

## Romania 2024

### Information from: Romanian Institute of Human Rights

## Follow-up to last year's rule of law recommendations

### State authorities' follow-up to regional actors' recommendations on rule of law

In May 2023, the Ministry of Justice had announced the establishing of a [high-level expert group](#) to analyse how to implement the recommendations of the Venice Committee issued in [Opinion no. 1105/2022](#), on the modifications of the justice system following the adoption of the three Laws concerning the justice system in 2022. To this day no report of the high-level expert group has been made public.

### NHRI's follow-up actions supporting implementation of regional actors' recommendations

The Romanian Institute for Human Rights (RIHR) has had meetings with representatives of the human rights committees of the Chamber of Deputies and Senate on [ENNHRI's 2022 report on the state of the rule of law](#) and the contribution of the Institute in this document. At the same time, RIHR has informed the Ministry of Foreign Affairs on [ENNHRI's 2023 rule of law report](#).

In view of the Commission's recommendations, the RIHR has also had discussions with representatives of human rights committees of Parliament and the Secretary General of the Chamber of Deputies to find a solution to amend the law of the Institute. In this regard, a dialogue with ENNHRI was also held, which resulted in an address to the Parliament and the Government on behalf of ENNHRI. Regarding the accreditation process, the Institute is in dialogue with the People's Advocate (Ombudsman) to find a partnership formula that complies with the requirements of Article 6. 3 (ii) of the SCA Regulation.

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RIHR promotes a rule of law culture in different ways. First, it contributes to the ENNHRI rule of law report and currently it is an associate partner in the [ROLL project - Rule of law for lawyers](#) ran by the International Commission of Jurists - European Institutions. As an associate partner, the Institute participated in two workshops organised in 2023 which analysed international standards on the independence of the judiciary, and, mainly, the appointment procedures, an overview of international legal standards on judges' freedom of expression and association, and challenges and opportunities for strategic litigation to ensure access to judicial systems that are independent and effective. The Institute, together with Romanian lawyers, presented the specific context of Romania.

RIHR will also contribute to the drafting of the final report of the project, which will focus on strengthening judicial independence and the rule of law through strategic litigation.

At the same time, the Institute organises [training courses](#) for different types of beneficiaries, with a special focus on schools and high schools, inter alia to promote a human rights culture. The [training sessions](#) have featured information on judicial proceedings before the European Court for Human Rights and its case law; they are usually developed for students, but also teachers. Other training activities addressed to the same audience are aimed at providing information on: the statutes of national human rights institutions (NHRIs) and international standards, such as the Paris Principles; various types of NHRIs, given that currently there are four such institutions in Romania; and the specific mandate of the Romanian Institute for Human Rights.

Moreover, the RIHR organises [internships for students of different universities](#): the Bucharest University of Economic Studies (ASE) - Faculty of administration and public management, National School of Political Science and Public Administration, Faculty of Law and Faculty of Political Science of Bucharest University, as well as the Faculty of Law of Titu Maiorescu University. In general, students receive information on the international human rights system, the national human-rights regulatory framework and institutions with human rights responsibilities, as well as the role of the Institute in promoting

and protecting human rights.

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## Independence, effectiveness and establishment of NHRIs

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### 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. The SCA has provisionally placed the consideration of accreditation of an NHRI in Romania on the schedule for the second session of 2024, pending an agreement on cooperation between the two institutions. Currently, both the Ombudsman and RIHR have submitted their request for accreditation to the SCA. In this regard, the SCA has reiterated the cumulative conditions provided by Article 6.3 of the SCA Rules of Procedure.

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.

