

# State of the Rule of Law in Europe in 2022

## Reports from National Human Rights Institutions

Romania



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## Romania

*Romanian Institute for Human Rights*

### Impact of 2021 rule of law reporting

#### Follow-up initiatives by the Institution

Following the publication of the ENNHRI Rule of Law Report, the Romanian Institute for Human Rights (RIHR) held meetings with representatives of the Committee for Human Rights and of the Legal Committee of the Senate on the Report and Institute' contribution therein. The discussions focused on aspects relating to the status of the Institute and the legislative proposal on the merger of RIHR into the National Council for Combating Discrimination, which, at that time, was under debate in the Senate (1).

RIHR believes that the ENNHRI Report had a significant impact on the adoption of the two committees of a joint report for rejecting the project (2), which was followed by the rejection of the legislative proposal by the Senate on 8 November 2021 (3).

At the same time, the Institute received the support of the Senate Committee on Human Rights to draft a new legislative proposal to reform RIHR, strengthening its institutional capacity in accordance with the recommendations made by the Sub-Committee of Accreditation (GANHRI) to comply with the Paris Principles.

RIHR also mentions that the issues related to the status of the Institute and the rule of law report have been submitted to international and regional organisations (Submission to the CESCR for the List of Issues on the occasion of the Examination of the Sixth Periodic Report Submitted by Romania (4) and OSCE's research aimed at mapping the type of threats experienced by NHRIs in the OSCE region).

#### References

- (1) [https://www.senat.ro/legis/lista.aspx?nr\\_cls=L701&an\\_cls=2020](https://www.senat.ro/legis/lista.aspx?nr_cls=L701&an_cls=2020)
- (2) <https://www.senat.ro/legis/PDF/2020/20L701CR.PDF>
- (3) <https://www.senat.ro/legis/PDF/2020/20L701ARD.PDF>
- (4) [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCO%2fROU%2f46585&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCO%2fROU%2f46585&Lang=en)

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

Romania currently does not have an institution accredited as a National Human Rights Institution.

The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of ENNHRI. The Romanian Institute has a strong promotional mandate and has been addressing a wide range of human rights in Romania.

In 2020, both the Romanian Institute and the Romanian Ombudsman (which is not an ENNHRI member and is not accredited) applied for accreditation.

In 2021, a legislative proposal on the merger of the Romanian Institute for Human Rights into the National Council for Combating Discrimination was under debate in the Senate and was rejected by the Senate, as decision making chamber.

### Regulatory framework

The RIHR has a legislative basis and has the mandate to contribute to access to justice for individuals, including through complaints handling, providing legal assistance to individuals and awareness-raising.

Although the mandate of the Institute does not include receiving petitions and carrying out investigations, the aim of the Institute is to ensure a better knowledge of human rights. In that sense, RIHR provides assistance and guidance to petitioners, taking the necessary steps in relation to public authorities/institutions in order to resolve correctly and efficiently any submitted petition. Moreover, RIHR offers guidance in accessing and filling in the application form to the European Court of Human Rights, as well as the way to refer the matter to the competent courts at national level.

The situation of the Romanian Institute for Human Rights, in terms of its independence, effectiveness, has significantly improved. The national regulatory framework applicable to the Romanian institution has changed since the 2021 report, given that the Senate rejected the proposal on the merger of the Romanian Institute for Human Rights into the National Council for Combating Discrimination.

Once the legislative proposal on the merger of RIHR into the National Council for Combating Discrimination was rejected, the procedure for appointing the members of the Institute's General Council was resumed (the General Council consists of representatives of parliamentary parties, civil society and academia). In this respect, the Institute now awaits

for the validation of the proposals by the permanent bureaux of the two chambers of Parliament.

Nevertheless, the Romanian Institute regulatory framework should still be strengthened. There is a need to regulate a clearer mandate of the Institute, highlighting the specific functions of the RIHR, i.e. the promotion of human rights, training and research in the field of human rights, as well as different duties compared to other institutions with a mandate in the field of human rights in Romania (Ombudsman, NCCD and the Monitoring Council), while also taking into account the recommendations of different international organisations. (1) (2)

### **References**

(1) <https://rm.coe.int/16806db83b>

(2) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25687&LangID=E>

### **Enabling and safe space**

The relevant state authorities have good awareness of the RIHR's mandate, independence and its role.

