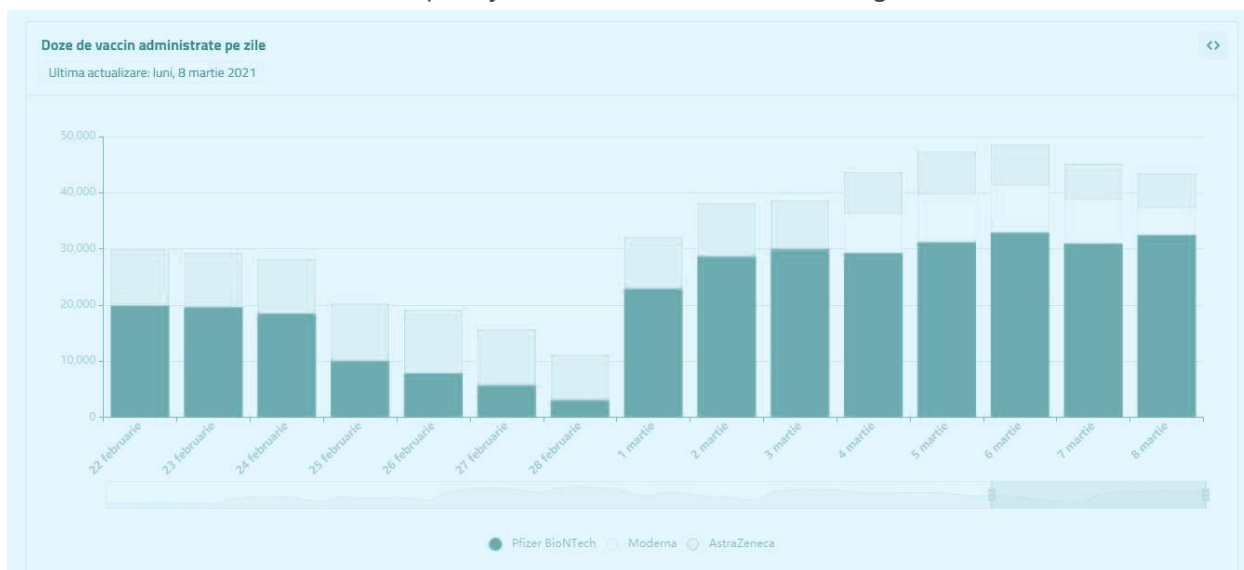
<sup>3</sup> including incompatibility rules (e.g.: revolving doors)

<sup>4</sup> (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

Transparency was an important topic during last year. Almost one week after the declaration of the emergency state, on the 2<sup>nd</sup> of April 2020, 97 editorial boards and 165 journalists [asked for access to information](#) and transparency from the Government. We, Funky Citizens, also asked for [transparency and integrity in public procurement](#), which was the subject of major modifications due to the Presidential emergency state decrees.

Even though all communication and interactions moved online, access to information became a struggle, fostered also by the measures taken by the Government. For example, Law 544/2001 was one of the subjects of Presidential Decrees that stated the emergency state. Doubling the deadlines for the public authorities to answer a request regarding public information, some authorities started to mismanage or abuse this prolongation by making it harder to access public information through declinations of responsibility, failures to meet the deadline, or not answering at all.

This opacity deepened distrust in the capacity of public decision-makers to handle the pandemic, leaving space for conspiracies to spread wildly. The lack of Governmental preparation in tackling the pandemic also transpired through another Presidential Decree provision. Unprepared and taken by surprise by the amount of disinformation and its effects, the Government regulated a mechanism that made it possible *to remove at the source or block Romanian users access to content that promotes false news on the evolution of COVID-19*. According to [a petition](#) we also signed, as a response to these provisions, *the measures to combat fake news must be implemented gradually, beginning with a reminder of the authors of the possibility of misinformation, followed by a request to change the incorrect information. Only after the request was unsuccessful, the site can be closed*. Unfortunately, the measures that were taken disclosed even more the lack of internal capacity of the Government in tackling such sensitive issues.