### Follow-up to SCA Recommendations and relevant developments

With regards to the recommendation (see EU Commission [Rule of Law Report – Country Chapter](#), page 3) to step up efforts to obtain the accreditation of a National Human Rights Institution taking into account the UN Paris Principles, RIHR has begun the process of signing an agreement with the Ombudsman (Romanian People's Advocate) according to Article 6.3 of the SCA Rules of

Procedure. Both RIHR and the Ombudsman have a general mandate in the field of human rights, however each of them have different powers. In this sense, as opposed to RIHR, the activities of the Ombudsman do not include research, trainings or awareness campaigns. RIHR reiterates that it has the obligation to follow the Paris Principles and to take all steps to be accredited by the Accreditation Sub-Committee of GANHRI. This is because Article 2 of Law no. 9/1991 on the functioning of the Institute provides that one of the mandates of RIHR is to inform public opinion abroad and international bodies about the practical ways in which human rights are ensured and respected in Romania; also because of the Institute's status as an associate member of ENNHRI since 2013.

Also, it is worth mentioning that the UN Committee on Economic, Social and Cultural Rights adopted its [Concluding observations on the sixth periodic report of Romania, at its 29th meeting, held on 1 March 2024](#). The Committee notes the information on the different mandates and activities of the Romanian Institute for Human Rights, the Ombudsperson and the National Council for Combating Discrimination. At the same time, the Committee recommended that the State party adopts legislative measures, particularly in relation to Law No. 9/1991 on the Establishment and Functioning of the Romanian Institute for Human Rights, to bring the Romanian Institute for Human Rights into full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by further strengthening its independence and by providing it with adequate financial and human resources to effectively and independently carry out its mandate.

## **Regulatory framework**

The national regulatory framework applicable to RIHR has not changed since January 2023.

## **NHRI enabling and safe environment**

The situation described in 2023, both in the [ENNHRI rule of law report](#) and in the [European Commission rule of law report](#), on the status of RIHR, the legal framework and its available financial and human resources has not changed. In this context, ENNHRI has sent a letter to Romanian authorities - Ministry of Justice and the speakers of the two chambers of the Parliament - to express its concerns on the lack of a favourable environment for the functioning of the Romanian Institute for Human Rights. ENNHRI has recommended that the Romanian authorities take urgent measures to address the current situation.

At the same time, the Institute highlights that notwithstanding the recently

adopted Law no. 296/2023 on fiscal-budgetary measures to ensure Romania's long-term financial sustainability, its budget proposal for 2024 was approved, with approximately the same budget as in 2023.

The Institute is carrying out its mandate with difficulties. There are staff shortages, especially taking into account the extension of its mandate, as a Focal point on the SLAPP Recommendation, which would require a change in the legal framework for the Institute's functioning.

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

It is recommended that RIHR, given its expertise in the field, be involved regularly in the process of drafting policies and legislation with human rights implications. It is also recommended that the Institute be given the necessary independence to carry out its mandate in a manner that respects impartiality, integrity, transparency and fairness.

## **Romania 2024**

### **Information from: Romanian Institute of Human Rights**

## **Checks and balances**

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### **Separation of powers**

CSOs criticised the changes to the Law on the authorisation of construction works, to the Law on administrative disputes and to the Law on territorial and urban planning (the latter as amended by [Law No 102/2023](#)) which restrict the right of CSOs to challenge building permits and comment on urban planning documents by shortening different relevant deadlines. This law was mentioned in the previous Rule of Law report (Please consult EU Commission Rule of Law report 2023, [Country Chapter – Romania](#), page 29), but at that moment it had not been promulgated by the President.

### **The process for preparing and enacting laws**

With regard to procedures and practices that could affect checks and balances, the Institute notes that policies adopted at national level do not always take into account all relevant stakeholders.

According to Article 7 of Law No 52/2003 on transparency in decision-making, public authorities should set a minimum period of 10 calendar days for receiving written proposals, suggestions or opinions on a piece of draft legislation submitted to public debate. According to reports received from civil society, draft legislation is published to satisfy the requirements of transparency of decision-making; however public authorities limit the time for consultation to a maximum of 10 days, independently of the complexity of the proposals and the amount of work needed to process them properly. By way of example, APADOR-CH reported that in October 2023, the Ministry of Internal Affairs opened for public debate a "legislative package drafted with the aim of protecting the interests of the community, protecting the fundamental rights and freedoms of the individual and increasing public safety", containing three draft laws to amend seven laws and ordinances currently in force. The laws regulate the status of police officers and gendarmes, the fight against drug abuse and amendments to the traffic code. According to APADOR-CH, the Ministry of Interior gave civil society only ten days to submit proposals for such a large-scale initiative, which is a short period considering the complexity of the draft legislation. (Please see the opinion of APADOR-CH in this regard, in Romanian).