Nevertheless, the Romanian Institute for Human Rights still does not have adequate access to information and to policy makers. Unfortunately, the RIHR is not involved in all stages of legislation and policy making with human rights implications.

The mandate provided by Law. 9/1991 does not allow the Institute to take up matters at its own initiative; it may only submit opinions at the request of Members of Parliament and Parliamentary Committees. To this end, the Institute's mandate and resources could be used more effectively given the expertise it can provide.

The addressees of the Romanian Institution's recommendations are not legally obliged to provide a timely and reasoned reply.

It is worth noting that in Romania measures necessary to protect and support the Romanian Institute for Human Rights, its head of institution and staff, against threats and harassment and any other form of intimidation (including SLAPP actions) are in place. This does not mean that there are special legal provisions for the head or the staff of the institution, as the general legal framework for contractual staff in public institutions is applied.

## Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Romanian Institution has taken action to improve its functioning in compliance with the Paris Principles and Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs. The Romanian Institute has engaged in carrying discussions with representatives of Senate committees regarding the amendment of the law establishing the Institute, supplementing the body of experts within the RIHR (filling of vacancies), ensuring the necessary resources to carry out the Institute's activities in relation to its tasks.

## Human rights defenders and civil society space

### Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

Considering the COVID-19 pandemic there were several measures in place, which limited the freedom of assembly given that the authorities restricted the number of participants to assemblies. For example, in August 2021 the maximum number of persons that could attend an assembly/march was 500 if the 14-day cumulative incidence in the county/town is less than or equal to 2/1000 of the population (1), however open-air performances, concerts, public and private festivals or other cultural events were allowed with the participation of no more than 75,000 spectators, with the condition of wearing of protective mask (2).

### References

- (1) According to Government Decision no. 826 of 5 August 2021, annex 3, article 1.33
- (2) According to Government Decision no. 826 of 5 August 2021, annex 3, article 1.12;  
According to Government Decision no. 586 of 10 June 2021, Annex 3, article 1.27

### NHRI's role in promoting and protecting civil society space and human rights defenders

Following the participation at the ENNHRI Academy, our institution has designed a training course for staff working with the Senate and Chamber of Deputies. The training course aimed to raise awareness of the participants on issues relating to human rights defenders and national human rights institutions. Thus, the objectives of the training course were: 1) increasing the effectiveness of the implementation and promotion of human rights at the national level; 2) raising awareness on the characteristics, mandate and modus operandi of key national human rights institutions at the national level; 3) developing an appropriate

and adequate national regulatory framework for human rights defenders and strengthening the national regulatory framework for national human rights institutions. (1)

### **References**

- <https://irido.ro/cursuri-formare.php>

### **Checks and balances**

On 15 June 2021, the Activity Reports of the Romanian Ombudsman for 2018, 2019, and 2020 were rejected in a joint session of Parliament. Following the rejection vote, a request for the revocation of the Ombudsman was submitted on the same day, and on 16 June, in an emergency procedure, the revocation took place by Parliament's Resolution No. 36/16.06.2021.

By Decision no. 455 of 29 June 2021, the Constitutional Court found that “the Decision of the Romanian Parliament no. 36/2021 for the revocation of Ms Renate Weber from the office of the Ombudsman violates the provisions of Article 1(3) and (5) of the Constitution, which enshrine the principle of the rule of law and the principle of legality and supremacy of the fundamental law, as well as the provisions of Article 9(2) of Law No 35/1997 [on the organisation and functioning of the Ombudsman]”.

In its analysis, Constitutional Court found that, contrary to the constitutional and legal norms in force, the submission to Parliament of the annual report on the annual activity of the institution does not place the institution of the Ombudsman under genuine parliamentary control, as it is rather an act of loyal cooperation, based on constitutional norms, between two independent public authorities.