Screenshot featuring the homepage of the [www.datelazi.ro](http://www.datelazi.ro) platform

Several [media investigations](#) reveal the opacity regarding COVID-19 data and the flawed communication coming from the public decision-makers during the last year. The most recent appeal to transparency came on January 20, 2021, when [20 NGOs sent an open letter to the new Minister of Health](#), Vlad Voiculescu, once again asking for transparency and open data publication regarding COVID-19 case reporting. The last appeal was followed by a transparency promise from the Health minister. Until this moment, the demand was only partially met through the publication of some data on March 5<sup>th</sup> on the open data portal of the Romanian Government. However, after just a few days, the Prime Minister announced that he is sending the Control Body to the Ministry of Health to see why and how the data was published. After verifying the data, it is unclear why any of the published information should not be publicly available, since it only contains statistical information on the number of Covid-19 tests and vaccinations at the local level.

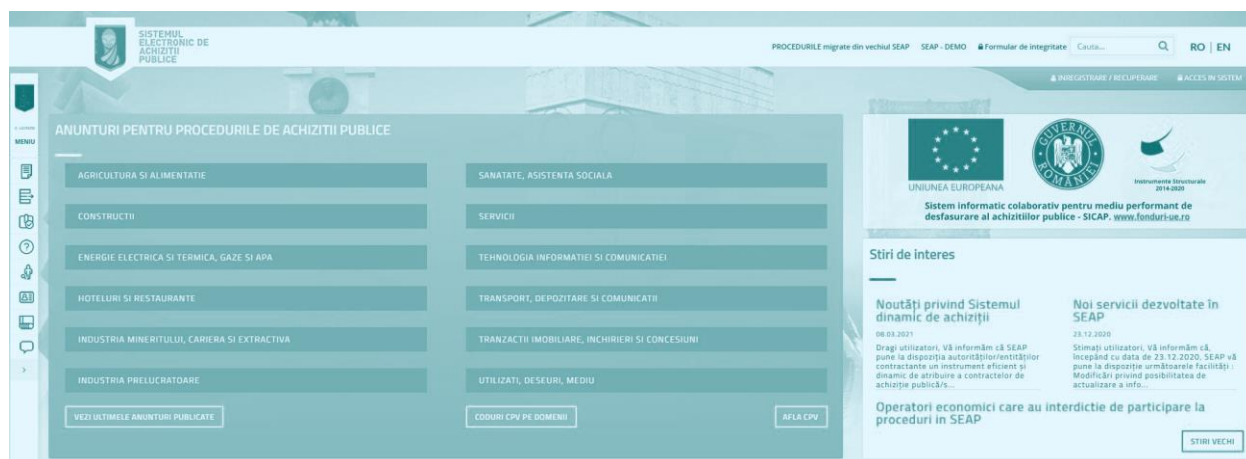
Political party financing was also another source of opacity in 2020, especially because we had two rounds of elections in 2020: local elections and parliamentary elections. Even if efforts were made in making the field more transparent, there are still unaddressed issues. For example, as regards the contributions made by candidates for electoral campaign funding, in the case of loans, the source was not specified. This issue is not new; in 2015, [a GRECO report](#) recommended specifying the source also in these cases. The opacity regarding the money invested in elections or funding political parties has also reached mass-media, in a suspicious case regarding [unjustified loans](#). Unfortunately, the system has such a degree of opacity that these cases rarely appear in mass-media.

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

When talking about the prevention of conflict of interests in Romania, we automatically think about the National Integrity Agency and PREVENT. The National Integrity Agency is an independent institution that exercises administrative control regarding the verification of assets acquired during the exercise of public office, conflict of interests, and incompatibilities. PREVENT is a mechanism for preventing a conflict of interests in public procurement. This mechanism is monitoring all the procedures that are conducted through SICAP, the e-public procurement platform.