Although CSOs take part in public debates organised by the authorities and prepare comments and proposals when various regulations are in the consultation phase, once they are submitted there is lack of communication and transparency of any follow-up. For example, the National Council of Disability in Romania, member of European Disability Forum (EDF), notes a lack of responsiveness on the part of the public authorities as regards the steps to be taken to respect the rights of people with disabilities (Please see the petition addressed by the National Council of Disability in Romania to the Ministry of Labour, available in Romanian). Some NGOs have also noted that in debates on draft laws, where they exist, the time allocated to present opinions can be limited, making it impossible to effectively communicate remarks.

Also, the rules on how explanatory memorandums of draft laws should be prepared at government level (including ministries) are not always followed. In this respect, RIHR notes that in the case of draft laws originating at government level, the explanatory memorandum contains a section on the impact on human rights. This section is often left empty, including in the case of laws that have a considerable impact on human rights (e.g. Law on pre-university education; see, [the explanatory memorandum of the proposed law](#), page 30, in Romanian)

However, since last year the Secretariat General of the Government has started the process of drafting a guide on human rights impact assessment so that this section can be completed accordingly. In this regard, as mentioned in last year's Rule of Law Report (see [ENNHRI Rule of Law report, Country Chapter - Romania](#), page 3), the General Secretariat of the Government has set up a

working group to develop this document, with RIHR being one of the main partners involved in this project. Thus, this year, the draft guide is to be evaluated so that it can be implemented at the level of government. RIHR can provide training within the services of the ministries that are involved in the procedure of drafting the explanatory memorandum of draft legislation. However, it should be noted that this procedure only applies to draft legislation prepared by the Government, and there is no similar requirement for legislative proposals drafted at Parliament level.

At the same time, it must be noted that in the case of the new legislation on cybersecurity [CSOs have observed](#) that public consultations have resulted in a draft that was more “dangerous” than the initial one.

At the same time, there are cases where public consultations at the local level do not always allow representatives of CSOs to participate in meetings. For example, a representative of an [association](#) in a county in Romania was not allowed to participate in a meeting of the local council due to “the lack of space”.

## Access to information

There are cases when institutions or other bodies do not always respond positively to requests of access to information; as a result, there are court actions as in the case of NGOs and journalists who tried to obtain information related to the financing of political parties or even PhD theses. One of the reasons authorities/institutions invoke for not providing such information is the GDPR. At the same time there are public institutions which restrict access to information through administrative acts that only grant access to certain documents; opinions of the Public Health Agency Branches on matters relating to public investment projects, or control documents of the Environmental Agency have, for example, not been listed among the documents that may be consulted.

On the other hand, the Institute notes that the drafting of a new Administrative Procedure Code is underway, which will include provisions on transparency in decision-making (the current legislation includes: Law no. 544/2001 on access to information of public interest, Law no 52/2003 on decisional transparency - and Government Decision no. 27/2002 on petitions). At the end of 2023, the preamble of the Code was adopted by Government Decision no. 946/2003, which provides at point IV. h) that “the Code must guarantee respect for the fundamental rights of the citizen, in particular the right to participate in decision-making and the right to information, at least at the level of current legislation, without derogations from the spirit of the normative acts to be codified”.