At the same time, given that “the act of revocation, which constitutes the cause for the termination of the mandate of the Ombudsman, is unconstitutional” and that “it ceases to produce legal effects”, the Constitutional Court decided that from the date of publication of the decision in the Official Journal, the Ombudsman shall resume her capacity “and shall exercise the constitutional mandate for which she was appointed by Decision No 18/2019 of the Parliament of Romania.” (1)

### **References**

- (1) Decision no. 455 of 29 June 2021 on the referral for unconstitutionality of Romanian Parliament Decision np. 36/2021 for the revocation of Ms Renate Weber from the office of the Ombudsman: [https://www.ccr.ro/wp-content/uploads/2021/07/Decizie\\_455\\_2021.pdf](https://www.ccr.ro/wp-content/uploads/2021/07/Decizie_455_2021.pdf)

## Functioning of the justice system

A new draft law aimed at disbanding the Section for the Investigation of Offences in the Judiciary (1) has been drawn up by the Ministry of Justice (2). According to the explanatory memorandum the draft law was drawn up taking into consideration the recommendations of the Venice Commission and of the Court of Justice of the European Union. According to the text of the proposal, the power to prosecute offences committed by judges or prosecutors is granted, where appropriate, both to the central structure of the Public Prosecutor's Office (the Public Prosecutor's Office of the High Court of Cassation and Justice) and to its territorial structures (at the level of public prosecutors' offices of courts of appeal). „The appointment of prosecutors who will prosecute offences committed by judges and prosecutors (magistrates) will be done by the Superior Council of Magistracy, upon the proposal of the Prosecutor General of the Prosecutor's Office of the High Court of Cassation and Justice (for offences committed by members of the Superior Council of Magistracy, judges of the High Court of Cassation and Justice and courts of appeal (including the Military Court of Appeal) and prosecutors of the Prosecutor's Office of the High Court of Cassation and Justice, prosecutors of courts of appeal and prosecutors of the Military Court of Appeal) or by public prosecutors of the public prosecutor's offices attached to the courts of appeal, for offences committed by judges of the courts, tribunals, military courts and prosecutors of the public prosecutor's offices attached to these courts. The prosecution of cases involving magistrates only by prosecutors specifically designated by the Plenum of the Superior Council of Magistracy and who meet certain conditions of seniority and professional experience constitutes an additional mechanism, which aims to ensure adequate protection of magistrates against possible pressure exerted on them and against abuses committed through arbitrary referrals/ denunciations.“

However, the new proposal has received critiques as various magistrates' associations (3) state that this represents an “inadequate compromise, which could breach the CVM Decision and the Opinions of the Venice Commission”, and, in their opinion, the only way to disband the Section for the Investigation of Offences in the Judiciary would be to restore the powers of specialised prosecutors' offices, such as National Anticorruption Directorate and the Directorate for Investigating Organised Crime and Terrorism, as proposed by the relevant European bodies.

In the 2021 Rule of Law Report, our institute mentioned a draft law proposed by the Ministry of Justice on the disbanding of the Section for the investigation of offences committed by the judiciary. That draft law is still under debate in the decision-making chamber, the Senate, as the Chamber of Deputies adopted it in March 2021. It should be noted that according to the explanatory memorandum of the new legislative proposal, the

draft law proposed last year “is under debate in the Senate, as there is yet no support for the legislative solutions it provides.”

What is more, in January, RIHR attended the public debate organised by the Ministry of Justice (4) on the new legislative proposal. Following the debates, the legislative proposal was amended and new provisions were included, especially referring to determining the professional experience and moral conduct of the prosecutors to be selected for handling offences involving magistrates. At the middle of February, the legislative proposal was sent to Parliament for adoption under the urgency procedure. Both the Superior Council of Magistracy and Legislative Council have issued positive opinions on this legislative proposal.