During the pandemic, the relaxation of public procurement measures has taken place through legislation adopted during the state of emergency, under which contracting authorities could *directly* purchase materials and equipment necessary to prevent and combat the epidemic. Thus, contracting authorities had a green light to exceed the threshold value established by Law no. 98/2016 regarding public procurement. During this time, **contracting authorities could make direct awards exceeding 135.000 RON threshold.**

Regarding conflict of interests, one of the limits of the PREVENT mechanism is that it cannot analyze the awards if they were not conducted through SICAP, leaving the procedure vulnerable.



Screenshot featuring the homepage of the SICAP platform

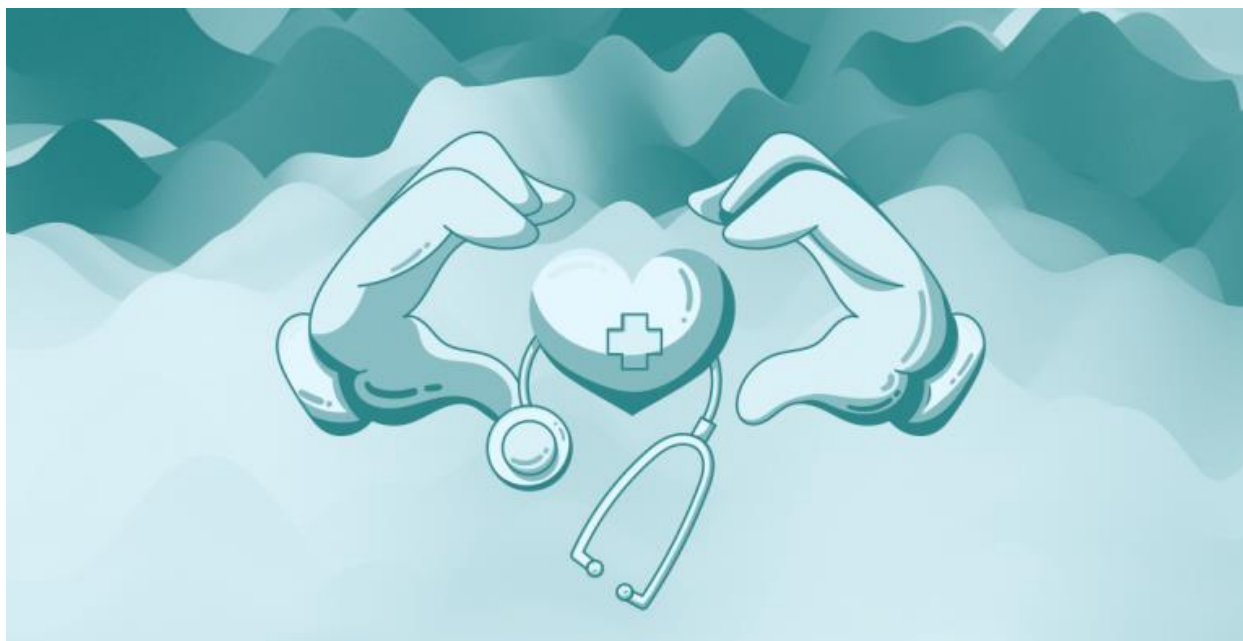
We do not have an evaluation of the impact of the measures taken as regards direct awards or how many direct awards were liable for conflict of interest, and we might never know how much it cost us. What we know is that abuse in direct awards was one of the most important issues during 2020. Moreover, even though negotiation without prior publication was seen as more suitable for the emergency situation and direct awards only an exceptional case, unfortunately, fostered also by the legislation, direct awards were far from being an exceptional procedure during 2020. Our organization published numerous analyses and reports on this topic, showing that direct procurement became the norm, making thus the job of preventing conflict of interest very hard.

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

The Romanian legislation regarding the protection of whistleblowers is one of the best examples where we have good legislation, but with faulty or almost nonexistent enforcement.

Considering the fact that 2020 was a year of general economical and health crisis, with a lot of problems regarding transparency, the discussion on the role of whistleblowers was almost nonexistent. Moreover, those who have the courage to step up and complain about an internal problem are excluded by the system. For example, [a police officer who publicly opposed the fines](#) as being too abusive during the state of emergency (fines that were further declared illegal by the Constitutional Court) was informed by the Timis police that he was being taken off active duty and put on stand-by.





