

An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory

Romania

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Table of Contents

1. Civic space developments in 2022	3
1.1. Extended exceptions to the transparency in decision-making general procedures	3
1.2. Restrictions to NGOs’ access to justice in cases related to the legality of building permits and the legality of general legislation	4
1.3. New legislation on cybersecurity threatening civil liberties	6
2. Promising practice in 2022	8
2.1. Efforts to improve the evaluation of the impact on fundamental rights of new legislation	8
2.2. Government – civil society cooperation in response to the Ukrainian refugee crisis	9
3. Visa for human rights defenders	11
3.1. Entry and stay for human rights defenders (HRDs) at risk	11

1. Civic space developments in 2022

1.1. Extended exceptions to the transparency in decision-making general procedures

Area	Participation and cooperation with authorities
Topic	Access to consultations / participation in decision-making
Impact	Major

In March 2022, the Government of Romania (*Guvernul României*) amended, by means of emergency ordinance, the Law no. 52/2003, on transparency in decision-making.¹ The Emergency Ordinance no. 16/2022 extends the exception to the general procedures on transparency when adopting new legislation, in cases of „emergency situations”. According to civil society organisations, by amending the definition of “emergency”, the EO no. 16/2022 provides arbitrary power to any public institution to classify new legislation as „urgent”, thus avoiding the public consultation process.² The Emergency Ordinance no. 16/2022 itself was adopted without any public consultation.

The Ombudsman office (*Avocatul Poporului*), at the request of civil society organisations, has challenged the Emergency Ordinance before the Constitutional Court (*Curtea Constituțională*).³ By the end of 2022, the Court did not rule on the case.

¹ Romania, Government’s Emergency Ordinance no. 16/2022 amending art. 7 para. (13) of the Law no. 52/2003 on transparency in decision making ([Ordonanță de urgență nr. 16 din 2 martie 2022 pentru modificarea art. 7 alin. \(13\) din Legea nr. 52/2003 privind transparența decizională în administrația publică](#)), 2 March 2022.

² The Group NGOs for Citizen (2022), ‘[Legea transparenței decizionale modificată complet netransparent. Sub pretextul urgenței, orice decizie va putea fi luată fără informarea și consultarea publicului](#)’, 4 March 2022.

³ Avocatul Poporului (2022), ‘[Excepția de neconstituționalitate cu privire la prevederile Ordonanței de Urgență a Guvernului nr. 16/2022 pentru modificarea art. 7 alin. \(13\) din Legea nr. 52/2003 privind transparența decizională în administrația publică, publicată în Monitorul Oficial al României, Partea I, nr. 204 din data de 2 martie 2022](#)’, 5 April 2022.

Examples of public authorities making use of the newly introduced exception, in the period April-November 2022, include:⁴

- The Ministry of Internal Affairs (*Ministerul Afacerilor Interne*): 11 draft normative acts (three Emergency Ordinances, six Government Decisions, and two Minister Orders). Nine of the 11 acts are related to the war on Ukraine and the refugee crisis, and the other two to other administrative aspects;
- The Ministry of European Investments and Projects (*Ministerul Investițiilor și Proiectelor Europene*): 15 draft Emergency Ordinances. All draft Ordinances refer to the financing through the Recovery and Resilience Facility;
- National House of Health Insurance (*Casa Națională de Asigurări de Sănătate*): 16 draft normative acts (two Emergency Ordinances, three Government Decisions, and 11 Minister Orders). All of them refer to various aspects of the public health system;
- Bucharest Municipality General Council (*Consiliul General al Municipiului București*): two Council Decisions. Both of them are related to constructions financed through the Recovery and Resilience Facility.