The Romanian Institute for Human Rights also stresses the need to improve the quality of the justice system. Actions need to be undertaken to ensure a simplified version of rules and regulations so that any person (regardless of their level of education) can understand their rights and obligations. Bearing in mind the provisions of Directive 2012/13/EU of the European Parliament and the Council on the right to information in criminal proceedings, providing a simplified (plain) version of rights and obligations ensures the understanding of certain provisions of law/regulations.

According to their website (5), the association APADOR-CH has consulted several bodies in this matter in 2020, following a test simplification of the form on the rights of persons brought before the police. The consulted bodies answered that some of the documents are also written in a language that can be understood by suspects/defendants, while others embraced the proposal of consultations for simplifying the technical language.

Currently, there is a legislative proposal (6) in the Chamber of Deputies (decision making chamber) on this matter, Draft Law on the approval of Government Emergency Ordinance no.18/2016 for amending and supplementing Law no.286/2009 on the Criminal Code, Law no.135/2010 on the Code of Criminal Procedure, as well as for supplementing Article 31 paragraph (1) of Law no.304/2004 on judicial organization, which aims to implement the aforementioned Directive. It is important to mention that this legislative proposal is from 2016, and the Government submitted 3 different opinions (2017, 2018, 2020), all in favor of the adoption, however, so far the legislative proposal is still under scrutiny at the Committee for Legal Matters, Discipline, and Immunities (at the same time, it should be noted that the Emergency Ordinance is in force). However, it should be noted that, although the Directive provides that “[information concerning at least the following procedural rights] shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons” (Article 3.2), the Text of the Ordinance only states that “the judicial authorities

shall provide the suspect, accused or sentenced person with written information on his or her rights during the criminal proceedings or the procedure for the execution of the European arrest warrant. The information shall be given in Romanian, in the person's mother tongue or in a language which the person understands, as appropriate" and that the text of form will be adopted by judicial authorities. (According to Article IV (1) and (2) of the Emergency Ordinance).

### **References**

- (1) The existence of this body was criticized by the European Commission and the Venice Commission.
- (2) <https://www.just.ro/proiect-de-lege-privind-desfiintarea-sectiei-pentru-investigarea-infractiunilor-din-justitie/>
- (3) <http://www.forumuljudecatorilor.ro/index.php/archives/6499>
- (4) <https://www.just.ro/informare-de-presa-cu-privire-la-publicarea-dezbaterilor-publice-organizate-de-ministerul-justitiei-referitoare-la-proiectul-de-lege-privind-desfiintarea-siij-2/>
- (5) <https://apador.org/en/cat-de-greu-e-sa-simplifici-limbajul-juridic-in-romania/>
- (6) [https://cdep.ro/pls/proiecte/upl\\_pck2015.proiect?cam=2&idp=15958](https://cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=15958)

### **NHRI's recommendations to national and regional authorities**

- Need to improve the quality of justice system by ensuring the accessible and 'easy to understand' publication of the of rules, regulations and rights for citizens.

### **Media freedom, pluralism and safety of journalists**

The Romanian Institute for Human Rights assessed that the situation concerning media freedom, pluralism and safety of journalists in Romania has deteriorated this year.

The legislative framework has not changed much with regards to the media environment. However, there were a series of intimidations (1) and assaults on journalists (2), especially investigative journalists. Such a situation refers to two journalists who reported on irregularities related to public funds and tenders in a Bucharest district, which was followed by a criminal complaint submitted by the mayor. A known case of assault was the one suffered by investigation journalists who were documenting illegal lodging in Suceava county who were attacked and beaten by several persons. At the same time, a report

coordinated by the Center for Independent Journalism (3) states that the number of lawsuits against journalists has risen.

