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The honouring of membership obligations to the Council of Europe by Romania

Report¹

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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Summary

The Monitoring Committee recognises the substantial progress with regard to the functioning of democratic institutions made by Romania since its accession to the Council of Europe. While the irreversibility and sustainability of this progress was put into question by the developments of 2017-2019, particularly in the areas of the judiciary and the fight against corruption, this reversal has been successfully overcome and Romania has returned to the path of reforms.

The committee appreciates the ongoing structural reforms of the Romanian judicial system aimed at addressing a number of concerns formulated, *inter alia*, by the European Commission for Democracy through Law (Venice Commission) and the Group of States against Corruption (GRECO).

The committee intends to continue following the developments in the country in the framework of a future periodic review and to report back to the Parliamentary Assembly if developments so warrant.

1. Decision by the Assembly. Reference to committee: Reference 4448 of 12 April 2019.



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A. Draft resolution²

1. Romania joined the Council of Europe in 1993. Upon accession, it entered into a number of commitments which were subject to monitoring by the Parliamentary Assembly until 1997 and then to post-monitoring dialogue between 2000 and 2002. Romania is a party to a number of core Council of Europe Conventions including the European Convention on Human Rights (ETS No. 5); the Framework Convention for the Protection of National Minorities (ETS No. 157); the European Convention for the Prevention of Torture and Inhuman Treatment or Punishment (ETS No. 126); the Criminal Law Convention on Corruption (ETS No. 173); the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing of Terrorism (CETS No. 198), the European Social Charter (ETS No. 163) and it is subject to monitoring mechanisms attached to these legal instruments. In 2019, Romania was selected by the Monitoring Committee for a periodic review report on its compliance with the obligations imposed on every Council of Europe member State in the field of democracy, rule of law and human rights. Periodic monitoring reports are prepared, over time, on all member States which are not subject to specific monitoring procedures.
2. Since its accession to the Council of Europe, Romania has made important progress with regard to the functioning of democratic institutions and respect for human rights. The irreversibility and sustainability of this progress was put into question by the developments of 2017-2019, particularly in the areas of the judiciary and the fight against corruption. However, the Assembly notes with satisfaction that this reversal has been successfully overcome and Romania has returned to the path of reforms.
3. The Assembly commends the Romanian authorities for demonstrating political will and commitment to fully respect their obligation to comply with democratic standards, as confirmed by their continued co-operation with Council of Europe monitoring mechanisms and the Assembly's Monitoring Committee in the framework of the periodic monitoring review.
4. The Assembly appreciates the ongoing structural reforms of the Romanian judicial system aimed at addressing a number of concerns formulated, *inter alia*, by the European Commission for Democracy through Law (Venice Commission) and the Group of States against Corruption (GRECO). The Strategy for the Development of the Judiciary for 2022-2025 adopted by the government on 30 March 2022 sets clear objectives in this respect and is accompanied by a monitoring mechanism.
5. In terms of judicial independence, the dismantling of the Section for Investigating Criminal Offences within the Judiciary on 11 March 2022 marked an important step, and should be commended. However, some concerns related to the new system for investigation and prosecution of criminal offences within the judiciary still need to be addressed. While the competence to investigate offences committed by magistrates has now been transferred to designated prosecutors within the Prosecutor's Offices attached to the High Court of Cassation and Justice and the courts of appeal, it is expected that sufficient resources will be allocated to the investigations of complex corruption cases in order to ensure the efficiency of the new system.
6. Furthermore, safeguards must be established to ensure judicial independence and prevent any risk of politicisation. These include the procedure for the appointment of designated prosecutors which needs to ensure their integrity, competence and impartiality. At the same time the Assembly welcomes the efforts within the judiciary to combat corruption and in particular the adoption by the Superior Council of Magistracy of the Integrity Plan.
7. Concerning the three justice laws, namely on the Status of Magistrates, on the Organisation of the Judiciary and on the Superior Council of Magistracy, which were submitted to the parliament, the Assembly takes note of the setting up by the parliament of the Joint Parliamentary Committee for the examination of laws in the field of justice and invites the authorities to follow the recommendations formulated by the Venice Commission and GRECO, in particular with regard to the civil and disciplinary liability of magistrates, competitions for admissions in the judiciary and rules on the status as well as appointment and removal of specialised and high-ranking prosecutors.
8. Regarding the fight against corruption, the Assembly welcomes the adoption by the government, in December 2021, of the Anti-Corruption Strategy for 2021-2025 and it notes with satisfaction the increased effectiveness of the investigation and sanctioning of medium and high-level corruption. In particular, the National Anti-Corruption Directorate should be commended for continuing the positive trend in terms of the number of indictments and the reduction of the backlog of cases despite insufficient human resources, which

2. Draft resolution adopted unanimously by the committee on 14 September 2022.

is the consequence of very strict criteria for prosecutors' appointments and in particular dissuasive seniority requirements. Furthermore, it should be noted that the value of assets confiscated by the National Agency for the Management of Seized Assets increased considerably over the last year.

9. The Assembly notes that amendments to the Criminal Code and Criminal Procedure Code aimed at bringing both laws into line with the Constitutional Court's decisions with regard, *inter alia*, to corruption related crimes, abuse of office and supervision methods, are under preparation. The Assembly hopes that they will be submitted to the parliamentary procedure without undue delay.

10. The Assembly notes with concern that Romania is among the States with the largest number of unexecuted judgments of the European Court of Human Rights; this number increased in 2021 to 409 compared to 347 in 2020. Some cases reveal the existence of structural dysfunctions and should be addressed as a matter of priority.

11. The situation concerning media freedom and pluralism needs to be strengthened. In particular, the use of public funds by political parties to finance media and influence their content on the basis of secret contracts is of utmost concern. It potentially undermines the principle of free media and the proper functioning of democratic institutions. Emblematic cases of threats, instances of harassment and violence against critical journalists, reveal serious problems concerning freedom of expression.

12. The Assembly notes with satisfaction the overall progress accomplished by Romania with regard to protection and respect for human rights. In particular, it welcomes the recent adoption of the amendment to Article 369 of the Criminal Code, extending the grounds for hate speech and hate crimes in line with Council of Europe standards. The Assembly also commends the Romanian Parliament for having revised its Rules of Procedure in June 2022 allowing for more efficient prosecution of hate speech among politicians.

13. The Assembly commends Romania for its commitment to protect the rights of persons belonging to national minorities. According to the reports of the monitoring mechanism of the Framework Convention for the Protection of National Minorities, Romania can be considered as an example of good European practices in this area. There are clear improvements, as provided by Article 195 of the Administrative Code adopted in 2019, especially for the localities with more than 20% of population belonging to a national minority, with regard to the right to use their mother tongue in the relations with the local authorities, and the obligation of the respective authorities to provide the citizens with, *inter alia*, bilingual forms, public information and bilingual inscriptions. Some difficulties still exist, particularly with regard to the financial and administrative obstacles to the implementation of these provisions of the Administrative Code. There are also some concerns that some amendments introduced into the Administrative Code may limit minority language rights in small communities.

14. However, regarding the Roma minority, the Assembly notes with concern that a number of programmes, strategies and action plans have not had the expected impact on the inclusion of Romanian citizens belonging to this minority and that Roma continue to occupy the most disadvantaged position in the labour market; despite sustained efforts of governmental and non-governmental stakeholders meant to improve their living standards, the material situation of Roma is well below average in the country; they are also affected by shortages in social housing.

15. Since the invasion of Ukraine by the Russian Federation on 24 February 2022, Romania has been confronted with large waves of refugees from that country. Over 2,25 million Ukrainians have fled to Romania to date. While the majority transited the country, about 81 000 decided to stay. Romania is to be commended on its swift reaction and its assistance to a large number of people in need of international protection.

16. In consequence, the Assembly calls on the Romanian authorities:

17. in the field of the judiciary, to:

17.1. continue the ongoing reform respecting the deadlines established by the Strategy for the Development of the Judiciary for 2022-2025;

17.2. take into account the recommendations and to address the concerns formulated by the Venice Commission and GRECO in the preparation of draft justice laws to be submitted to the parliament in Autumn 2022;

17.3. ensure inclusiveness in the legislative process; to carry out meaningful consultations with all stakeholders and to try to accommodate different opinions;

17.4. introduce proper safeguards into the new system of investigation and prosecution of criminal offences in the judiciary, following the dismantling of the Section for Investigating Criminal Offences within the Judiciary, with a view to guaranteeing judicial independence;