1.2. Restrictions to NGOs' access to justice in cases related to the legality of building permits and the legality of general legislation

Area	Access to justice
Topic	Capacity to represent collective interests
Impact	Major (potential)

In November 2022, the Romanian Parliament (*Parlamentul României*) adopted legislation that restricts the right of non-governmental organisations to challenge building permits and urban

⁴ Please note that this is not an exhaustive monitoring or an analysis of the content of the respective acts. The examples are taken from the webpages of the respective institutions.

planning documents in court.⁵ According to a protest initiated by civil society organisations, the proposal is introducing strict restrictions for NGOs, restrictions that do not apply to individuals, businesses or public institutions in similar circumstances:⁶

- NGOs have only 30 days to challenge in court building permits and urban planning documents suspected of being issued illegally;
- the right to go to court expires after 30 days from the date of the last Publicity Operation (from the publication of the notice of issuance of the act on the website or in a newspaper);
- the deadline for challenging urban planning documentation has been reduced in the case of NGOs by 5 times, from 5 years to 1 year.
- The bill was challenged at the Constitutional Court by the opposition. The Constitutional Court announced hearings for 22 February 2023.

In November 2022, a group of MPs from the governing coalition initiated another draft law to amend the general operating framework for associations and foundations, in the sense of restricting NGOs access to justice.⁷ The legislative proposal would prevent or make it significantly more difficult the process by which any non-governmental organisation can challenge before the courts any possible illegality of acts issued by public institutions, drastically restricting NGOs access to strategic litigation, according to an open letter published by a large number of civil society organizations.⁸ Though the draft amendment alleges to aim to limit court actions brought in bad faith, no such an example is provided and the MPs fail to recognise that the current legal framework already allows for other sanctions for court claims filed in bad faith.⁹ According to the draft law, in order to have standing in a court of law, the NGO should have been established two years before the issue to be brought in court appeared, its bylaws should expressly mention the issue challenged and its activity should be continuous. A guarantee of 1% of the value of the investment challenged up to a limit of €10,000 is also required and the board members of the NGO would be liable jointly with the NGO should the

⁵ Romanian Senate (*Senatul României*), Legislative proposal amending the Law no. 50/1991 on authorizing construction works and other normative acts ([Propunere legislativă pentru modificarea și completarea Legii nr.50/1991 privind autorizarea executării lucrărilor de construcții, pentru modificarea și completarea Legii nr.350/2001 privind amenajarea teritoriului și urbanismului și pentru modificarea și completarea Legii contenciosului administrativ nr.554/2004](#)), November 2022.

⁶ Declic.ro (2022), '[Scrisoare deschisă adresată Administrației Prezidențiale](#)', 28 November 2022.

⁷ Romanian Senate (*Senatul României*), Legislative proposal amending the Government Ordinance no. 26/2000 regarding associations and foundations ([Propunere legislativă pentru modificarea și completarea Ordonanței Guvernului nr.26/2000 cu privire la asociații și fundații](#)), November 2022.

⁸ The Group NGOs for Citizen (2022), '[Parlamentul României manifestă tendințe iliberale – Dreptul ONG-urilor la litigare strategică limitat drastic](#)', 29 November 2022.

⁹ [Report](#) of the parliamentary Legal committee on the legislative proposal from 14 February 2022.

NGO lose the case. Another unconstitutional provision states that the members of the board of an NGO dissolved under the law will have the complementary sanction of being prohibited for 5 years to be a part of the board of another NGO. The draft law also establishes additional reporting obligations for NGOs receiving donations or who benefit from the mechanism of redirecting 3,5% of the income tax to NGOs.

The High Council of Magistrates (CSM – *Consiliul Superior al Magistraturii*) issued a negative opinion, underlying that the bill has the potential to restrict fundamental rights such as access to justice and freedom of association. A similar opinion was issued by the Social and Economic Council (CES – *Consiliul Economic și Social*). Despite these warnings, the Legal Committee of the Senate (*Comisia juridică, de numiri, disciplină, imunități și validări*) adopted a positive report of the bill, on 14 February 2022.¹⁰

11

1.3. New legislation on cybersecurity threatening civil liberties

Area	Safe space & protection
Topic	Surveillance
Impact	Major

In December 2022, the Parliament of Romania (*Parlamentul României*) passed new legislation on cybersecurity, at the initiative of the Government.¹² The law establishes the legal and institutional framework regarding the organisation and conduct of activities in the fields of cyber security and defence, the cooperation mechanisms and the responsibilities of the institutions with attributions in the mentioned fields. Human rights organisations have

¹⁰ All documents quoted can be retrieved in Romanian from [the page of the bill, on the website of the Senate](#).