## Independence and effectiveness of independent institutions (other than NHRIs)

At the end of 2023, the National Council for Combating Discrimination (NCCD), Romania's equality body, submitted a draft amendment to its internal procedures for examining petitions. The amendment in question contains elements that may have a negative impact on certain categories of persons/groups of persons. Thus, according to an analysis by an NGO, parties or witnesses who do not speak Romanian must ensure themselves the presence of an authorised translator. This restricts their ability to participate in the proceedings effectively. The same NGO draws attention to the fact that, according to the proposed provisions, a legal person is allowed submit a request to the NCCD in its own name as opposed to that of its members even in cases concerning discrimination on the basis of grounds that can only concern natural persons, such as "race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, belonging to a disadvantaged category (...)". However, it is questionable whether a legal person can be discriminated on grounds that can only be attributed to persons. (Please see the [opinion of the Center for Legal Resources](#), in Romanian)

It is also important to note that since 2023 the Romanian Institute for Human Rights, along with the Advocate of the People (Ombudsman) and the National Council for Combatting Discrimination are members of the Committee on [the Charter of Fundamental Rights of the European Union](#). The Committee is a partnership-based body, without legal personality, under the coordination of the Ministry of Investments and European Projects, having the role of providing guidance, through recommendations, to the managing authorities in handling and resolving complaints and cases of non-compliance with the provisions of the Charter.

## Enabling environment for civil society and human rights defenders

Many NGOs consider that the procedure for the establishing and functioning of an NGO is considerably bureaucratic, considering, for example, a lack of unitary practice at the level of courts or institutions, the lack of clarity of the legislation and the lack of digitalisation (please see the [report of the Center for Not-for-profit Law](#)).

At the same time, in 2023 the Government passed new fiscal legislation (GEO no. 115/2023) which restricts NGOs' ability to receive sponsorship. According to the new provisions they can only receive donations that correspond to up to 3.5% of the tax that individual donors pay on income derived from wages and



salaries. Thus, NGOs can no longer receive donations from self-employed persons or independent professionals. At the same time, the new provisions also specify a new procedure for NGOs that receive sponsorship; the technical details were not defined yet.

## **Regarding the role of RIHR as Focal Point on the SLAPP Recommendation**

In 2023, the Institute tried to obtain a grant from ENNHRI in order to facilitate the activities as Focal Point on the SLAPP Recommendation. Although the project was selected for EU funding, given that the Institute's functioning law dates back to 1991 and the RIHR Director has the status of a tertiary authorising officer, the Institute encountered a number of difficulties in finding legal solutions to access these funds. However, the Institute has held a debate on the SLAPP Recommendation and on its role as focal point with representatives of CSOs, Lawyers and the Ministry of Justice. At the same time, the Institute has also discussed with lawyers working in the field of SLAPPs/intimidation/threats, as well as with representatives of the Superior Council of Magistracy in order to find ways in which to collect statistical data on SLAPPs. The Institute has also [discussed the topic of data collection](#) with representatives of CSOs.

The last year has seen an increase of attacks on journalists, one of the most known cases being the one against Emilia Şercan (For further information, please see [here](#)). At the same time, misinformation and disinformation has been on the rise; there are, for example, networks of websites and Facebook pages that emulate the appearance of independent publications, but post exclusively propaganda or even fake content (please see [Misreport Newsletter 19](#)).

Given the rise of AI in many areas, and the fact that this technology may be used in order to create various online content, it should be noted that there are no national provisions specifically targeting deepfakes; however, there are other legal instruments that can be used to contain them (Please see [Misreport newsletter no. 155](#)).

The Romanian Institute for Human Rights has participated in a debate on the state of the media in 2023 (organised by the Centre for Independent Journalism). The participants stressed the relationship between the influence that political parties and others powerful actors exercise in practice and the precarious position of local media. In this connection, it should be noted that there is no transparency about political parties' spending the public financing they receive on mass media). In a case opposing a CSO and a political party, the court has decided that the political party should provide information on the way it spent state subsidies in 2020; however, the party has not respected the decision of the court. The CSO submitted another request to the court for the

non-execution of the judgement, but the proceedings are still pending.

