

# Funky Citizens - rule of law in 2022 in Romania

## Contents

### [Justice System](#)

[Independence](#)

[Quality of justice](#)

### [Anti-Corruption Framework](#)

[The institutional framework capacity to fight against corruption \(prevention and investigation / prosecution\)](#)

[Prevention](#)

[Repressive measures](#)

### [Media Freedom and Pluralism](#)

[Safeguards against government or political interference and transparency and concentration of media ownership](#)

[Framework for journalists' protection, transparency and access to documents](#)

### [Other institutional issues related to checks and balances](#)

[A. The process for preparing and enacting laws](#)

[D. The enabling framework for civil society](#)



The Russian aggression against Ukraine started a new stage of the decision-making process in Romania. Under the pretext of the war at the borders and then under the argument of tackling the consequences of the war (i. e. inflation, energy crisis), several major measures were taken with little respect for transparency and rule of law:



in general the decisions were taken by Emergency ordinance, including for fundamental areas (in 2022, no less than 192 emergency ordinances were passed by the Government)



even when the legislative procedure was the "normal" one, going through the Parliament, almost a third of the draft laws were debated and / or adopted under emergency procedure



the hasty process made little room for transparency, participation or consistent debate, including for laws on the judiciary, whistleblowers' protection or other major pieces of law



A very weak opposition and the few options for civil society to be engaged in the decision-making process leave **little room for checks and balances**, making the oversight of the grand coalition of the two major parties almost nonexistent.

The decision of the EC to lift the Cooperation and Verification Mechanism for Romania without Romania fulfilling some of the benchmarks puts a lot of expectations for the Rule of law Report to continue to monitor the remaining unfulfilled criteria and the other ones that appear in other areas.



Shrinking access to information and the weaponization of GDPR against journalists and activists, as well as the huge amounts of money spent by political parties for traditional media (sometimes with no transparency) are additional challenges for uncovering what is happening with public decisions and public money. The significant amount of money available under the MFF and also under the RRF are also under little public scrutiny, given the little public information available about the contracts allocations.



# Justice System

Some changes were operated through the Parliamentary adoption of two major pieces of legislation:



the Special Section for Investigating Magistrates was rebranded and moved under the General Prosecutor, but without following all the recommendations from the Venice Commission or the European Commission



the package of justice laws was adopted on a fast-track procedure; though many of the outrageous provisions were corrected in the Parliament, problems still appear when it comes to guaranteeing the independence of the justice system

Both pieces of legislation were adopted while the Opinion of the Venice Commission was requested and drafted, the majority in power ignoring completely their own promise to wait for those opinions.

## Independence



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

There are new issues appearing from the new justice laws, especially for top-management positions.

Analysis on the matter: <https://its.funky.org/RoCVM22>

### 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)

There are new issues appearing from the new justice laws, especially when it comes to the pressure for magistrates to retire sooner rather than latter. Analysis on the matter: <https://its.funky.org/RoCVM22>. Moreover, a reform of the special pensions, including for magistrates, is promised and expected under the National Recovery and Resilience Plan. As of December 2022, the Government submitted a draft law on the reform of the special pensions to the Parliament, but there are major concerns with regards to its constitutional validity.

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

There are new issues appearing from the new justice laws. In this area, the issues are generated mainly by the significant differences between the effective promotion and on-the-spot promotion:



The effective promotion competition (art. 139) consists of taking a test with the objective of evaluating the activity and conduct of the candidates in the last 3 years of actual activity; the assessment is subjective and lead by the members of a committee appointed to the proposals of the presidents of the courts of appeal



The on-the-spot promotion procedure (art. 132-138) is more meritocratic, through a written exam and through a practical exam; the evaluation includes outside actors like those from INM, but this procedure seems to favor those preferred by the presidents of the courts of appeal etc

In the context of extended powers for the presidents of courts and first prosecutors, the promotion procedures become **increasingly subject to the influence of a small circle of makers and breakers.**

Analysis on the matter: <https://its.funky.org/RoCVM22>

## Allocation of cases in courts



Even though the allocation of cases is supposed to be random, sometimes this is impossible (due to the small number of magistrates available) or avoided through various techniques. A media investigation showed [how the allocation system was rigged](#) for the plagiarism scandal related to the Prime Minister:

## 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)*



The Superior Council of Magistracy was finally renewed. There are serious doubts with regards to the appointment by the Senate of the two representatives of civil society (regarding their independence from political parties influence).