¹² Chamber of Deputies (*Camera Deputaților*), Draft Law on cybersecurity (*Proiect de Lege privind securitatea și apărarea cibernetică a României precum și pentru modificarea și completarea unor acte normative*), December 2022.

strongly criticised the proposal.¹³ Among other issues, they are underlining the structural flaws of the bill:

- The large scope of the law, which include citizens, businesses and NGOs that “provide public services or of public interest”. The Government has the power to decide the exact list of subjects of that law, through a government decision, which is not under the control of the Parliament, and it may lead to abuses. The situation of watchdog NGOs and independent journalists is particularly concerning, because they definitely serve a public interest.
- The disproportionate obligations, such as reporting any security incident in maximum 48 hours, no matter the size and threat of the incident, or storing large quantity of data for a long time;
- Disproportionate fines, starting at RON 5,000 (€1,000) and up to 10% of the turnover for businesses or RON 75,000 (€15,000) for non-profits and citizens.

The Ombuds institution (*Avocatul Poporului*) acknowledged most of these concerns and challenged the law before the Constitutional Court (*Curtea Constituțională*).¹⁴ The Court announced hearings on this case for 1 March 2023.

¹³ Association for Technology and Internet (2022), [‘Securitatea cibernetică pe masa Guvernului: cetățenii și persoanele juridice, și sub papucul serviciilor, și cu banii luați’](#), 8 December 2022. See also APADOR – Helsinki Committee Romania (2022), [‘Moș Parlament vine cu amenzi uriașe și pușcărie pentru cine amenință cu vorba securitatea cibernetică a statului’](#), 21 December 2022.

¹⁴ Avocatul Poporului (2022), [‘Sesizarea de neconstituționalitate referitoare la prevederile Legii privind securitatea și apărarea cibernetică a României precum și pentru modificarea și completarea unor acte normative \(PL-x nr. 773/2022, L828/2022\)’](#), 27 December 2022.

2. Promising practice in 2022

2.1. Efforts to improve the evaluation of the impact on fundamental rights of new legislation

In Romania, the norms on legislative drafting require all draft normative acts to include a preliminary evaluation of their impact on fundamental rights.¹⁵ In spring 2022, the Government updated the secondary legislation describing the procedures and templates required when proposing new acts.¹⁶ During the public debate, the civil society representatives recommended improving both the visibility (within the template) and the related guidelines of the section on fundamental rights, and the Government accepted these proposals.¹⁷ Continuing the dialogue on this topic, the representatives of the Government and civil society organisations agreed that public servants need more resources, such as guidelines, trainings, and knowledge, in order to address the issue properly. In the fall of 2022, a joint working-group¹⁸ has been setup, with the participation of the Ombudsman institution. The first joint activity, a workshop involving public servants and human rights specialists, took place in January 2023.

¹⁵ Romania, Law regarding the legislative technique for the elaboration of normative acts ([*Legea nr. 24/2000 privind normele de tehnică legislativă pentru elaborarea actelor normative*](#)), 21 April 2000.

¹⁶ Romania, Government Decision regarding the presentation and motivation tools for new normative acts ([*Hotărârea Guvernului nr. 443/2022 pentru aprobarea conținutului instrumentului de prezentare și motivare, a structurii raportului privind implementarea actelor normative, a instrucțiunilor metodologice pentru realizarea evaluării impactului, precum și pentru înființarea Consiliului consultativ pentru evaluarea impactului actelor normative*](#)), 5 April 2022.

¹⁷ Romanian Government (2022), '[*Minuta dezbaterii publice organizate în data de 23.03.2022*](#)', 10 April 2022.

¹⁸ The author of this report is participating to the working-group.

2.2. Government – civil society cooperation in response to the Ukrainian refugee crisis

The war on Ukraine triggered many people fleeing to neighbouring countries. Over 1 million refugees crossed the border to Romania during 2022. Most of them continued their trip westward, and by 1 of January 2023, more than 106.000 remained in Romania.¹⁹ Faced with this challenge, the state and the civil society found new ways of working together.