Screenshot from the [www.funky.org/de-garda](http://www.funky.org/de-garda) homepage of the whistleblower app

The health system also lacks procedures that encourage people to complain about internal irregularities, mismanagement or corruption. The system already has a really bad reputation in Romanian that was also deepened during the pandemic. Once in a while, when a tragedy happens (as the ones from Piatra Neamt and Balş Intensive Care Units) we find out how rotten the system is. Because we didn't want those tragedies to be the catalyst for other inefficiencies and problems disclosure, we created [De Gardă application](#) that encourages healthcare personnel to report, anonymously, problems they observe in public hospitals. Until this moment we have received 300 reports that show systemic failures, corruption vulnerabilities, and poor management of public resources in the healthcare sector. We work together with investigative reporters to investigate many of these cases in detail, but we often encounter significant resistance from managers and decision-makers to address these issues. The Ministry of Justice also recently published in public consultation [a draft law](#) on transposing the European Directive on Whistleblowers. Though still a draft, there are concerns that some provisions might actually weaken the current framework.

### **Sectors with high-risks of corruption**



Screenshot from the homepage of the Tenders.guru platform



### Healthcare sector

It was affected before the pandemic as well, the evolution of the healthcare crisis only made it more vulnerable to corruption



### Public procurement

We had numerous reactions on the topic and regularly monitor the issues that appear within the [www.tenders.guru](http://www.tenders.guru) platform



### Local public spending

Authorities at local level have proved vulnerable to corruption, especially during the electoral campaign and often allocated in a discretionary fashion contracts and scarce resources



### EU funds

With the anticipated influx from closing MFF 2014-2020, the Recovery and Resilience Mechanism and the new MFF 2021-2027, there are high-risks of corruption if we are to look at the existing experience



### Infrastructure spending

The sector was always vulnerable to corruption, but the disappearance of local media and civil oversight made the problem worse because it left such spending unchecked

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



The general impression is that no measures were taken to address corruption risks in the context of the pandemic. While we can understand why some measures were taken to prevent and combat the pandemic in a time of extreme urgency, our impression is that their side-effects were not really taken into account. For example, the state of emergency enacted through the two Presidential decrees gave wider liberties to contracting authorities regarding direct awards. This came with side-effects such as a higher degree of corruption risks. These side-effects were not sufficiently taken into account, if at all.

The results were seen also during the two months of emergency state and during the entire previous year. Direct awards were a problem even before the pandemic, but, in the context of the emergency and with new legislation that fostered them, even more abuses appeared. According to [some percentages](#) communicated by a representative of Integrity Agency in a public conference, the agency observed that, in the first quarter of 2020, 1 out of 5 direct awards were made by the hospitals during this period of time and the total value of them was 194 millions of Euros. One day before the state of emergency was established, these authorities conducted just over 100 direct awards, with a total value above 140.000 EURO. After the state of emergency, the number of purchases increased to more than 3000, with a value of 5 million EURO per day.

Despite the significant allocations to respond to the effect of the Covid-19 pandemic, the provisions to mitigate the risks regarding corruption were almost nonexistent and disregarded, including through a lack of regular publication of financial allocations and measures to tackle the pandemic in themselves. With the information available right now, it is almost impossible to learn what were the real expenditures for the pandemic (the budget lines are not sufficiently detailed) or which public contracts were directly related to it.

## Other relevant measures to prevent corruption in the public and private sector.



In the past years, the fight against corruption has been intensively politicized, until the moment when the actions of enforcement institutions were put under question and ripped off of credibility, at least in the eyes of one part of the public. One thing that highly contributed to this situation is the assessment of past issues and challenges that important institutions (such as the National Anticorruption Directorate) have encountered during the years. As mentioned above, there is a prevailing suspicion regarding the past and present relationship between enforcement institutions and the intelligence community.

Also, besides the unaddressed issues from the past, another obstacle to investigation and prosecutions of high-level and complex corruption cases is that the fight against corruption tends to be very personalized. From the point of view of the mass-media and for the public, the subject tends not to be anymore about the crime, but about the person. For these reasons, considering also the past criticisms on the way the judicial procedures were conducted, there might also be some reluctance from the prosecutors to investigate high-level and complex corruption cases.