## 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 new justice laws failed to offer sufficient guarantees against the misuse of the disciplinary regime against some judges and prosecutors. This continues to be an issue, in particular when it comes to magistrates that chose to use their freedom of expression and criticize some legal provisions.





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

There are new issues appearing from the new justice laws, especially for top-management positions. For example, the chief This point was always a contentious one that was signaled as such by many Progress reports under the CVM. Unfortunately, the proposed solution (in the Law on the statute of judges and prosecutors) does not fully take into account the need for a procedure that goes beyond doubt of political interference, nor the realities on the ground.

Art 144-149 set up the procedure for the appointment of top prosecutors, a procedure that is de facto dominated by the Minister of Justice. These conditions apply for the positions of Chief General Prosecutor, First-Deputy General Prosecutor, Deputy General Prosecutor, Chief and Deputy Chief Prosecutors for the National Anticorruption Directorate (DNA) and Directorate for investigation of organised crime and terrorism (DIICOT), as well as for all section presidents in these Prosecutor's Offices.

Even though the Section for prosecutors at the SCM is involved in the process of the MoJ (it has two members participating in the interview commission) and by interviewing and giving an opinion with regards to the proposed candidates, its decisions can be overturned by the Minister of Justice. Art. 148 clearly gives the possibility for the Minister to interview again the candidate that receives a negative opinion from the Section for prosecutors of the SCM and continue the appointment procedure no matter what.

The proposal of the Minister is further sent to the President, who can refuse only once a proposal (at difference from the pre-2018 regulation that put no such limit)

The proposed appointment system must be read together with the dismissal procedure associated to the same positions (Art. 172) that reinforces the dominance of the Minister of Justice. The dismissal procedure can be initiated by the Minister from his own initiative or as a result of a notification from the General assemblies of the prosecutors of the respective institution or from the Chief general prosecutor or Chief prosecutors of DNA/ DIICOT.

No matter the opinion of the SCM, the Minister of Justice can proceed with the dismissal procedure and send it to the President, who can only refuse it for legality reasons. The decision can be attacked by the dismissed prosecutor under an emergency procedure at the HCCJ. Thus, the Minister of Justice explicitly has the power to ignore a negative opinion from the Section for prosecutors of the SCM in both the appointment and the dismissal of high-ranking prosecutors

Analysis on the matter: <https://its.funky.org/RoCVM22>.



## Quality of justice

### Resources of the judiciary (human/financial/material)

The new justice laws provide for the budgets of the courts to be managed by the High Court of Cassation and Justice (with an initial support from the Ministry of Justice). Though this is an important step towards ensuring the independence of the justice system, it remains to be seen whether:



enough resources will be allocated or if this will become a leverage for the governing parties to put additional pressure on the courts if they want sufficient budgets

the HCCJ will have the administrative capacity to manage this new role for the courts system given the fact that the human resources in the system are scarce