## References

- (1) <https://rsf.org/en/news/romania-open-letter-rsf-and-activewatch-denounce-judicial-pressures-investigative-journalists>
- (2) <https://europeanjournalists.org/blog/2021/09/21/romania-filmmakers-badly-beaten-while-shooting-documentary-on-illegal-logging/#:~:text=On%2016%20September%202021%2C%20journalist,in%20Suceava%20County%2C%20northeastern%20Romania.>
- (3) <https://cji.ro/wp-content/uploads/2021/07/Journalism-in-2021.-An-obstacle-race-with-fewer-and-fewer-winners.-Romania.pdf>

## Impact of measures taken in response to COVID-19 on the national rule of law environment

### Emergency regimes and related measures

Following the measures taken by the authorities (which are similar to the measures taken in many EU countries) one negative impact is the fact that hate speech has risen (1). On social media, hate messages are directed both at vaccinated persons and unvaccinated persons (depending on the side one chooses) or various ethnic groups. These could be the effect of disinformation campaigns as well as a low level of understanding and information regarding to vaccines or education in general. At the same time, as people spend more time online the exposure to certain forms of hate speech could lead to a “normalisation” of hate.

With regards to the constitutional scrutiny of the Constitutional Court RIHR notes that in Decision no. 672/2021 the Romanian Constitutional Court analysed aspects on the separation of powers, as the Court admitted the referral for unconstitutionality of the provisions of the Decision of Romanian Parliament no. 5/2020 for the approval of the state of alert and the measures established by G.D. no. 394/2020 on the state of alert and measures to be applied during the state of alert to prevent and combat the effects of the COVID-19 pandemic (2).

With reference to Decision no. 457 of 25 June 2020, in which the Constitutional Court found unconstitutional the legal provisions on the competence of the Parliament to approve the state of emergency adopted by the Government, in full or with amendments (3), the Court stressed that “Parliament, by approving/amending measures adopted by

Government decisions, comes to combine legislative and executive functions, a situation incompatible with the principle of separation and balance of powers in the state, enshrined in Article 1(4) of the Constitution. Parliament's interference in a specific act of the Government, intended to implement the law, is tantamount to interference by the legislature in the secondary regulatory power for the implementation of laws, which belongs exclusively to the Government." The Court held that Decision no. 5/2020 of the Romanian Parliament for the approval of the state of alert and the measures established by Government Decision no. 394/2020 on the declaration of a state of alert and measures to be applied during the state of alert to prevent and combat the effects of the COVID-19 pandemic, which is based on a legal provision declared unconstitutional, is itself devoid of any constitutional basis (4). The Court holds that the unconstitutionality of Parliament's Decision no. 5/2020 has no consequence on Government Decision no. 394/2020 on the declaration of a state of alert and the measures to be applied during the state of alert to prevent and combat the effects of the COVID-19 pandemic, a normative act in its own right, adopted in execution of the provisions of Article 4(1) of Law no. 55/2020 and which continues to have legal effects in the form not modified by the provisions of the Decision of the Romanian Parliament no. 5/2020 (5).

Moreover, on 15 February 2022, Constitutional Court, within the framework of scrutiny of laws after their enactment, admitted an exception of unconstitutionality and found Government Emergency Ordinance no. 192/2020 for amending and supplementing Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, as well as for amending letter a) of art.7 of the Law no. 81/2018 on the regulation of teleworking unconstitutional, in its entirety. The court claimed that GEO no. 192/2020 was adopted in violation of constitutional provisions on the approval of draft legislation by the Legislative Council (6). The Court notes that, following this decision, the other provisions of Law no. 55/2020 and Law no. 81/2018 shall remain in force, as only provisions of GEO no. 192/2020 are to be eliminated. By GEO no. 192/2020 the Government amended articles of Law. 55/2020 concerning the mandatory wearing protecting masks, removing the phrase "in closed public spaces", which meant that masks became mandatory outdoors. The provisions of the GEO also amended Law. no. 81/2018 allowing employers to decide applying teleworking without the consent of the employee. The decision of the Constitutional Court shall enter into force once it is published in the Official Journal.