- 17.5. continue the implementation of already adopted measures aimed at increasing the efficiency and quality of the justice system, including increasing the recruitment of magistrates, redistributing the courts' workload and increasing the digitalisation of the justice system;
18. in the field of the fight against corruption, to:
 - 18.1. pursue implementation of the National Anti-Corruption Strategy and ensure determined political support for its effectiveness;
 - 18.2. amend the Codes of Criminal Law and Criminal Procedure in line with the decisions of the Constitutional Court and the recommendations of the Venice Commission in respect of deadlines established by the National Anti-Corruption Strategy;
 - 18.3. address effectively the issue of human resources shortages within the National Anti-Corruption Directorate;
19. in the field of the execution of judgements of the European Court of Human Rights, to:
 - 19.1. step up efforts to implement the Court's judgments, in particular those concerning nine principal cases subject to the Committee of Ministers' enhanced supervision procedure, and over 300 repetitive cases;
 - 19.2. consider exploring the feasibility of organising training sessions in co-operation with the Council of Europe on the implementation of the Court's rulings;
 - 19.3. consider exploring the feasibility of organising training sessions in co-operation with the Parliamentary Assembly Co-operation Unit on legislative follow-up to the Court's decisions;
20. in the field of media, to:
 - 20.1. ensure proper implementation of the existing legislation on access to information;
 - 20.2. ensure full independence of the National Audiovisual Council by establishing clear professional criteria for the selection of its members and to ensure adequate budgetary resources;
 - 20.3. ensure full transparency of media ownership;
 - 20.4. ensure specific safeguards for editorial independence and to introduce legal requirements to disclose secret contracts between political parties and the media on the basis of which public funds are transferred to the latter;
 - 20.5. ensure proper investigation and punishment of perpetrators in cases of harassment or intimidation of journalists;
21. in the field of minorities and vulnerable groups, to:
 - 21.1. condemn without reservation, investigate and prosecute any discriminatory remarks and behaviour, and to eliminate hate speech from public discourse;
 - 21.2. continue efforts aimed at better integration of Romanian citizens belonging to the Roma minority.
22. In conclusion, the Assembly recognises that Romania has made substantial progress towards its compliance with Council of Europe standards in areas crucial for the functioning of democratic institutions, in particular the judiciary and the fight against corruption. However, the question of sustainability and irreversibility of the reforms as well as of the effectiveness of the reforms will have to be confirmed by the proper implementation of legislation.
23. Against this background, the Assembly invites its Monitoring Committee to continue following the developments in the country in the framework of a future periodic review, and to report back to the Assembly if developments so warrant.

B. Explanatory memorandum by Ms Edite Estrela and Ms Krista Baumanė, co-rapporteurs

1. Introduction

1. Under its terms of reference as defined in [Resolution 1115 \(1997\)](#) (as modified), the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) is seized to carry out regular periodic reviews of the compliance of the obligations entered into upon their accession to the Council of Europe by member States that are not already under a full monitoring procedure or engaged in a post-monitoring dialogue.
2. As a result of the Monitoring Committee's reflection on the improvement of its working methods and impact, in 2019, the format of these periodic reviews underwent a considerable modification: the countries were selected on substantive grounds (and not in alphabetical order as before), and the reports were accompanied by specific resolutions and presented, in contrast to earlier practice, independently from the report on the progress of the Assembly's monitoring procedure. The objective of producing, over time, periodic reviews on all member States was maintained.³
3. On 6 March 2019, the Monitoring Committee selected three countries, including Romania, with a view to preparing periodic review reports and informed the Bureau accordingly. Following the Bureau's decision to revise the list of countries which the committee proposed, the Committee on Rules of Procedure, Immunities and Institutional Affairs was asked for an opinion on the interpretation of the relevant Rules. Pending clarification, the Monitoring Committee decided, on 16 May 2019, to suspend the preparation of the periodic review reports, including the one on Romania. The opinion of the Committee on Rules of Procedure was adopted in January 2020. On 16 January 2020 the Monitoring Committee decided to resume the preparation of the periodic review reports.
4. Furthermore, to avoid any possible future misinterpretation, the relevant provisions contained in [Resolution 1115 \(1997\)](#) (as modified) were amended. They now specify that the preparation and submission of periodic review reports should be done in accordance with Rule 26 of the Rules of Procedure. The order and frequency of these reports will be decided upon by the committee "in accordance with its internal working methods based on substantive grounds, with the objective of producing, over time, periodic review reports on all member states".
5. It is further specified that during the preparation of these reports, the authorities of the country in question are to be given a six-week period to provide their comments on the preliminary draft report transmitted to them by the committee. Lastly, the Assembly decided that all periodic reviews should be prepared by two co-rapporteurs from different countries and political groups, as is the case for all other Monitoring Committee reports, with the exception of reports on the progress of the Assembly's monitoring procedure.
6. The first co-rapporteurs were appointed on 27 May 2020. However, the preparation of the report was delayed for a number of reasons including the electoral campaign and the legislative elections held in Romania on 6 December 2020; the sanitary restrictions on travel which prevented the co-rapporteurs from visiting the country in the first half of 2021; electoral campaigns and parliamentary elections in the rapporteurs' own respective countries followed by their resignation as a result of non-re-election and, last but not least, a political crisis in Romania which started on 1 September 2021, and ended only on 25 November 2021 with the creation of Prime Minister Ciucă's grand coalition Government.
7. Against this procedural background we were appointed rapporteurs on 29 October 2021 (Ms Estrela) and on 21 April 2022 (Ms Baumanė).
8. Romania became a member of the Council of Europe in 1993.⁴ Upon accession, it entered into a number of commitments which were subject to monitoring by the Parliamentary Assembly on the basis of [Order 508 \(1995\)](#). In 1997, considering that Romania had honoured its most important obligations and commitments, the Assembly decided to close the monitoring procedure. The post-monitoring dialogue started in 2000 and was closed in 2002.

3. See [Resolution 2261 \(2019\)](#) "The progress of the Assembly's monitoring procedure (January-December 2018) and the periodic review of the honouring of obligations by Iceland and Italy", adopted on 24 January 2019.

4. [Doc. 6918, Opinion 176 \(1993\)](#) on the application by Romania for membership of the Council of Europe.

9. In 2007, Romania became a member of the European Union. Upon its accession, the European Commission established a mechanism called the Co-operation and Verification Mechanism (CVM), as a transitional measure, with a view to facilitating Romania's efforts to reform its judiciary and step up the fight against corruption. So far, 20 reports have been published including a comprehensive assessment over the ten years of the mechanism in January 2017.⁵ We have used the findings of successive CVM reports in the present report.

10. We also relied on the European Commission's rule of law reports, in respect to the situation in Romania, published on a yearly basis since 2020 under the European rule of law mechanism. The Monitoring Committee held an exchange of views on this subject with a representative from the European Commission on 9 March 2021. The European Union mechanism provides for a dialogue on the rule of law between the Commission, the Council, the European Parliament, member States, national parliaments, civil society and other stakeholders. Reports on individual countries aim to identify possible problems in relation to the rule of law as early as possible and to present best practices. Areas covered by the present report include justice systems, the anti-corruption framework, media pluralism and freedom, and other institutional issues linked to checks and balances.

11. The current memorandum is also based on the legal opinions provided by the European Commission for Democracy through Law (Venice Commission) on different aspects of the reform of the judicial system prepared between 2018 and 2022 following requests by the Monitoring Committee. Moreover, we have also used legal opinions of the European Council of Prosecutors and the European Council of Judges.

12. We also took into account the findings and conclusions of the relevant institutions and monitoring mechanisms attached to the conventions of the Council of Europe to which Romania is a party. In particular, we based ourselves on the reports prepared by the Commissioner for human rights, the Group of States against Corruption (GRECO), the Committee of Experts on the Evaluation of Anti – Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Advisory Committee on the Framework Convention for the Protection of National Minorities and the European Commission against Racism and Intolerance (ECRI). We studied judgments of the European Court of Human Rights with regard to areas covered by the present report and took into account the work of the Committee of Ministers in its supervisory function concerning the execution of the Court's judgements. Furthermore, we got acquainted with recent annual reports on the state of democracy, human rights and the rule of law prepared by the Secretary General of the Council of Europe.

13. We have had extensive contacts with international and national non-governmental organisations and representatives of civil society, including a series of online meetings held on 20 May 2022, which we consider a valuable source of first-hand information about the situation in the country. We shall often refer to their reports in the current memorandum.

14. We conducted a visit to Bucharest on 4-5 July 2022 to establish a direct political dialogue with the Romanian authorities on the concerns identified in the preliminary draft report. We held very interesting and informative meetings with the Head of the Chancellery of the Prime Minister, the Minister of Justice and the Presidential Adviser. In the parliament we met the Deputy Speakers of both Chambers, the leaders of factions and the members of the delegation of the Assembly. Concerning the judiciary, we held exchanges of views with the President of the High Court of Cassation; members of the Superior Council of Magistracy and two associations of judges (the Association of Magistrates in Romania and the Forum of Judges in Romania). We met the Romanian Ombudsperson and her team and last but not least we met the chief prosecutor of the National Anti-Corruption Agency. The findings of this visit have been taken into account in the current report along with the written comments of the Romanian authorities which we received on 5 August 2022.

15. We believe that the information gathered from such a variety of sources will have provided us with a balanced overview and enabled us to prepare an objective report in which we endeavour to assess the functioning of democratic institutions and the human rights situation in Romania.

16. Unlike full monitoring and post-monitoring reports, this report is not a comprehensive study but rather an analysis of developments in Romania in relation to the specific Council of Europe standards in the fields considered to be particularly meaningful for the functioning of democratic institutions.

5. [COM\(2017\)44 final](#).

17. We would like to underscore the excellent co-operation during the preparation of the present report with the members of the Romanian delegation to the Assembly, representing both the governing coalition and the opposition. We also wish to express our gratitude for the organisation and hospitality during our visit in Bucharest.

2. Political context

18. The December 2016 parliamentary elections were the first to be held under a new proportional electoral system adopted in 2015 after being abandoned in 2004. They were won by the Social Democratic Party (PSD) which obtained over 45 % of the votes and 154 out of 329 seats in the Chamber of Deputies. Its major rival party, the National Liberal Party (PLN) got 20.04% and 69 seats.