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## Securitisation's impact on the rule of law and human rights

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In December 2022, a new law on cybersecurity was adopted, [Law no. 58/2023 on the cybersecurity and cyber defence of Romania, as well as for amending and supplementing certain normative acts](#). CSOs have expressed their concerns on this new legislation as it requires security incidents to be reported within 48 hours and the storage of large amounts of data for a long time, and it also imposes high fines. Considering that the law targets, according to Article 3 (c), “networks and systems owned, organised, operated or used by central and local government authorities and institutions, other than those referred to in point (a), and by natural persons and legal persons providing public services or services of public interest, other than those referred to in point (b)”, it could also apply to watchdog NGOs and journalists due to its broad scope. The law was referred to the Constitutional Court, however the majority of judges decided the rejection of constitutionality complaints put forward by the Ombudsman and a group of Members of Parliament. However, there was a separate opinion which suggested that the Court should have accepted that certain provisions of the law infringe fundamental rights. The complaints were referring to the wide scope of application, the fact that the category of persons under Article 3 (c) will be defined by the Ministry for Research, Innovation and Digitalisation, the lack of clarity in defining cyber threats and cyberattacks.

Another law criticised by CSOs was the one that modified the Criminal Code on the disruption of public order and peace during protests. The new provisions state that “the act of a person who, in public, by threats or serious attacks on the dignity of persons, disturbs public order and peace is punishable by imprisonment from 3 months to 2 years or a fine” and that “The act of a person who, in public, by violence committed against persons or property, disturbs public order and peace shall be punished by imprisonment for a term of one to five years.” The matter was referred to the Constitutional Court by a number of Members of Parliament, who considered that the penalties provided for risked upsetting the general balance struck in the Criminal Code between the severity of the offences and the sanctions threatened. They referred as an example to the fact that unintentional manslaughter is punishable by imprisonment of one

to five years. The Constitutional Court dismissed the complaints on unconstitutionality. However, CSOs expressed their worries about the tendency to introduce repressive measures to control and prevent natural demonstrations in a living democracy. At the time of the parliamentary debates on the draft law, the fact that the penalty for "serious attacks on the dignity of persons" is maintained in the Criminal Code, as such a rule risks violating not only citizens' exercise of the fundamental right to public assembly, but also the right to free expression. (Please see the [opinion of NGOs](#), in Romanian)

At the same time, at the beginning of 2024 [NGOs expressed their concerns](#) towards the actions of law enforcement authorities which limit the freedom of expression and the freedom of assembly and association. Specifically, they found it disproportionate to bring an activist to the police station following a Facebook post criticising the presence of firearms in the context of protests organised by transporters. Questions were also raised considering that she was brought from an address different than her residence. Moreover, there was criticism of the police actions to open criminal cases for incitement circulating on Whatsapp groups of those participating in the transporters' protest, as well as the fact that there was an attempt to block participation in the protest. According to NGOs, such actions jeopardise the freedom of assembly and to participate in protests, a fundamental right in a democratic society.

## **NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation**

In 2022, RIHR has been asked to submit an opinion on a draft law on public assemblies, in which the Institute outlined existing international provisions and recommendations on public assemblies. This [draft law](#) is still in the legislative process and there are no recent developments.

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

National authorities should have regard to the [Human Rights Committee's General Comment No. 37 on the right to peaceful assembly](#). This document clarifies the meaning of Article 21 of the International Covenant on Civil and Political Rights, explaining the measures that national authorities should consider in the context of peaceful assembly.

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## Other challenges to the rule of law and human rights

NGOs in Romania complain about the length of proceedings relating to the exercise of the right to information which, in some cases, has an impact on the exercise of this right. At the same time, NGOs raise the issue of the relationship between media freedom and the public funding of political parties; the latter use various methods to fund certain media (for more information, please consult the report issued by ActiveWatch - "[Political parties, money and the media - a toxic relationship](#)").

Moreover, there has been an intense public debate about journalists laid off from a widely circulated daily newspaper because the owners of the media trust were interested in promoting the gambling industry (Please see the [press release signed by 80 NGOs](#)).

In terms of media freedom, it should also be noted that journalists are sometimes under pressure to disclose information sources, which is contrary to the rules of the profession (Please see ActiveWatch, "[Pushing for exposure of sources. Ethical and legal rules](#)").