### Geographical distribution and number of courts/jurisdictions (“judicial map”)

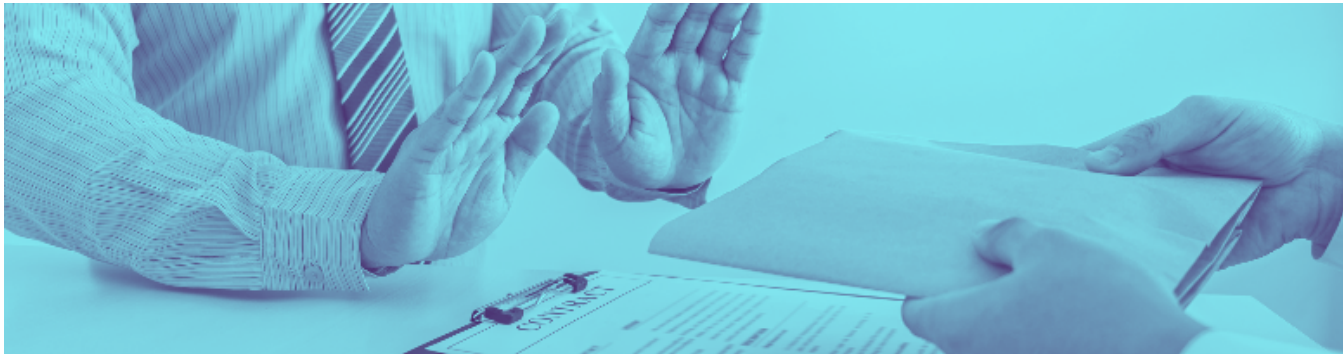


No changes in this field, but the results of the census should be used to recalibrate on the basis of the evolving demographics of the judicial map of Romania. So far, there are decades since major changes were applied to the geographical distribution, while the country lost more than 25% of its population and several urban centers became development poles that have a large concentration that requires similar judicial services.



# Anti-Corruption Framework

While some measures were taken, no significant follow up is yet in place in this regard.



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

The years of political pressure on the anticorruption framework are still felt with many issues remaining unsolved, including at the level of resources available:



1) lack of sufficient human resources (because of early retirements but also due to the loss of attractiveness of the job for young professionals)

2) even though resources are allocated (including for positions within these institutions), they are not necessarily used due to the above mentioned issues

3) There are concerns with regards to the capacity of the National Integrity Agency to manage its new role in the context of the whistleblowers protection legislation

### Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption:

Several changes introduced through the laws on the judiciary maintain a certain degree of functional independence of the authorities tasked with fighting corruption (such as the National Anticorruption Directorate chief prosecutor appointment).

### Information on the implementation of measures foreseen in the strategic anti-corruption framework:

The National Anticorruption Strategy was adopted and is being implemented, but with mixed results:

- some of the areas under monitoring are very "light" without consequential impact on major corruption issues (i.e. while there is a working group at the level of the Ministry of Health dealing with integrity issues, the Ministry of Health was ignoring major issues such as a huge corruption scandal involving Unifarm, the Ministry's company dealing with major procurement contracts subject now to anticorruption investigations related to bribes)
- other priority areas, such as the environment, still have to register progress, even though there are major issues related by the media in this regard (appointments in some of the Agencies, clearcutting issues, corruption scandals and violence against activists and journalists etc)
- public procurement is still one of the most vulnerable sectors to corruption, the legislation has continued to be lightened (under the pretext of a better absorption of EU funds), while the opacity of the procedures and the issues related to corruption practices in the allocation or execution of contracts are still as high as ever (the openness of the system is not improving, as shown [by studies looking](#) at how open the spending is).



### Measures to enhance integrity in the public sector and their application

Such measures were sometimes taken, especially within projects financed through EU programs such as the Operational Program for Administrative Capacity. However, the impact of these projects still remains to be seen.

#### General transparency of public decision-making,

*including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing*

The transparency of public decision-making decreased first with the pandemic and in the last year under the pretext of the war in Ukraine. Three different examples depict structural issues with transparency:

#1. Most of the legislation is passed through Emergency Ordinances by the Government, or through fast-track procedures in the Parliament.

- A simple count of the Emergency Ordinances shows that, on average, one is passed at less than once every two days.
- Our organization monitors the activity of the parliament every semester and the numbers show that [a third of the legislation follows an emergency procedure](#)

#2. The same issues appear at the local level, including on major topics such as the budgets. Our analyses show that [not even municipalities deploy simple transparency decision-making processes](#):

#3. Not even when it comes to major programs such as the National Recovery and Resilience Plan **there is no transparency**. As an example, in order to "fulfill" some reform-based milestones in the NRRP, the Government passed, in the last meeting of December, a package of 70 pieces of legislation or secondary acts. A significant part of them were not debated, did not follow transparency procedures nor offered enough space for social or civic dialogue. This happens while the calendar with the NRRP milestones is available and would permit enough predictability.

Unfortunately, at least when it comes to the Emergency Ordinances, the only institution that can notify the Constitutional Court to check whether the emergency criteria are met is the Ombudsman. And **the Ombudsman decides in a very arbitrary fashion what is notified or not**. We can provide several examples of petitions to the Ombudsman, that sometimes admits that the emergency is not justified but nevertheless, does not send the respective Emergency Ordinances to the Constitutional Court.