19. Between 4 January 2017 and 4 November 2019, four PSD led governments were in office. The period was marked by massive popular protests against corruption which started as early as January 2017. The first demonstrations were triggered by the secret overnight adoption by a newly invested government of the ordinance modifying the Criminal Code and the Criminal Procedure Code. The changes were aimed at pardoning certain crimes especially regarding the abuse of power and, according to critics, were intended to decriminalise the politicians' alleged corruption and to help them escape ongoing criminal investigations and prison sentences. This was done in the context of a high number of investigations against leading politicians for alleged corruption and related offenses carried out by the Anti-corruption Directorate, and a considerable number of ministers and members of parliament convicted by courts of first instance. The government, confronted with massive protests, repealed the original ordinance and the Minister for Justice resigned.

20. The second wave of street protests took place between August 2017 and August 2019, following the tabling by the government of a controversial judicial reform and its subsequent adoption by the then parliamentary majority under emergency procedure. Street protests included demonstrations, marches, sit-ins, occupations, pickets, and were aimed not only at stopping the government's and parliament's amendments to the legislation on the judiciary, perceived as weakening the fight against corruption, but also called for the dismissal of the government. The protest in Bucharest on 10 August 2018 which gathered between 80 000 and 140 000 people according to different estimates, started peacefully but was marked by police violence which resulted in 452 people being injured including 3 policemen. The fourth PSD Government resigned on 4 November 2019 and was replaced by a minority PLN Government which remained in office until the December 2020 elections.

21. On 26 May 2019, along with the elections to the European Parliament, a consultative referendum was organised in Romania. The question put forward was whether to prohibit amnesties and pardons for corruption offences, as well as whether to prohibit the government from passing emergency ordinances concerning the judiciary and to extend the right to appeal against them to the Constitutional Court. Both proposals were approved by wide margins, with over 85% of the vote. On 27 May 2019, the High Court of Cassation and Justice upheld on appeal the sentence of 3.5 years of imprisonment for corruption for Liviu Dragnea, the leader of PSD and, until then, President of the Chamber of Deputies. He spent 2 years and 2 months in prison.

22. The most recent legislative elections were held on 6 December 2020. The election process was assessed to be in compliance with international obligations and commitments for democratic elections by the Office for Democratic Institutions and Human Rights (ODIHR) Special Election Assessment Mission.⁶ We will refer to some of the shortcomings identified by the Mission in the relevant sections of this report.

23. The PSD which in 2016 had won a major victory, this time lost 44 seats in the Chamber of Deputies, gaining 28.9% of the vote cast and 110 seats in the new Parliament. The second winning party was the National Liberal Party (PLN) which received 25.18% and 93 seats (plus 24). Another winner was USR PLUS, an alliance established solely as an electoral alliance between Save Romania Union (USR) and the Freedom, Unity and Solidarity Party (PLUS) which received 15.37 % and 55 seats (plus 24) and was dissolved in 2021. The newly created Alliance for the Union of Romanians (AUR) obtained 9.08% and 33 seats; The Democratic Alliance of Hungarians in Romania (UDMR) got 5.74 % and 21 seats and other minority parties received 1.72 % and 17 seats.

24. The voter turnout was approximately 32 %, the lowest since the democratic transformation of the country, partly due to the Covid-19 pandemic.

6. ODIHR Special Election Assessment Mission's Final Report, 23 April 2021.

25. Following the elections, a centre-right coalition government was formed by the PLN, USR PLUS and the UDMR led by Florin Cîțu as Prime Minister. It was invested by the parliament on 23 December 2020 and governed until the outbreak of the political crisis which broke out the following year.

26. The political crisis began on 1 September 2021 against a background of economic difficulties and controversies over the handling of the pandemic and was triggered by disagreements over the so-called Anghel Saligny investment programme. The programme was designed to develop Romanian settlement and was supported by one of the coalition partners, Prime Minister Cîțu's National Liberal Party but criticised by the other, USR Plus. Following a complaint to the Constitutional Court and two motions of no confidence, the government was dissolved on 5 October 2021.

27. Two consecutive Prime Ministers nominated by President Klaus Iohannis failed to form a government. On 25 November 2021, a new coalition government composed of PSD, PLN and UDMR and led by Nicolae Ciucă, a former Romanian Land Forces army general won the parliament's support.

28. The most recent presidential election was held on 10 November 2019. President Klaus Iohannis, former leader of the PNL who was initially elected in 2014, was re-elected. It was assessed by the ODIHR Election Assessment Mission as competitive, pluralistic and offering voters a genuine choice from a broad spectrum of political alternatives.

3. Outstanding concerns and other issues

3.1. Judiciary

29. Since 2004, the judicial system in Romania has been defined by three Justice Laws: on the Statute of magistrates (Law 303/2004); on Judicial Organisation (Law 304/2004); and on the Superior Council of Magistracy (Law 317/2004). These Justice Laws have received a positive assessment from the European Union VCM and from the Council of Europe although some concerns with regard to the independence of the judiciary persisted, particularly concerning the role allegedly played by the Romanian Intelligence Service in certain criminal proceedings. However, overall, until 2017, Romania was praised by the international community including in VCM reports for its continued progress in fighting corruption and promoting the independence of the judiciary.

30. As a result of the backslide in the years 2017-2019 in the areas mentioned above (see also paragraphs 19-21), the situation of the judiciary in Romania has deteriorated creating a real risk for its independence. The three Justice Laws were first amended in May 2018 by the then parliamentary majority under emergency procedure in a tense political climate impacted by the criticism of the authorities' methods to fight corruption and by massive popular protests. They entered into force in July and October 2018. Following widespread criticism including from the international community and concerns expressed by the President of Romania and the High Court of Cassation and Justice, they were referred to the Constitutional Court which identified some constitutional concerns requiring correction. As a result, the amended laws were subsequently further supplemented and modified by five Government Emergency Ordinances Nos. 77, 90, 92 of 2018 and 7 and 12 of 2019.

31. These further changes introduced by the ordinances to already amended laws have drawn more criticism in Romania including by the Superior Council of Magistracy and professional organisations, and internationally. Concerns relate to the procedure for adoption as well as the content of the amendments and prompted the Monitoring Committee to request the Venice Commission's Opinion.⁷

32. With regard to the procedure, the authorities have been accused of conducting the whole process with excessive haste, not inclusively, without necessary consultations, and lacking transparency. Concerning the ordinances, the Venice Commission considered this manner of amending the laws on justice as highly problematic. Not only does it undermine the quality of legislation and call into question the principles of democracy and the separation of powers, but it also affects legal certainty. Moreover, the patchwork of amendments included in the laws and ordinances made it very complicated, even for lawyers to identify the current status quo. Finally, law-making by emergency ordinances does not permit the Constitutional Court to exercise the preliminary control of the constitutionality of such legislation.

7. [CDL-PI\(2018\)007](#).

33. It is also important to emphasise that this legislative process took place in a difficult context impacted by the results of the fight against high-ranking corruption. On the one hand, there were reports of pressure on and intimidation of judges and prosecutors including through media campaigns; but on the other, alleged cases of misuse of power by some Romanian magistrates, in particular prosecutors led to a questioning of the methods used to fight corruption. The disclosure of secret co-operation protocols signed between the Romanian Intelligence Service and judicial institutions raised serious concerns with regard to the judicial independence and the safeguards required to protect the judiciary against undue interference. Finally, the controversy over the dismissal of the Chief anti-corruption prosecutor was a clear illustration of the circumstances in which these controversial amendments were introduced.

34. Concerning their content, the Venice Commission formulated a number of concerns in its first Opinion delivered in October 2018. These were subsequently reiterated in its July 2019 Opinion⁸ presented, again, at the Monitoring Committee's request following the adoption of the government's ordinances. In particular, it emphasised that some important provisions introduced by the three amended laws and ordinances, seen alone but especially taking into account their cumulative effect, were likely to undermine the independence of Romanian judges and prosecutors.

35. The controversial changes included prosecutors' status and the principles inherent to their functions, the new system for the appointment and dismissal of chief prosecutors, the role of the Ministry of Justice therein, and the extended scope of hierarchical control, new rules for the exercise of judges' and prosecutors' freedom of expression, new rules for material liability of judges and prosecutors, issues related to the status of the Superior Council of Magistracy weakening its role as the guarantor of the independence of the judiciary, and the early retirement scheme for judges and prosecutors with a risk of impact on the efficiency of the judicial system. Particular concerns were raised by the establishment of a Section for Investigating Criminal Offences within the Judiciary (SIJ).

36. The criticism formulated in the Venice Commission's opinions was echoed by similar concerns expressed by GRECO in its Rule 34 *Ad hoc* report adopted in March 2018⁹ in reaction to the deteriorating situation of the Romanian judiciary as well as by the Consultative Council of European Prosecutors¹⁰ and the Consultative Council of European Judges.¹¹ The CVM report published in November 2017, expressed serious concern that the earlier progress in the reform of the judiciary and the fight against corruption might be affected by the recent legislative changes. Subsequent CVM reports in 2018 and 2019 reiterated these concerns.