## **References**

- (1) [https://ec.europa.eu/home-affairs/networks/radicalisation-awareness-network-ran/publications/far-right-extremists-use-humour-2021\\_en](https://ec.europa.eu/home-affairs/networks/radicalisation-awareness-network-ran/publications/far-right-extremists-use-humour-2021_en)

- (2) [https://www.ccr.ro/wp-content/uploads/2021/10/Decizie\\_672\\_2021-1.pdf](https://www.ccr.ro/wp-content/uploads/2021/10/Decizie_672_2021-1.pdf)
- (3) <https://legislatie.just.ro/Public/DetaliiDocument/227535>
- (4) Curtea Constituțională, Decision no. 672/2021, para. 32 [https://www.ccr.ro/wp-content/uploads/2021/10/Decizie\\_672\\_2021-1.pdf](https://www.ccr.ro/wp-content/uploads/2021/10/Decizie_672_2021-1.pdf)
- (5) Ibidem, para. 33
- (6) <https://www.ccr.ro/wp-content/uploads/2022/02/Comunicat-de-presa-15-februarie-2022.pdf>

### **Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection**

The crisis generated by the COVID-19 pandemic has caused adverse effects on the economy and social framework as a whole. A significant number of petitions submitted to the Institute concerned access to social housing, aspects on the right to receive pension etc. At the same time, poor socio-economic conditions have affected the labour market, with employers making unfair dismissals, delaying the payment of wages or maintaining a working climate violating human rights. With reference to maintaining a working climate in line with the protection and promotion of human rights, petitions requesting additional information on moral harassment in the workplace as regulated by Law No 167/2020 were submitted. At the same time, there have been complaints on abuses by employers concerning the modification of employment relationships in breach of legal conditions.

Acknowledging the disproportionate impact determined by the COVID-19 pandemic on vulnerable groups (children, women, persons with disabilities, detainees, migrants and refugees), the Institute considered the specificities of vulnerable groups when dealing with petitions concerning their rights. With regard to vulnerable groups, the petitions highlight some limitations of rights that are common to them such as: the right to physical and mental integrity, access to health services, the right to education, the right to dignity. At the same time, for each vulnerable category there are certain specific issues which are highlighted in petitions: the right to have a personal relationship with both parents (children), the right not to be subjected to any form of violence (women), the right to have access to detention conditions respecting human dignity standards (persons in detention), the right to benefit from accessible public services (persons with disabilities), the right to benefit from legal forms of protection while on Romanian territory (migrants and refugees).

## Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The introduction of the system of digital COVID-19 vaccination certificate, test and recovery certificates has generated, at the national level, a differentiation between citizens in terms of the possibility to (physically) access public authorities/institutions and certain retailers. In this context, in the petitions submitted to the Institute, individuals who opted not to vaccinate against the SARS-CoV-2 virus have invoked an unjustified different treatment comparing to vaccinated individuals. The Institute drafted an opinion on the *Impact of COVID-19 digital certificates on the realisation of human rights* (1). From RIHR's perspective "the implementation of digital certificate system is a measure that needs to be considered in a prudent and responsible manner, in accordance with the relevant international, European and national legal instruments and taking into account the exceptional nature of the pandemic situation, the main issue at stake in the implementation of the digital certificate system being to ensure that the essence of fundamental human rights and freedoms is maintained, subject to limitations appropriate in a pandemic situation".

The respect of the right to health has been analysed in relation to citizens' petitions, in relation to the lack of response from the health authorities to requests from citizens infected with the SARS-CoV-2 virus and the bureaucratic barriers that limit citizens' rights, and, in this regard, RIHR drafted opinions on: *Restriction of the freedom of movement - double quarantine for medical error* (2); *Legality of forcing patients to undergo COVID tests in private centres* (3).

Other opinions issued by the Institute in this period concerned:

- guaranteeing the right to education for children with disabilities and special educational needs (SEN) (4);
- the protection of the rights of persons with disabilities (5);
- admissibility of the employer's claim relating to the right to health (6);
- protection and promotion of the rights of refugees (7).

### References

(1) <https://irdo.ro/pdv.php?ideseu=26>

(2) <https://irdo.ro/pdv.php?ideseu=22>

(3) <https://irdo.ro/pdv.php?ideseu=19>

(4) <https://irdo.ro/pdv.php?ideseu=23>

(5) <https://irido.ro/pdv.php?ideseu=21>

(6) <https://irido.ro/pdv.php?ideseu=20>

(7) <https://irido.ro/pdv.php?ideseu=24>