Nonetheless, lack of staff can also be an obstacle, especially at the local level.



## Media authorities and bodies



Screenshot from the Covid-19 media campaign (via [Paginademedia.ro](https://paginademedia.ro))

This is one of the most problematic areas that appeared during the pandemic. The ability of the media to cope with the digital revolution and changing consuming behaviours was already weak before the Covid-19 crisis. The Romanian media did not actually recover from the shock of the economic crisis, when the advertising budgets almost disappeared, and a lot of foreign investors withdrew due to the lack of funds. This left the media space vulnerable to some oligarchs with close ties with the political sphere or to public budgets sponsored advertising (especially at local level). Media became vulnerable also due to cuts in advertising budgets as well as CSR budgets of companies that decided to redirect most of their available funds towards sustaining the healthcare sector or organizations and campaigns dealing with the effects of the crisis.

The most important development on the financial side of the media is also probably the one that will make the landscape even more vulnerable to political pressure: the Government decided to give around 40 million euro / 200 million lei to media outlets (audio, video, print, online) as part of the measures set by the [Emergency ordinance 63/2020](#). The support scheme is conducted under the pretext (stated as such) of a four months media campaign related to the pandemic that any media outlet can access; the funds for each outlet are established based on the audience or visitors they have, as audited by independent bodies. The scheme is basically offering money for clicks/ for views. Just a few organizations criticized the measure, raising concerns with regards to the political influence that such a scheme could exert on almost all media outlets (some even labelled it as a bribe). However, according to the Government, over 700 outlets requested money. According to [to Pagina de media](#), a platform dedicated to the media market, most of the money ended up with already established televisions or media groups (that were arguably not as vulnerable to the lack of revenue as for example the local media). Because all Emergency ordinances need to be approved at some point in the Parliament, it will be interesting to see what will happen with this piece of regulation – the current opposition is claiming that not only will they



not stop the program but increase the allocations. In an electoral year, the populist contest affects the media in new ways.

Besides this large funding program that is coming directly from the government, there are signals that the local authorities are also profiting from the more relaxed procurement procedures and award publicity contracts to local media outlets. Interviews with local media outlets reveal that the advertising contracts from the private sector are almost non-existent during these months and that accepting such contracts can sometimes make the difference between staying open or going bankrupt. Qualitative assessments aside, considering the public [procurement database](#), we can see that the spending for publicity has increased by almost a third in April and May 2020 in comparison with the similar months last year (a proper assessment can be done in a few months because, also due to the state of emergency regulations, not all contracting authorities published all procurement on the platform).

The declining revenues have also translated into poorer reporting – most of the information coming from official sources are rarely treated in a critical fashion (also due to the lack of access to information) (CJI, 2020). Misinformation and disinformation activities were often observed, sometimes starting even from well-established media organizations or news agencies.

Still, most of the media outlets from the new wave of digitally born media start-ups refused to request governmental backed funds, to protect their independence (i.e., RISE Project Romania / OCCRP, Recorder, G4Media). Some of these organizations managed to identify other sources of revenue (such as some emergency funds released by foundations). A lot of them have kept a significant level of support from their public, mainly through small donations.

### **Rules governing transparency of media ownership and public availability of media ownership information**

Central and local public authorities have never excelled in transparency and several journalists note that in recent years it has been almost impossible to get public authorities to respect the law and be transparent. The press conferences are missing, the answers on information of public interests are postponed, incomplete or they are never delivered. The law is often reinterpreted, or, in some cases, even rewritten, and there are also institutions that prefer to be sued, instead of being transparent.

Since the General Data Protection Regulation came into force, in 2018, some authorities also use *the argument of personal data protection* to stop journalists from accessing information of public interest.

Moreover, public officials rely more and more on social media to inform the public, forgetting the role of the journalist in the society, as being an objective filter of information.