37. Regrettably, the authorities did not address these concerns and did not take into account the majority of recommendations made by the Venice Commission, GRECO and the CVM between the adoption of the first amendments and the ordinances. Only a few of the Venice Commission's recommendations of 2018 have been addressed, for example the postponement of the early retirement scheme until 1 January 2020.¹² Almost all of the other concerns identified in 2018 Opinion remained unaddressed or were even exacerbated.

38. The amended laws as amended again by the ordinances still contained disproportionate restrictions to the freedom of expression of judges and prosecutors as well as unqualified provisions on magistrates' material liability. No attempt was made to specify more clearly the criteria for the "screening" of magistrates.¹³ The most serious concerns remained, including the appointment and removal of top prosecutors giving too much power to the Minister for Justice;¹⁴ the creation of a Section for Investigating Criminal Offences within the Judiciary under the transitional appointment scheme (already criticised in 2018) and extending its jurisdiction on appeal or even closed cases (the latter were declared unconstitutional by the Constitutional Court decision no. 7/2020); further weakening the role of the prosecution section of the Superior Council of Magistracy (SCM), notably in favour of the judges section. In particular, the prosecutor section had no role in the appointments of prosecutors to the special section, increasing from one day to the next the seniority requirements for prosecutors in the National Anti-corruption Directorate (DNA) and in the Directorate for Investigating Organised Crime and Terrorism (DIICOT) without considering the impact on these institutions.¹⁵

8. [CDL-AD\(2019\)014](#).

9. Follow-up report of the GRECO: [AdHocRep\(2019\)1](#).

10. [CCPE-BU\(2019\)3](#).

11. [CCJE \(2021\) 11](#).

12. The provision on the early retirement scheme was subsequently repealed by the law positively assessed by the SCM.

13. It should be noted that at the level of the secondary legislation, the Regulation on the evaluation of the professional activity of judges and the Regulation on the evaluation of the professional activity of prosecutors were established by the respective Decisions of the Section for Judges (No 1113/2021) and the Section of Prosecutors (No 130/2022).

14. The SCM sent us comments, pointing out that the amendments did not change the procedure substantially, and moreover, they were similar to relevant provisions in other Council of Europe member States.

39. One of the most strongly criticised adopted provisions was the newly established Section for Investigating Criminal Offences within the Judiciary. The Venice Commission raised strong concerns in particular as regards “the reasons for its existence, its impact on the independence of judges and prosecutors and on the public confidence in the criminal justice system and in the Romanian judicial system, more generally”. It drew attention to possible conflicts of competence with specialised prosecutors’ offices and issues of effectiveness of centralising all such investigations in one single location. Rerouting of high-profile cases of corruption, which were pending with the DNA would undermine both the DNAs anti-corruption work and the DNA as an institution. Moreover, such a massive transfer would cause disruption and serious delays. In consequence, the creation of this Section might undermine the population’s trust in the judiciary.

40. To sum up, amendments to the Justice laws, both introduced by the parliament and by the ordinances, had a serious impact on the independence, quality and efficiency of the justice system. The implementation of the amended laws soon confirmed concerns.

41. Despite all the criticism, the Section for Investigating Criminal Offences within the Judiciary (SIIJ) was established and became operational on 23 October 2018. All investigations and prosecutions involving a magistrate, including past and ongoing investigations were transferred to the SIIJ even if the magistrate’s role in the file was marginal. Allegedly, the SIIJ has been used to put pressure on judges and prosecutors and change the course of some high-level corruption cases. The situation created uncertainty and pressure on both individual magistrates’ career developments and independence and for the justice system as a whole.

42. One of the major concerns identified by the Venice Commission was the frequent use by the government of emergency ordinances to make legislative amendments. While the Romanian Constitution clearly indicates that this should be an exceptional measure, legislation by government of emergency ordinances became a routine putting in danger State institutions, external checks on the government and the principle of the separation of powers and weakening legal certainty.

43. The Romanian authorities addressed this concern by organising a consultative referendum held in May 2019 in which a majority of citizens voted in support of banning the use of government of emergency ordinances in the area of justice (see paragraph 21). No significant government of emergency ordinances have been adopted since then. In February 2021, the parliament rejected a proposal to examine the draft law to abolish the SIIJ through an emergency parliamentary procedure and this is to be commended.

44. The minority PLN government which took over in November 2019, declared its political will to introduce a reform of the judiciary along the lines recommended by the international monitoring bodies. On 30 September 2020, the then Minister of Justice presented draft texts for the comprehensive revision of the justice laws for a six-month public consultation.

45. The new coalition government which took office in late December 2020 following the parliamentary elections of 6 December 2020, included the rule of law and the independence of the judiciary as well as the fight against corruption in its programme. In January 2021 it adopted a memorandum reflecting the political commitment to address all pending CVM, GRECO and Venice Commission recommendations. It also set out a timetable for the adoption of “essential legal provisions aimed at consolidating the organisation and functioning of the judiciary”.¹⁵

46. The new government decided to dismantle the SIIJ, indicating that this would be the first step in the reform of the justice laws and would be followed by the adoption of three draft laws, respectively on the status of judges, the judicial organisation and the SCM. The Minister of Justice pointed out that the SIIJ proved to be an inefficient body that completely failed to achieve its goal of holding accountable judges who break the law, adding that it had brought to court only two cases during each year of its existence. On 29 March 2021, at the end of the public consultation and following several rounds of debates with the judiciary, the Minister of Justice requested the Venice Commission’s Opinion on the draft law dismantling the SIIJ.

47. The Venice Commission, in its opinion adopted in July 2021,¹⁷ welcomed the Romanian authorities’ intention to reform the judiciary and to restore the competence of the specialised prosecutors’ offices such as DNA and DIICOT. It made several recommendations and in particular criticised a new type of inviolability for

15. It was drawn to our attention that the Constitutional Court in its Decision No 514 of 14 July 2021, held that: “(...) To undervalue this condition of actual seniority, may lead to unacceptable situations in which the two specialised directorates are composed of prosecutors at the beginning of their career, although by their nature they are specialised and placed at the highest hierarchical level”.

16. In their comments, the SCM drew our attention to two laws introducing temporary measures, which were adopted following respective decisions by the Constitutional Court (Law No. 192/2021 on the admission and training of judges and Law No. 131 /2021 on the status of judges and prosecutors).

judges and prosecutors going far beyond functional immunity as well as a new competence of the SCM allowing its relevant section prior screening in criminal proceedings against judges and prosecutors; and suggested both should be removed. The Venice Commission also emphasised that vexatious complaints by private individuals against judges and prosecutors should be dealt with by the ordinary prosecutorial service.

48. In January 2022, the Monitoring Committee, decided to ask the Venice Commission's Opinion on the draft Law Dismantling the Section for Investigating Criminal Offences within the Judiciary. This opinion was adopted in March 2022.¹⁸ The Venice Commission regretted the haste with which this controversial law on dismantling the SIJ had passed through parliament and been promulgated, which has meant that the Law was adopted before the Commission was able to issue its opinion. In their written comments, the authorities disagreed with the opinion that the law had been "hastily adopted". They pointed out that the legislative process had gone through all the steps provided for by the legislative procedure including consultations with representatives of the judiciary (the SCM had delivered a positive opinion) and magistrates' associations. There had also been public consultation on the draft law, two wide public debates with the participation of stakeholders and discussions at the political level within the coalition. The draft had been approved by the government and adopted by the parliament with a large majority. The Constitutional Court had validated it by a unanimous decision. The authorities also stressed that the call for the dismantling of the Section had been a long-standing recommendation by the Venice Commission, the GRECO and the European Union – the law No. 49 of 11 March 2022 was adopted after almost three years of earlier failed attempts.

49. At this point we feel obliged to report on our meetings with representatives from two judges' associations. They informed us that four out of six magistrates' associations, namely: the Romanian Association of Magistrates; the Association of Judges for the Defense of Human Rights; the National Union of Romanian Judges and the Romanian Association of Public Prosecutors had been opposed to the dismantling of the SIJ and claimed that the arguments in favour of dismantling had been based on serious factual errors resulting from a disinformation campaign. They also provided us with documentation on their position and arguments which, according to their words, had never been taken into account by the critics of the SIJ. On the other hand, they raised serious concerns about the practices of DNA prosecutors who had investigated cases involving judges which, in their opinion, amounted to pressure with direct consequences on the way the justice act was executed and clearly endangered the independence of the judges as expressly stated by the Romanian Constitutional Court in its Decision 33/2018.

50. While the Section has been dismantled despite the criticism on the part of the judges' community, a number of concerns raised by them with regard to the follow-up remain valid and we urge the relevant authorities to take into account all opinions expressed within the judiciary. The situation in which a part of the judicial community claims that its opinions are ignored is detrimental to the functioning of the judicial system.

51. On the other hand, we have received detailed information from the Ministry of Justice on the steps undertaken in order to pursue and implement the reform following the dismantling of the Section in compliance with international recommendations. The system provided by Law No. 49 does not establish a new section but represents an integral part of the architecture of the national prosecution services. All of the approximately 6 000 files formerly dealt with by the Section have been redistributed at the central and local levels. The system is already operational, and a number of prosecutors have already been appointed by the Prosecutor General. The procedure for appointment by the SCM is underway.

52. Moreover the SCM in its written comments pointed out that the procedure provided by Law No. 49/2022 on the appointment of prosecutors allows for an effective selection by the plenum of the SCM in accordance with its role as the guarantor of judicial independence.