At the beginning of the conflict, the Prime Minister of Romania organised two public meetings with central authorities, international organisations and civil society organisations on 28 February²⁰ and 14 March.²¹

At the same time, the responsible state institution, the Emergency Situation Department (*Departamentul pentru Situații de Urgență*) set up an online cooperation platform²², which provided the backbone for permanent coordination with hundreds of civil society organisations: weekly coordination meetings, various working groups, resource sharing, periodic thematic meetings, and direct contacts between public official and civil society workers. The platform has been praised by independent evaluations as a new and improved model of cooperation in the field of migration.²³

In June 2022, Romania adopted the national action plan of measures to support the integration of beneficiaries of temporary protection coming from Ukraine.²⁴ The plan was drafted by six

¹⁹ UNHCR portal quoting data provided by the General Inspectorate for Immigrations, <https://data.unhcr.org/en/situations/ukraine/location/10782>

²⁰ https://www.stiripesurse.ro/nicolae-ciuca-intalnire-cu-reprezentantii-societatii-civile-pentru-coordonarea-campaniei-ucraina_2265150.html

²¹ <https://gov.ro/ro/media/comunicate/premierul-nicolae-ionel-ciuca-este-absolut-necesar-ca-autoritatile-statului-sa-lucreze-impreduna-cu-societatea-civila-pentru-a-gestiona-situatia-refugiatilor-din-ucraina>

²² The author of this report is participating on the platform since the early days of the war.

²³ Centre for Public Innovation (2022), '[Raport de evaluare a sistemului național de integrare a beneficiarilor de protecție internațională](#)', 8 June 2022.

²⁴ Romania, Government Emergency Ordinance regarding the National Plan of measures of protection and integration of persons displaced from Ukraine ([Ordonanță de urgență nr. 100/2022 privind aprobarea și implementarea Planului național de măsuri cu privire la protecția și incluziunea](#)

thematic working groups, coordinated by the relevant ministries. The Coalition for the Rights of Migrants and Refugees (CDMiR – *Coaliția pentru Drepturile Migranților și Refugiaților*), which is the platform of civil society organisations involved in supporting immigrants in Romania, was represented in all six working groups. According to the representatives of the Coalition, the majority of the suggestions made by civil society were accepted and included in the Plan.²⁵

Local initiatives included also the coordination of humanitarian assistance (for example at Siret border crossing point).²⁶

[persoanelor strămutate din Ucraina, beneficiare de protecție temporară în România, precum și pentru modificarea și completarea unor acte normative](#), 30 June 2022.

²⁵ Forintegration.eu (2022), '[Romania - Advocacy work in the context of the Russian invasion of Ukraine](#)', June 2022.

²⁶ <https://siret.help/tag/asistenta-umanitara/>

3. Visa for human rights defenders

3.1. Entry and stay for human rights defenders (HRDs) at risk

Dedicated visa scheme for HRDs at risk available in your country	No
Other type of visa or alternative legal entitlement or derogation clause applied to HRDs	No

HRDs are not considered as a specific legal category for entry or stay in Romania. The entry conditions are the same as for all foreigners (applicable also for family members), and this includes the possibility of denial of entry at the border.²⁷

HRDs who consider themselves as being at risk as persons potentially in need of protection may apply for asylum for persecution or on grounds of serious risk, as provided by national legislation on asylum²⁸, fully transposing the EU acquis. In September 2021, Romania welcomed 139 Afghans evacuated from Islamabad, including at least one known HRD, university teacher.²⁹

²⁷ Government Emergency Ordinance no. 194 of 12 December 2002 regarding the regime for aliens in Romania (*Ordonanța de urgență a Guvernului nr. 194 din 12 decembrie 2002 privind regimul străinilor în România*), published in the Official Gazette No. 421 of 5 June 2008, the latest unofficial English translation (however not updated) available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=544676df4&skip=0&query=Aliens&coi=ROM>.

²⁸ Law no. 122/2006 regarding asylum in Romania from 4 May 2006 (*Legea nr. 122/2006 privind azilul în România*), initially published in the Official Gazette no. 428/18.05.2006, the latest unofficial English translation (however not updated) available at: <http://www.refworld.org/docid/44ace1424.html>

²⁹ <https://www.educatieprivata.ro/un-profesor-universitar-activist-pentru-drepturile-omului-printre-refugiarii-afgani-preluati-de-romania/>