[The report](#) from the Center of Independent Journalism shows an exhaustive overview of the state of mass-media in Romania during the pandemic, as well as our contribution to the “[Shrinking Media Space in South-Eastern Europe](#)” analysis.



Screenshot from a Balkan Insight article from March 2020

Despite the above opinions of journalists and civil society on Romanian authority transparency, there were opposing views within Parliament that *there is too much transparency*. In October 2020, [a group of members of the Parliament proposed a draft amending Law no. 544/2001](#) regarding the free access to public information. According to the explanatory statement, the current form of the law favors “*various NGOs and various individuals or persons who post on Facebook, who, on the pretext of being in the civic interest, abuse excessively absurd provisions, seeking to put public authorities and institutions into difficulty*”. Moreover, according to the motivation, the law forces authorities to publish too much information at their own initiative. Such a requirement blocks, in the opinion of the initiators, the entire activity of the institution or, where applicable, of the public authority for days in a row. The draft therefore proposed that the form in which information of public interest will be made available will be “left to the decision of authorities and public institutions”.

The draft proposal was met with strong opposition from civil society, and journalists associations [immediately reacted](#). According to them, the proposals show the way the group of the legislative power ridicules a fundamental right - access to public information. In the end, the draft proposal was withdrawn.

Also related to the subject, in August, the Government elaborated a set of amendments to the enforcement rules, inter alia, providing that information of public interest “shall be provided in the form in which it is identified and held by the public authority or institution”, which would exclude processed answers such as lists, tables or statistics, if they do not already exist, but also the primary data on which they are based, if not explicitly requested. Following this proposal, we sent

[our recommendations](#) regarding it, together with an invitation to a public debate. Unfortunately, our requests were not met.

## Lawsuits and convictions against journalists and safeguards against abuse



Screenshot from one of the [Buletin de București articles](#) that lead to the publication being sued

Even though some journalists are starting to think that they are not seen anymore as relevant enough to be sued by the public authorities, 2020 did not pass without such events. For example, a journalist from Buletin de București (editorial project by Funky Citizens) was sued by Bucharest’s District 1 Local Police regarding an article about the public procurements of this institution. The article was seen as defamatory by Local Police but, [the journalist and us, as an association, won the case in the lower court](#) as well as in the appellate court.

Also at the level of Bucharest administration, the new mayor gave up the lawsuits filed by the former leadership of the General City Hall of Bucharest. The lawsuits were against journalists and politicians. In his public declaration, Nicușor Dan, the new mayor, said that he finds *unacceptable the use of a public institution for personal image and, even more, to intimidate those who express a different point of view.*

## The process for preparing and enacting laws

As noted in most of the recent Country Reports, the uncertainty over policy and legislative decisions has contributed in recent years to the overall perception of unpredictability. There is no mandatory ex-ante impact assessment for emergency ordinances and the legislation is often interpreted as requiring no public consultations for such regulation.

Even during “normal” times and for “normal” regulations, although different formal structures exist, the quality of public consultations is deteriorating. Public consultations are generally

perceived as formal and of low quality, and the involvement of social partners and other relevant stakeholders is limited. Social partners and other relevant stakeholders report not being adequately consulted, including for major pieces of legislation. For example, at the beginning of 2021, even though [we requested](#) a public debate on the national budget, the Ministry of Finance simply ignored the request. Moreover, even when the Economic and Social Committee gave a negative report on the budget due to the non-existent consultation, the Prime Minister attacked the social partners and civil society represented there, [claiming](#), in a factually incorrect statement, that the report was “political”.

On a brighter note, after an initial lack of consultation on the drafting of the National Recovery and Resilience Plan (which was published with great speed in November, during the electoral campaign), the Ministry of European Investment and Projects [launched an extensive debate](#) on the plan. While it remains to be seen whether the input from the civil society and other stakeholders will be taken into account in the final version of the Plan, the consultation was the clear proof that when there is a requirement for consultation coming as a standard from the European Commission and there is the political will, a genuine debate can happen.