53. As dismantling the SIJ is only the first step in a larger package of reform measures, the Venice Commission, in its opinion, encouraged the Romanian authorities to continue this wider reform and offered any further assistance that may be required.

54. The new Strategy for the Development of the Judiciary 2022-2025 and its related Action Plan were approved by the government on 30 March 2022. The Strategy set clear objectives and a monitoring mechanism. It identifies, as areas of action, the independence, quality and efficiency of justice, on the one hand, and access to justice, on the other.¹⁹

17. [CDL-AD\(2021\)019](#).

18. [CDL-AD\(2022\)003](#).

19. It should be noted that the adoption and entry into force of the new Strategy is a milestone under Romania's Recovery and Resilience Plan agreed with the European Commission.

55. The remaining draft justice laws, namely the Draft Law on the Status of Magistrates, the Draft Law on the Organisation of the Judiciary and the Draft Law on the SCM are expected to be submitted to the parliament before the end of September 2022. Currently they are still subject to wide consultations; the most recent version was published on 22 June 2022. The drafts take into account recommendations of the Venice Commission, judicial instances including the SCM, magistrates' associations and individual magistrates. According to the Minister of Justice, the provisions regarding admission to the magistracy, the promotion of magistrates, the civil and disciplinary liability of magistrates, the organisation and functioning of the Judicial Inspection and the appointment procedure for high-level prosecutors, have been carefully assessed in order to fully comply with the principle of the independence of the judiciary; the draft laws have also been discussed with the European Commission.

56. The Strategy for the development of the Judiciary also aims at improving the digitalisation of the justice system, through the implementation of the ECRIS V system, which will provide key functionalities supporting the digital processing of cases in courts and prosecution offices, the collection of statistical data and the generation of certain pre-defined statistical reports, as well as the electronic transfer of data between different actors, including courts and prosecution offices.

57. It has to be acknowledged that the perception of judicial independence among the general public in Romania has significantly improved between 2020 and 2021 up from 37% to 51%.²⁰ The reason most often invoked for the perceived lack of judicial independence remains interference or pressure from the government and politicians.

58. Some concerns, however, persist. For example, in December 2021, a prominent judge in Romania was suspended by the SCM from his position for posting videos on social media on the grounds that this behaviour amounted to behaviour that affects the image of the justice system. More recently, in May 2022, two controversial judges perceived as close to President Klaus Iohannis were elected by parliament to the Constitutional Court.²¹

59. Moreover, as demonstrated above, serious concerns remain as to the stability and predictability of legislation and the quality of the legislation process.

60. It is to be commended that the authorities have undertaken reforms of the Romanian judicial system and committed themselves to fulfil recommendations formulated by the Venice Commission. However, the developments of 2017-2019 undermined confidence in the stability of Romania's rule of law, independence of the judiciary and the fight against corruption at the highest level.

3.2. Fight against corruption

61. The perception of the level of corruption in Romania remains critical. In the 2020 Transparency International Corruption Perception Index, Romania scored 44/100 and ranked 19th in the European Union and 69th globally. This perception has been relatively stable in recent years.

62. The institutional framework to combat corruption is comprehensible but the efficient implementation requires sustained political will and commitment from the government. A National Anti-Corruption Strategy was in place between 2016-2020 and its co-ordination and implementation were ensured by the Ministry of Justice. The effectiveness of the investigation and sanctioning of medium and high-level corruption has improved.

63. A new National Anti-Corruption Strategy for 2021-2025 has been declared a key national priority on the political agenda of the government.²² The Strategy has five general objectives: enhanced implementation of integrity measures at organisational level; reducing the impact of corruption on citizens; strengthening institutional management and capacity to prevent and combat corruption; strengthening integrity in priority areas such as health care, public procurement and local administration; and increasing the performance of the fight against corruption by criminal law and administrative means. The first monitoring report on the implementation of the Strategy is due at the beginning of 2023.

20. See 2021 EU Justice Scoreboard.

21. In their comments, the authorities disagreed with this opinion expressed by the representatives of civil society and recalled that the two judges had been proposed by the parliament; they had been respectively deputy Prosecutor General and Chair of the Legal Committee in the Senate before their appointment to the Constitutional Court.

22. Governmental Decision No. 1269 of 17 December 2021 on the approval of the National Anticorruption Strategy 2021-2025 and its related documents. The Strategy is a part of the Recovery and Resilience Plan.

64. In accordance with Article 6 (1) of this legislative act, on 14 April 2022 the plenum of the SCM adopted the Integrity Plan including the following objectives: strengthening institutional mechanisms for identifying and managing corruption risks and vulnerabilities; continued implementation of general public disclosure standards and promotion of transparency in decision making; promotion of anti-corruption education.

65. According to information provided by the DNA, it carried out a significant number of investigations against leading politicians for alleged corruption and related offenses and a considerable number of ministers or members of parliament were convicted. This successful fight against corruption was widely praised internationally. Between 2013 and 2018 the DNA indicted more than 68 high officials charged with corruption offences (14 ministers and former ministers, 39 deputies, 14 senators, 1 member of the European Parliament). The courts have ruled final conviction decisions against 27 of these officials.

66. Until 2017, yearly CVM reports noted and praised important progress in the fight against corruption. However, the negative developments described in the previous section devoted to the judiciary, have had an inevitable impact on the fight against corruption. The CVM report from November 2017 expressed serious concerns in this respect.

67. The disclosure of co-operation protocols between the Intelligence Service and judicial institutions raised questions over alleged interference by the intelligence service in the activities of the judiciary and shed new light on allegations of misuse of powers by some prosecutors and judges, and on some acquittals in high profile cases of corruption.

68. Amidst these controversies, the parliamentary majority tabled amendments to the Criminal Code and the Criminal Procedure Code laws as well as to the Law on preventing, detecting and sanctioning acts of corruption. While there was consensus in Romania that a reform of the criminal codes was necessary in order to implement relevant EU directives and rectify existing shortcomings, the manner in which this reform was carried out, is of the utmost concern. The amendments were adopted on 18 June and 4 July 2018 under urgent procedure by the parliament with no transparency and very little time for a genuine public debate. On 28 June 2018, the Monitoring Committee requested the Opinion of the Venice Commission on these amendments.

69. In its Opinion²³, the Venice Commission criticised the procedure of adoption of the amendments which it considered in no way adequate for a comprehensive reform of two of the most important and sensitive codes. It then stated that some of the proposed amendments were in conflict with the international obligations of Romania, especially regarding the fight against corruption. The Commission was concerned that, taken separately, but especially in view of their cumulative effect, many amendments would seriously impair the effectiveness of the Romanian criminal justice system in the fight against various forms of crime including corruption-related offences, violent crime and organised criminality.

70. The Venice Commission recommended that the Romanian authorities conduct an overall re-assessment of the amendments to both codes through a comprehensive and inclusive consultation process. In particular as far as the Criminal Procedure Code is concerned, the rules on communication on on-going criminal investigations, starting a criminal investigation, evidentiary thresholds and the inability to use certain forms of evidence and the right to be informed of and participate in all prosecution acts should be amended in substance.

71. As far as the Criminal Code is concerned, the provisions regulating corruption-related offences, in particular bribery, influence trading and buying, embezzlement and abuse of service, as well as some other provisions with a more general impact such as those on the statute of limitations, false testimony and compromising the interests of justice, provisions on extended confiscation measures, definition of public service, ancillary penalties should be reconsidered and amended.

72. Similarly, GRECO mandated with the monitoring of the implementation of the Criminal Law Convention on Corruption (ETS No. 174), in its ad hoc report of April 2018, noted that the amendments raised serious concerns both domestically and among other countries due to their potential negative impact on mutual legal assistance and the capacity of the criminal justice system to deal with serious forms of crime including corruption-related offences.

73. Continued uncertainty as regards amendments to the Criminal Code and Criminal Procedure Code remained an important challenge in the fight against corruption until February 2021 when the parliament definitively rejected problematic amendments which were found unconstitutional in their entirety by the

23. [CDL-AD\(2018\)021](#).

Constitutional Court. We have been informed that new drafts of the Criminal Code and the Criminal Procedure Code are in preparation and will be finalised shortly. These new versions align the provisions of the Codes with relevant provisions of the Constitution as interpreted by the decisions of the Constitutional Court.

74. On the other hand, politicians alleged that there had been cases of misuse of power by prosecutors, which led to acquittals, some of these allegations having been confirmed. In particular, following the disclosure, in 2018, of co-operation protocols signed between the Romanian Intelligence Service and judicial institutions, serious concerns were raised concerning judicial and prosecutorial independence. More generally, there have been reports of pressure and intimidation of judges and prosecutors including by some high-ranking politicians and through media campaigns. These concerns were amplified by a controversy in 2018 over the dismissal of the Chief anti-corruption prosecutor.

75. The National Integrity Agency investigates incompatibilities, conflicts of interest and unjustified wealth. In 2020, this agency finalised 1 143 cases and applied 204 administrative fines for failure to submit assets and interest disclosures. Its work was facilitated by an amendment to the Law regarding integrity in exercising public office and high officials adopted in July 2020 which allowed for electronic submissions of assets and interest disclosures.

