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COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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

Report¹

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¹ Assembly decision. Reference to committee: Reference 4448 of 12 April 2019.

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; the Framework Convention for the Protection of National Minorities; the European Convention for the Prevention of Torture and Inhuman Treatment or Punishment; the Criminal Law Convention on Corruption; the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing of Terrorism, the European Social Charter and it is subject to monitoring mechanisms attached to these legal instruments. In 2019, Romania was selected by the Monitoring Committee for a periodic monitoring 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.

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 the Investigation of Offences in 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 for the investigations of complex corruption cases, sufficient resources will be allocated 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 Magistrates 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.

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

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 (DNA) 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 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 (ANABI) 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 the 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, inter alia, with bilingual forms, public information and bilingual inscriptions. Some difficulties still exist, particularly with regard to financial and administrative obstacles to the implementation of these provisions of the Administrative Code. There are also some concerns that some amendments introduced to 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 the Roma 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:*

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

17.2 to take into account the recommendations and 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 to ensure inclusiveness in the legislative process; to carry out meaningful consultations with all stakeholders and try to accommodate different opinions;

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

17.5 to 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:*

18.1 to pursue implementation of the National Anti-Corruption Strategy and ensure determined political support for its effectiveness;

18.2 to 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 to address effectively the issue of human resources shortages within the National Anti-Corruption Directorate.

19. *In the field of execution of judgements of the European Court of Human Rights:*

19.1 to 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 three hundred repetitive cases;

19.2 to 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 to 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:*

20.1 to ensure proper implementation of the existing legislation on access to information;

20.2 to ensure full independence of the National Audio-visual Council by establishing clear professional criteria for the selection of its members and ensure adequate budgetary resources;

20.3 to ensure full transparency of media ownership;

20.4 to ensure specific safeguards for editorial independence and 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 to ensure proper investigation and punishment of perpetrators in cases of harassment or intimidation of journalists.

21. *In the field of minorities and vulnerable groups:*

21.1 to condemn without reservation, investigate and prosecute any discriminatory remarks and behaviour, and eliminate hate speech from public discourse;

21.2 to continue efforts aimed at better integration of Romanian citizens belonging to 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.