### **Rules and use of fast-track procedures and emergency procedures<sup>5</sup>**

Romania already had issues with continued unpredictable policy-making and this problem was even more visible during the pandemic. In the past year, we have seen an inflation of emergency regulations (227 Emergency ordinances were issued in 2020, at difference from 89 in 2019 and 114 in 2018). No matter the areas covered by emergency regulations, the legislators did not manage to “ensure that legislative initiatives do not undermine legal certainty by improving the quality and predictability of decision-making, including by appropriate stakeholder consultations, effective impact assessments and streamlined administrative procedures” (an important country-specific recommendations 2019/ 2020)




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<sup>5</sup> (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

## Parliamentary oversight



Even though the Parliament has 19 authorities and institutions under parliamentary control, the legislative power did not really take advantage of it during the emergency state. One institution that elaborated a special report at the request of the Romanian Parliament is the Romanian Court of Accounts. The [special report](#) was about the management of public resources in the context of the emergency state. One institution that would have had an important role in the development of the pandemic, would have been the National Audiovisual Council of Romania. Unfortunately, this institution is almost forgotten and its presence in the public sphere is minimal. Global influences regarding fake news and its impact in the society are also very present in our society, but this subject is not at all dealt with by the public authorities, especially the ones that have powers in this regard.

Apart from that, the other oversight mechanisms were more part from the political agenda (such as interpellations, motions etc.).



## National Human Rights Institutions



For a long time, the Ombudsman was quite irrelevant for Romanian society. But, during 2020, the institution (Avocatul Poporului) started to have some public appearances, at least for the public to know its existence. For example, it took notice in a high-ranking public official regarding that the former Minister of Health was taken in handcuffs to the hospital. At the moment, the former minister was in preventive arrest.

Also, during COVID-19 pandemic, the Ombudsman referred to the Constitutional Court the lack of clarity of the health reform law, as regards the establishment of quarantine and isolation.

During the same time, the institution took a public position in the context of press disclosures on the conditions under which workers leaving Romania are accommodated and work for seasonal agricultural activities in Germany. The Ombudsman has sent a letter to the German Federal Labour Minister and to the Chairman of the Committee on Petitions in the German Parliament, asking for some clarification on the situation of Romanian seasonal workers.

[Here](#) is the whole activity of this institution during the emergency state. Even more, we can have an important glimpse over the problems that Romania faced during 2020 as regards human rights from the [2020 Ombudsman reports](#). For example, the most numerous petitions received by the institution during 2020 concern free access to justice (2467), the right to information (1343), the right of petitioning (2275) and protection of children and young people (1016).

Since this institution almost lost its relevance during the years and is seen as highly politicized by a part of the society, it would need even more public positions and official actions to gain trust and relevance in public eyes.

Another institution with important powers in defending human rights in Romania is the National Council for Combating Discrimination. Even though, during the pandemic, human rights violations were present regarding measures that were taken by the government, its reaction was almost nonexistent.

However, probably the most notable reaction that was present in the public during the last year was when CNCD [amended a politician](#) for his opinion expressed on Facebook, in which he named Virgin Mary a surrogate mother. The Council failed to give a proper argumentation on how his opinion was discriminatory and it only said that the Facebook post was *denigrating, offensive to Christians*. The post was far from being critical, the politician himself being a Christian believer. The Council's attitude reminded more of a theocratic society, than of a democratic one where freedom of expression is protected.

The failures to take a stand on issues that are really involving the defense of human rights make this institution to lack its credibility and importance. Things that are even more dangerous since there is not so much public trust left for these institutions.

### **Framework for civil society**

Several changes were tried (i.e. using the harmonization of the EU Anti money laundering directives as a bureaucratic weapon against NGOs by asking them to publish in the Official gazette all the beneficiaries of their activities or all their donors, including small individual donors) but none was passed, mainly because of the joint reaction of civil society and active reaction of European institutions. A recent change in the Government Ordinance 26 which regulates the establishment of associations and foundations has been saluted by some organisations because it should simplify the procedures and registration rules. However, lawyers and practitioners also criticize these changes with just a few months after their adoption because they are incoherent and lead to many issues in the jurisprudence.