76. The National Agency for the Management of Seized Assets, established in 2016, is fully operational. It is tasked with enforcing the confiscation orders issued in criminal matters. We have been informed that in 2021 the value of assets confiscated by this agency amounted to 57 million € compared to 34 million € in 2020. The National Asset Recovery Strategy for 2021-2025 includes an action plan with legislative measures for expanding the Agency's mandate. A recently adopted draft law is meant to ensure an increase in the recovery of assets of crime, the improvement in social re-use of confiscated goods and the improvement of the rules on the compensation of victims of crime.

3.3. Execution of the judgments of the European Court of Human Rights

77. According to the 2021 Annual report of the Committee of Ministers on the supervision of judgements and decisions of the European Court of Human Rights ("the 15th annual report"), as of 31 December 2021, there were 409 judgements (compared to 347 in 2020 and 309 in 2019) pending against Romania before the Committee of Ministers including 106 cases under enhanced or standard supervision and 303 repetitive cases. In total, 41 cases were closed in 2021.

78. Nine principal cases/groups of cases which are most problematic in terms of implementation and are still subject to the Committee of Ministers' enhanced supervision procedure are²⁴: failure to provide restitution or compensation for nationalised property (the *Străin and Others* group of cases and the *Maria Atanasiu and Others* pilot judgment); the excessive length of civil and criminal proceedings and the lack of an effective remedy (the *Vlad and Others* group of cases); the non-enforcement of domestic judicial decisions (*Săcăleanu* and other similar cases); overcrowding in detention centres (the *Bragadireanu* group of cases); the ineffectiveness of investigations into the violent crackdown on anti-government demonstrations (the *Association "21 December 1989" and Others* group of cases); the lack of appropriate legal protection and medical and social care for vulnerable persons with mental disabilities (*Centre for Legal Resources on behalf of Valentin Câmpeneanu*); the inadequate management of the psychiatric conditions of detainees (the *Ticu* group) and the conviction of a whistle-blower for having disclosed information on the illegal secret surveillance of citizens by the intelligence service and the lack of safeguards in the statutory framework governing secret surveillance (*Bucur and Toma*).²⁵

79. On 10 March 2022, the Council of Europe's Committee of Ministers exhorted the Romanian authorities to implement the outstanding individual measures and to adopt legislative reforms to prevent similar violations of the European Convention on Human Rights (ETS No. 5) as those found by the European Court of Human Rights in 17 judgments concerning the non-implementation of final domestic court decisions delivered against the State or State-controlled companies. This Interim Resolution concerns 86 applications.²⁶

24. AS/Jur (2019) 52. [AS/JUR: Documents and declarations \(coe.int\)](https://www.coe.int/en/web/assembly/docs/2019-52).

25. The authorities, in their written comments, informed us that some progress had recently been noted in the implementation of some of the most problematic groups of cases.

26. *Săcăleanu group v. Romania*.

80. In a positive development, as regards *Kövesi v. Romania*, the Committee of Ministers noted, *inter alia* that draft legislation has been put forward containing provisions aimed at remedying the gap found in the judgment in the judicial protection afforded to senior position-holders in the State Prosecution Office against unlawful removals from office and also at countering the “chilling effect” outlined by the Court of the applicant’s early removal on other members of the judiciary.

81. The SCM informed us about its role in the training of judges with regard to the Court’s rulings. It also provided us with examples of proposals for legislative reforms resulting from the Court’s judgments.

3.4. Pluralism of the media

82. In 2021, Romania was ranked 48 out of 180 countries on the Freedom of expression index established by Reporters Without Borders. While its position had not changed since 2020, it was 47 in 2019 and 44 in 2018. Representatives of the media and civil society working in the field of freedom of expression whom we met online, have confirmed the deterioration of the situation.

83. Legal safeguards concerning media freedom and pluralism are in place. Defamation was decriminalised, in compliance with recommendations of the Assembly, in 2006. However, concerns remain in relation to the implementation and enforcement of the existing legislative framework, particularly regarding access to information. Reportedly, the EU General Data Protection Regulation is often invoked by the authorities as a ground for denying access to information, or to threaten and prosecute journalists in connection with their investigative reporting. It is a particularly worrying sign, when authorities’ decisions refusing to provide information are challenged in court, different interpretations are applied to similar situations. Moreover, in March 2020, temporary restrictions on freedom of information were introduced following a state of emergency decree due to the Covid 19 outbreak.

84. Broadcast media are supervised by the National Audiovisual Council, the autonomous public authority under parliamentary control tasked to safeguard public interest in the audiovisual, grant licenses, monitor the media and promote media literacy and market fairness. The 11 members of its management board are appointed by the parliament for a six-year term and are legally obliged to be politically independent. However, there are not clear professional criteria for the selection of the Council’s members and the parliament may dismiss its president by rejecting the annual activity report, which may undermine the independence of the regulatory body. Another concern is the lack of the resources to fully perform its tasks. The draft law transposing the EU Directive on Audiovisual Media Services ensuring adequate budgetary resources was published for public consultation in March 2021.

85. Other concerns include the lack of specific safeguards for editorial independence as it exposes journalists to owner influence over editorial content. This is aggravated by the fact that transparency of media ownership is incomplete. This information, which was public in the past, is no longer communicated by the National Audiovisual Council on the grounds that it violates data protection legislation. Furthermore, the 2021 media pluralism country report for Romania signals the existence of legislative loopholes which allow for a digital company to be owned by an entity abroad with undisclosed owners. As a result, key outlets remain controlled by businessmen with political interests and their coverage is distorted by owners interests.

86. Media may be subject to political pressure, especially when their revenues depend on State advertising. State advertising is an important source of income for the media sector which raises concerns about editorial autonomy and self-censorship of journalists. In the last two years political parties have become the biggest advertisers, using loopholes in the current legislation and buying media silence. But even more shockingly, it was reported to us that there is a structural problem in the media sector as political parties use public funds to finance media to influence their content. While the amounts spent by different parties are published,²⁷ the contracts between them and the media are secret, and it is not clear what the latter are paid for. This lack of transparency, in our opinion, is potentially harmful for pluralism and freedom of expression. The representatives of civil society insisted on the rarity of criticism of the authorities in the Romanian media and the persecution of those journalists who do not follow this line. Our interlocutors underscored that this problem did not exist during the election campaign where the legislation required full transparency and insisted on the need for the same legal solution outside electoral periods.

27. According to Europa Libera Romania (5 July 2022), in 2021, two main parties, namely PSD and PLN spent over half of their public grants on media, respectively 40 million lei (8 million €) and 20 million lei (4 million €). For the first five months of 2022, the figures are as follows: PSD: 40 071 070 lei of grants of which 22 481 716 lei were spent on the media; PLN: 33 970 177 lei of grants and 14 702 194 spent on media; USR: 18 312 603 lei and 992 518 spent on the media.

87. Our interlocutors working in the field of media drew our attention to the case of investigative journalist Ms Emilia Sercan who received death threats and was subject to a smear campaign following her article of 18 January 2022 alleging that Prime Minister Nicolae Ciucă plagiarised his doctoral dissertation. On 8 April 2022, the Committee to Protect Journalists urged the Romanian authorities to conduct an independent investigation into the harassment and smear campaign against Ms Sercan, investigate her claims that State officials participated in the campaign and hold the perpetrators to account.²⁸

88. We were also alarmed by the case of investigative journalist Mr Cătălin Tolontan who revealed a big corruption scandal in the ministry of health and in local authorities following a tragic fire in the Colectiv Club in Bucharest. A series of articles in a number of media, in particular *Libertatea* and *Newsweek* pointed to untransparent procurement procedures. Following a lawsuit for defamation filed by the mayor of a Bucharest district, a court of first instance decided the removal of these articles. We were informed that the mayor has also filed a criminal complaint, investigated by the Directorate for Investigating Organised Crime and Terrorism against journalists from several publications for constituting an organised criminal group as well as for extortion.

89. Civil society interlocutors also reported cases against journalists, media or civil society by public institutions or business leaders. Electronic media are also under pressure and there have been reports of the use of blocking measures by the National Security Directorate, which allegedly operates without a legal basis, is not independent and uses unclear criteria for its decisions.

90. A total of 12 alerts including the two cases mentioned above have been published since 2019 on the Council of Europe Platform for the protection of journalism and safety of journalists. Only 1 has been resolved in terms of a constructive response by the State.²⁹

91. On a positive note, no major concerns with media coverage of the parliamentary campaign in December 2020 were identified by the ODIHR Special Election Assessment Mission.³⁰ It was recommended to the National Audiovisual Council, however, to consider enhancing its media monitoring methodology and allocate additional resources to include quantitative media monitoring. There is also no deadline to review complaints and redress violations in a timely manner.

3.5. Rights of persons belonging to national minorities

92. Romania was the first state to ratify the Framework Convention for the Protection of National Minorities (ETS No. 157) in April 1995 and since then it has been subject to the monitoring mechanism of the Convention. The most recent report of the Convention's Advisory Committee published in November 2019,³¹ pointed to the continuous progress in the protection and promotion of the rights of persons belonging to national minorities living in Romania. The authorities' commitment to the principles of the Convention is reflected by the relevant national legislation, measures for its implementation and financial allocations in favour of persons belonging to national minorities. The Advisory Committee states that the situation of these persons has improved substantially from one monitoring cycle to the next, and that Romania can be considered as an example of good European practices.