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

The whistleblower protection was weakened in Romania. Under the pretext of transposing the EU Directive, the legislation now offers less protection for those whistleblowers that are reporting on outside channels and to those that report anonymously. Unfortunately, despite the positions of civil society, even though [some issues were solved during the legislative process](#), those major issues still remain.

We can provide numerous examples of faulty protection for whistleblowers, as seen in [the work we are doing with the journalists](#) that chose to tell the stories of these people: .

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### Sectors with high-risks of corruption and list the relevant measures taken

Public spending and public procurement - as mentioned above, this area remains highly vulnerable to corruption and no major changes were made in order to close the loopholes. Initiatives like open contracting are highly necessary, at least for major infrastructure projects or EU-funded projects.

### Repressive measures

#### Criminalisation

No major changes, the new draft Criminal code and criminal procedure codes were just sent to the Parliament at the end of December 2022. However, the proposed changes do not solve all the issues related to the sanctions.

#### Data on investigation and application of sanctions for corruption offences

No major changes, the new draft Criminal code and criminal procedure codes were just sent to the Parliament at the end of December 2022. However, the proposed changes do not solve all the issues related to the statute of limitations or procedural aspects that are [obstacles to investigations](#)



# Media Freedom and Pluralism

No improvements were made since the 2022 Report regarding media freedom and pluralism, on the contrary.

## Safeguards against government or political interference and transparency and concentration of media ownership

No improvements. On the contrary, more and more resources, including from the subsidy of the political parties, are allocated to the media, with no transparency. [Several media investigations](#) show [a lack of transparency](#):

### Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

## Framework for journalists' protection, transparency and access to documents

No improvements when it comes to rules and practices guaranteeing journalist's independence or law enforcement capacity. Also, there has been an increasing number of SLAPPs and no improvements in the protection or early administrative dismissal of such lawsuits and harassment.

### Access to information and public documents

Access to information continues to decrease. However, one of the major developments in this area is related to **the use of GDPR as an argument not to release data**.

Several areas stand out, especially when it comes to public officials, civil servants, and other publicly funded positions – CVs, exams to occupy the offices or amounts paid are sometimes over-protected under the pretext of GDPR. However, public spending related to either public contracts awarded to individuals or that involve political parties also dominate the top problems related to GDPR misinterpretation.



Several examples we have collected are:

City halls / institutions in which the results of competition for public offices mention only the number of the application / file, but not the name of the candidate.

Institutions that refuse to answer FOIA request for persons that make extra-salary income (for example from sitting on boards on behalf of the institution), even though the same income must be declared in the assets declaration (where it is public)

Contracts (value for the salaries or for the prizes awarded) for professional sports players from the clubs that are subsidized by public authorities, not even anonymized

Public contracts for artists being paid public for statues or other forms of art, even though the legislation provides access to information related to public procurement

Universities refusing to communicate the situation of studies of public officials due to GDPR, even though the law states that such information can be requested if it can affect the capacity of that person to perform its duties (this leads absurd situations, because, for example, PhD holders get extra-money when employed or there were cases for

which BA or MA are requested but those persons had no such diploma)

Ministry of European Investments and Projects sending information on [projects funded with EU funds](#) that is totally blackened.

A significant number of FOIA requests addressed to political parties are denied based on GDPR. In Romania, the political parties are subject to Law 544/2001 as they receive subsidies on a monthly basis from the state budget. There are dozens of cases though in which political parties refused access to information related to their public spending, in particular for political advertising and for media appearances, invoking GDPR

During the previous mandate of a mayor of the Capital city, the request from LGBTQ+ organizations to notify Bucharest pride were denied because “other events were already approved on the same route”, but it was claimed that due to GDPR, the name of the organizations that had such approvals couldn't be revealed



## Other institutional issues related to checks and balances

### The process for preparing and enacting laws

#### Framework, policy and use of impact assessments and evidence based policy-making, stakeholders

No improvements, even though several reforms in this area are expected under the National Recovery and Resilience plan.



#### Rules and use of fast-track procedures and emergency procedures

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## The enabling framework for civil society

### Measures regarding the framework for civil society organizations and human rights defenders

Several concerning initiatives are currently discussed in the Parliament, including [the dissolution rules](#).