93. Minority groups represent over 10% of the total population. There are twenty-one officially recognised groups with ethnic Hungarians being the largest group comprising 1.2 million people (6.1% of the population). All of them are represented in the government's consultative body called the Council on National Minorities³². Membership in the Council confers on each group constitutionally guaranteed representation in parliament through preferential seats in the lower chamber, the Chamber of Deputies. The lower threshold for these seats is set at 5% of the average number of votes needed to obtain a mandate at national level. For the 2020 elections this threshold was under 800 votes. The UDMR won 21 seats, other minorities got one seat each in the last parliamentary elections.

28. The authorities, in their written comments, have informed us of the progress made in the investigation and argued that all necessary steps by the prosecution bodies had been taken without delay and all prosecutors investigating the case were aware of the standards for investigating crimes against journalists, as provided by the Rule of Law reports of the European Commission.

29. In their comments, the authorities stressed that they had replied to all questions about the alerts and expressed their surprise that only one case was considered to have been resolved.

30. ODIHR Special Election Assessment Mission Final Report, 23 April 2021.

31. ACFC/SRV(2019)013.

32. The minorities represented in the Council are: Albanians, Armenians, Bulgarians, Croats, Czechs, Germans, Greeks, Italians, Jews, Macedonians, Hungarians, Lipovans, Russians, Poles, Roma, Ruthenians, Serbs, Slovaks, Tatars, Turks and Ukrainians.

94. The only concern with regard to the rights of persons belonging to national minorities raised by the ODIHR Special Election Assessment Mission observing the parliamentary elections on 6 December 2020 related to the different treatment in the electoral process of the minorities' organisations represented in the Council and those who were not represented. The latter were required to collect a number of signatures equal to 15% of the population of their minority, the former were exempted from this requirement and received public funding. In its final report, the ODIHR recommended to amend the electoral legislation with a view to fostering a level playing field among national minority organisations both within and outside of the Council of National Minorities to compete for preferential seats.

95. Romania has succeeded in defining its own model for the protection of the rights of persons belonging to national minorities based on their effective participation in the political and socio-economic life thanks to structural dialogue in the parliament and in the Council. The success is built around the idea of dialogue and the consolidation of consensus on policies for minorities.

3.5.1. Hungarian minority

96. According to the 2011 census, the Hungarian minority of Romania is the largest ethnic minority consisting of 1 227 623 people and making up 6,1% of the total population.

97. According to representatives of the Hungarian minority whom we met, the legislation as recommended by the Framework Convention and European Charter for Regional or Minority Languages (ETS No. 148) has never been translated into one comprehensive framework law on minorities in Romania.³³ Furthermore, there is some discrepancy between existing laws and their implementation which hampers minority rights.

98. Despite UDMR's participation in several coalition governments, some rights, especially relating to language use including in the administration, symbols, cultural autonomy, city names and education remain unimplemented mainly due to the resistance of the national authorities. There are many administrative obstacles that obstruct the implementation of minority rights. These include a lack of bylaws, the failure of the national authorities to follow up the enforcement of minority language provisions and the financial impact which is to be borne by local communities. The questions of insufficient funding and the lack of sanctions in case of non-implementation of some minority rights were raised by several interlocutors during the hearings and the visit. The failure to allow bilingualism in inter-ethnic areas has become one of the main obstacles to better integration of the Hungarian minority and has fostered self-segregation pushing the Hungarian minority into a parallel society with their own schools, media, institutions etc.

99. It was also drawn to our attention that the new Administrative Code adopted in 2019,³⁴ introduced a new, more restrictive way of applying minority language rights which puts into danger existing language rights in some communities.³⁵

100. The state of public anti-minority discourse occasionally amounts to hate speech. Regrettably, some leading politicians have labelled the Hungarian minority as a threat, generating anti-Hungarian feelings and campaigns. In 2015, the National Strategy on Public Policy and Public Security explicitly mentioned the aspiration for territorial autonomy of Hungarians as an internal threat causing the indignation of the UDMR. The reference was subsequently removed but there were more statements in this sense including by President Klaus Iohannis who in 2020 accused the largest opposition party, the PSD, of "selling Transylvania to the Hungarians".

101. During the visit, we were also informed that anti-Hungarian behaviour and hate speech are common in sport, particularly in football. Hungarian players are reportedly often targets of xenophobic and discriminatory chants. Regrettably these incidents remain unpunished and until recently, no specific legislation was applied to sanction such behaviour. The recent amendment introduced to Article 369 of the Criminal Code (see below) will hopefully remedy this situation.

33. In their written comments the authorities stressed that under the Convention there is no obligation to adopt such general legislation on the protection of the rights of persons belonging to national minorities. Furthermore, there are no specific recommendations of the monitoring mechanism of the Convention in this respect.

34. Government Emergency Ordinance No. 57/2019.

35. The authorities, for their part, insist that the constitutional right for persons belonging to national minorities to study in their national language is guaranteed by the National Education Law No. 1/2011 which provides a solid framework for its implementation in respect of persons belonging to 20 national minorities.

102. The tensions may be illustrated by the violent incidents at the military cemetery in the Uz Valley which followed some administrative decisions concerning the cemetery's appropriation in June 2019. A violent crowd broke through the police cordon and attacked a peaceful gathering of members of the Hungarian community praying on site. While the authorities have clearly condemned the attack, the criminal investigation regarding anti-Hungarian chants during the incident ("Out with the Hungarians from the country") was dismissed by the prosecution which argued that these slogans could not be classified under Article 369 of the Criminal Code as "incitement to hatred or discrimination" because the Article applies to a category of persons (for example homosexuals or persons with disabilities) but not to an ethnic group. As a result, in February 2021 the European Commission called on Romania to fully transpose the EU law criminalising hate speech and hate crimes into the national legislation. We have been informed by the Romanian authorities that Article 369 has been recently amended by Law No. 170/2022. The relevant provision as it reads now, applies to "persons on the grounds of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, property, social origin, age, disability, chronic non-contagious disease or HIV/Aids infection".

3.5.2. Roma equality and inclusion

103. According to the 2011 census, the Roma population in Romania amounts to 621 573 people which represents 3.2% of the total resident population and it is relatively uniformly distributed throughout the country. However, the real figure is estimated to be considerably higher. For example, the Council of Europe estimates it at 1 850 000 people (8,6 % of the total population). The difference is explained by the reluctance of the people concerned to identify themselves as Roma for fear of stigmatisation and discrimination.

104. Regrettably, the negative public perception of Roma is widespread in Romania as confirmed by several opinion polls.³⁶ The educational level of the Roma population is very low. 25% of the adults over 16 years old declared that they could not read and write. Women are even more affected by illiteracy and 23% of the Roma population did not graduate from any school. Roma occupy the most disadvantaged position in the labour market which is partly the result of the low level of education but also of the discriminatory attitude of employers. The employment rate of the Roma population was 35.5% compared to 58% national employment rate of the population in 2011. Lack of jobs is the main barrier to the social inclusion of Roma in Romania. The shortage of social housing persists and forced evictions from their irregular settlements continue, often without offering any rehousing solutions. While 25 % of the general population has an income below the national poverty threshold, this rate stands at 70% for the Roma population.

105. Yet the Romanian authorities have undertaken significant efforts to remedy this situation. The National Strategy for the Integration of Roma for the years 2016-2020 based on the framework prepared at European level, covered four areas in a comprehensive way: education, employment, health and housing as well as other fields such as social services and culture. According to the report prepared by the National Agency for Roma published on 16 March 2020, the Romanian National Strategy for the Integration of Roma was progressing as planned. However, it has had little impact so far as its implementation has suffered from considerable financial constraints.

106. In a positive development, in January 2021, Romania introduced a law against anti-Roma speech or behaviour which could be subject to up to 10 years in prison. Punishable behaviour is defined as "verbal or physical manifestations, motivated by hatred against Roma, directed against Roma or their properties". This includes hate crimes against places of worship, traditions, and the Roma language.

107. During the Covid-19 pandemic, NGOs and the media reported several cases of unlawful use of force and allegations of ill-treatment of Roma by the police.³⁷ There were reports on the rise of hate speech and racism targeting Roma in mass media and social media, especially by opinion leaders and public figures. Romania's equality body, the National Council for Combating Discrimination, criticised a local newspaper, a member of parliament, a former president and a university professor for discriminatory statements against Roma.

36. Opinion poll conducted by the National Council for Combating Discrimination in 2015.

37. [Amnesty International](#): "Policing the pandemic, human rights violations in the enforcement of Covid-19 measures in Europe" (EUR 01/2511/2020). The authorities drew our attention to more recent statistics provided by the [Eurobarometer](#) factsheet for 2019, which shows positive progress in non-discriminatory attitudes; a study commissioned by [Asociația ACCEPT](#) in April 2021, p. 13, indicates that 62% of respondents abide by non-discrimination standard of treatment.

108. The pandemic has also had a negative impact on the education of Roma children. According to a study by the NGO Caritas Romania, an average of only 15% of Roma children participated regularly in online educational activities during the lockdown (March-June 2020) as compared to 83% school attendance before the pandemic. The main obstacles included a lack of technical equipment, overcrowded homes with a lack of adequate study spaces and the absence of parental support.

3.5.3. LGBTI people

109. In June 2020, the parliament adopted without any public debate a law which, among other things, prohibited teaching and training about gender identity. In particular, it banned “activities aimed at propagating the gender identity theory or opinion, understood as the theory or opinion that gender is a different concept from that of biological sex and that the two are not always identical”.

110. Human rights groups have condemned the law arguing that it would legitimise discrimination against the LGBTI community. The law also raised concerns with regard to freedom of expression and academic freedom. In December 2020, it was declared unconstitutional by the Constitutional Court.

111. Civil society points out that there is a hostile attitude towards LGBTI people in Romania which may render them targets of violence,³⁸ as illustrated by the case of *M.C. and A.C. v. Romania* before the European Court of Human Rights.^{39,40} The applicants were attacked and injured by a group of people on their way home from an annual gay parade. The Romanian authorities had failed to take into account possible discriminatory motives and treated it as simple violence. This is a more general problem which we will highlight in a sub-section below.

3.5.4. Asylum seekers and migrants

112. According to United Nations High Commissioner for Refugees, 6 116 asylum applications were received in 2020 in Romania, most of them coming from Afghanistan, Syria and Iraq. 81% of asylum applications were rejected in the first instance. In 2021 the figure amounted to 9 591 applications out of which 500 people were granted refugee status, 626 persons received other forms of humanitarian protection and 3 190 were rejected which resulted in a rejection rate of 73,91%.

113. Since the invasion of Ukraine on 24 February 2022, Romania has been confronted with large waves of refugees from that country. As of 27 April 2022, over 770 000 Ukrainians had fled to Romania and about 80 000 of them had decided to stay. On 27 February 2022, the Romanian Government adopted Emergency Ordinance 15/2022 on the provision of humanitarian support and assistance by the Romanian State to foreign nationals or stateless persons in special situations coming from the area of armed conflict in Ukraine. On 18 March 2022, Government Decision No. 367 on the establishment of conditions for ensuring temporary protection entered into force. Due to the unusual pressure which the asylum system came under, the Romanian Ministry of Internal Affairs signed an operational plan with the European Union Agency for Asylum at the end of March 2022. The plan foresees the gradual deployment of up to 120 EUAA staff and interpreters to the country.⁴¹ Romania is to be commended on its swift reaction and assistance to a large number of the population in need for international protection.

114. During our exchange with non-governmental human rights organisations dealing with refugees and asylum seekers, we learned that there are some concerns mainly with regard to non-Ukrainian refugees and asylum seekers. The major issue is public custody provided for by the Asylum Act as introduced in 2015, which amounts to administrative detention but is not considered as such. According to the law it should be applied only in clearly defined cases when there is “a significant risk of absconding”; in practice, in most cases asylum seekers are detained on the territory. Whereas prior to 2015, the Aliens Ordinance required the release of the foreigner from detention as soon as the first application for asylum was lodged, the current Act prescribes that an asylum seeker is only released when he or she is granted protection status; otherwise, they are detained during the whole procedure including appeals, until deportation in the case of rejection.

38. ECRI report on Romania (fifth monitoring cycle): [CRI\(2019\)20](#).

39. [Application No. 12060/12](#).

40. The authorities drew our attention to the fact that this judgment refers to an event which took place in 2006. In a more recent similar case, *Association ACCEPT and Others v. Romania*, (case No. 19237/16), the Court rejected the applicant's complaint as manifestly ill-founded.

41. EU Agency for Asylum Operational Plan 2022.

115. Other concerns signalled to us by civil society included some procedural shortcomings such as an insufficient number of interpreters, a lack of legal advice, insufficient information provided to asylum seekers and, allegedly, obstructions to their access to justice. Certain categories of asylum seekers such as victims of sexual abuse, in particular children, are insufficiently taken care of. There is no psychological or legal support. More generally, the judicial system lacks the necessary tools to protect victims of such crimes.

116. We were also informed that trafficking in humans remains a concern which is partly a result of an unclear definition of smuggling.

3.6. Hate speech and violence

117. Racist and intolerant hate speech in public discourse, particularly at local level, as well as on the internet is a widespread problem in Romania. The main targets are Roma, the Hungarian minority, LGBTI people and the Jewish community. Violent attacks against these groups or their property also occur sporadically. Furthermore, accounts of alleged cases of racial discrimination and misconduct by police are reported. This assessment has been confirmed by the civil society representatives with whom we have exchanged online.

118. According to the assessment of ECRI,⁴² the authorities' response to these reports and allegations is not satisfactory. The level of underreporting is very high. There is no coherent and systematic data collection on hate speech and hate motivated violence. Criminal action is almost never taken and the provisions on racist motivation as an aggravating circumstance are almost never applied. Lack of awareness among the law enforcement bodies and the judiciary in recognising hate crimes hinder proper qualification. This is amplified by the lack of awareness among the general public. There is no independent body entrusted with the investigation of alleged cases of police misconduct. The impunity of perpetrators means there is no effective deterrent.

119. We mentioned above that the question of the reporting and registration of hate crimes was the subject of the judgment of the European Court of Human Rights in the case of *M.C and A.C v. Romania*.⁴³

120. Since the publication of ECRI report, in a positive development, a new law penalising anti-Roma speech has been introduced. The National Strategy and Action Plan for preventing and combating antisemitism, xenophobia, radicalisation and hate speech for 2021-2023 was adopted in May 2021. One of its objectives is to improve data collection on hate crime by developing a uniform methodology. To this end, a working group has been set up including experts from the Ministry of Justice, the General Prosecutor's Office, the Superior Council of Magistracy and the National Institute of Statistics.

121. The recent amendment to Article 369 of the Criminal Code we described in paragraph 102 above constitutes another positive development.

122. Furthermore, the authorities have provided further training for law enforcement officials and members of the judiciary on dealing with hate-motivated violence. For example, between October 2018 and March 2020, a total of 144 professionals (96 judges and prosecutors, 24 police officers and 24 gendarmes) benefited from specific training on hate crime legislation including the case law of the European Court of Human Rights. Both initial police education and in-service training include subjects related to hate crimes.⁴⁴

123. The SCM informed us about the concrete measures undertaken in the judiciary with a view to combating hate speech. In particular we learned about thematic controls at the courts' and prosecutors' offices regarding the way of investigating and dealing with cases concerning offences under Article 369, followed by the report to the SCM with proposals for concrete measures to be introduced in order to improve the situation. Training sessions have been initiated.

124. Last but not least we were glad to hear during our visit that new rules facilitating punishment of hate speech in parliament were introduced into the parliament Rules of Procedure in March 2022 in reaction to some discriminatory statements.

42. ECRI report on Romania (fifth monitoring cycle): [CRI\(2019\)20](#).

43. [Application No. 12060/12](#).

44. In their comments, the authorities informed us of their intention to review their methodology for collecting data, reporting and sharing, in order to complement these tools by sociological research and to expand the area of interest to incidents that are below the threshold envisaged by the administrative and criminal codes. The Ministry of Internal Affairs has created a working group composed of experts from the Ministry of Justice, the Prosecutor General's Office, and the SCM, tasked with developing a new methodology for reporting cases of hate crime.

4. Concluding remarks

125. This report contains a number of concerns, which we have identified on the basis of the different sources of information listed in the introduction. We subsequently discussed these concerns with the Romanian authorities at the legislative, executive and judicial levels with a view to identifying ways to improve the situation. We commend our interlocutors' clear commitment to democratic values and, their openness and readiness to co-operate in order to fulfil Romania's obligations as a member of the Council of Europe.

126. We note with satisfaction that there is progress towards compliance with Council of Europe standards in the areas crucial for the functioning of democratic institutions, namely the judiciary and the fight against corruption. We are confident that the ongoing reforms will be continued in co-operation with and following recommendations of the Venice Commission and the GRECO. We reiterate our conviction that stakeholders should be consulted on all legislative changes and that their opinion should be taken into account to the greatest extent possible.

127. There are issues which raise some concern particularly with regard to media freedom and insufficient transparency concerning the use of public funds by political parties to finance media in order to influence their content. We hope that this problem will be addressed as quickly as possible in order to allow media to fully play their important role in democratic society.

128. At the same time, we commend the Romanian authorities for their swift reaction and assistance to a large number of the population in need of international humanitarian assistance following the Russian Federation's aggression against Ukraine.

129. More generally, we very much appreciate the excellent work carried out by the Romanian Ombudsperson and her team in the continuous dialogue with the authorities and action in favour of the respect for human rights. We express our satisfaction at the Constitutional Court's unanimous ruling reinstating the Ombudsperson in her position after the parliament's decision to dismiss her.⁴⁵

130. We believe that the Council of Europe and its specialised bodies, and the Parliamentary Assembly in particular, can be instrumental in assisting the Romanian Parliament and the authorities in pursuing their efforts to better fulfil their obligations undertaken – like all other member States- upon accession to our Organisation. We hope that the current report will encourage all relevant committees to include the concerns raised in their respective work.

131. In particular, we hope that the Monitoring Committee will continue to follow the developments in Romania in the framework of its periodic monitoring. We recommend preparing the next report on Romania be prepared within five years.

45. On 17 June 2021, the Romanian Parliament took a decision for the revocation of Ms Renate Weber, Ombudsperson, from her position on the grounds of rejection of her annual reports. This decision, which was objected by the Social Democrat parliamentary caucus in the Senate and the Chamber of Deputies, was considered unconstitutional by the Court on 29 June 2021, and Ms Weber was reinstated in her seat.