

Overall Score:

81 - Strong

Legal Framework Score:

96 - Very Strong

Actual Implementation Score:

66 - Weak

Category I. Civil Society, Public Information and Media

I-1. ⁸⁶Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

References:

Associations and foundations are ruled by Law 246/ July 18, 2005, the framework law in this field, completed with the provisions of Government Ordinance No. 26/2000;
Government Decision 1354/2005 establishes The College of Civic Society (HG nr. 1354 din 3 noiembrie 2005 pentru modificarea si completarea HG nr. 618/2005 privind constituirea colegiului pentru consultarea societatii civile);
1948 Universal Declaration of Human Rights, article 20;
European Convention of Human Rights, article 11

The Romanian Constitution, article 40, provides for the right of assembly: Citizens may freely associate in political parties, trade unions and other types of association. This is the legal ground for non-profit organizations (NGOs) The same article, however, imposes certain limits: Paragraph 2 states that "parties or organizations which, by their goals or activity, militate against political plurality, against the principles of the state of law or against Romanias sovereignty, integrity or independence are unconstitutional". Paragraph 3 states that: "judges of the Constitutional Court, district attorneys, magistrates, active members of the army, policemen and other categories of civil servants mentioned by organic law cannot be members of political parties". It is obvious that the act of association is limited in the case of political parties only from a personal point of view; the other restrictions are only related to the goal of the association. The values mentioned therein are defended by the constitution and in accordance with the constitutional provision described any party or organization, irrespective of its legal personality, becomes unconstitutional and therefore illegal the moment it attempts to or does infringe the limitations through the activity it carries out. Paragraph 4 stipulates that "secret associations are forbidden".

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

There are no obstacles, according to Law 246/July 18, 2005, regarding associations and foundations.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

According to art. 38 of Law 246/July 18, 2005, regarding associations and foundations, only the associations and foundations that are declared of public utility must disclose their sources of funding.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

100

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

All CSOs, including those focused on promoting good governance or anti-corruption, can organize themselves freely with little interaction with the government. However, all CSOs are obliged to register in court. CSOs acting for the public benefit are listed in the Central Register for Non-profit Legal Entities and have the obligation to report their activities annually. Generally, CSO registration is inexpensive and takes approximately one month to complete.

References:

Cristina Guseth, executive director, Freedom House Romania, phone interview, July 25, 2007:

In Romania CSOs focused on promoting good governance or anti-corruption can freely organize with no interaction the government."

-Ioana Lupea, columnist Evenimentul Zilei, (national daily newspaper), on-line interview, Aug. 14, 2007:

"The government does not create legal or practical barriers to the organization of new anti-corruption/good governance but sometimes ignores or disputes their reports on corruption. Without a judiciary investigation, the reports are denied for irrelevance. Until now, no official was convicted for corruption or corruption related facts."

-Freedom House,

"Nations in Transit 2007",

released on June 14, 2007, Budapest, pp.440-441; 448-450;

http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

-Association for the Defense of Human Rights in Romania-the Helsinki Committee,
"ANNUAL REPORT 2006",
<http://www.apador.org/en/index1.htm>

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

There are many anti-corruption or good governance CSOs in Romania. Some of them, such as the Romanian Academic Society (SAR) and Transparency Romania have access to decision makers and the media and are very influential in shaping public opinion on the topic of corruption. The Romanian Coalition for a Clean Parliament (CPC), created during the 2004 election as an NGO alliance, is monitoring the justice process and the good governance. The CPC lobbied intensely and assisted the former minister of Justice, Monica Macovei, in creating an official body to oversee asset statements and conflicts of interest among dignitaries, magistrates, and top civil servants.

References:

-Freedom House,
"Nations in Transit 2007",
released on June 14, 2007, Budapest, pp.440-441; 448-450;
http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

-Gelu Trandafir,
Southeast European Times
"The East European NGOs Launch Anti-Corruption Revolution",
Oct. 26, 2006
<http://www.setimes.com/cocoon/setimes/print/ro/features/setimes/features/2006/10/26/feature-01>

-Alina Mungiu Pippidi,
Journal of Democracy, "Corruption: Diagnosis and Treatment",
July 2006, Volume 17, Number 3, pp.86-114;
<http://www.journalofdemocracy.com/articles/gratis/Mungiu-Pippidi-17-3.pdf>

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

No such cases have been reported since the collapse of communism in Romania in 1989.

References:

-Ioana Lupea, columnist Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007 "No anti-corruption/good governance organisation have been shut down by the government for their work on corruption-related issues in the past years."

-Freedom House, "Nations in Transit 2007", released on June 14, 2007, Budapest, pp.440-441; 448-450; http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

-Association for the Defense of Human Rights in Romania-the Helsinki Committee, "ANNUAL REPORT 2006", <http://www.apador.org/en/index1.htm>

www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

In the past year, no civil society activists working on corruption issues have been imprisoned.

References:

-Freedom House, "Nations in Transit 2007", released on June 14, 2007, Budapest, http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

-Ioana Lupea, columnist Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007 "In the past year, no civil society activists working on corruption issues have been imprisoned."

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

In the past year, no civil society activists working on corruption issues have been physically harmed.

References:

-Association for the Defense of Human Rights in Romania-the Helsinki Committee, ANNUAL REPORT 2006", <http://www.apador.org/en/index1.htm>

-Freedom House, "Nations in Transit 2007", released on June 14, 2007, Budapest, pp.440-441; 448-450; http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

-Ioana Lupea, columnist Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007 "In the past year, no civil society activists working on corruption issues have been physically harmed."

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

In the past year, no civil society activists working on corruption issues have been killed. National and international media would cover such an event if it occurred.

References:

-Association for the Defense of Human Rights in Romania-the Helsinki Committee, ANNUAL REPORT 2006", <http://www.apador.org/en/index1.htm>

-Freedom House, "Nations in Transit 2007", released on June 14, 2007, Budapest, pp.440-441; 448-450; http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

-Ioana Lupea, columnist Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007 "In the past year, no civil society activists working on corruption issues have been killed."

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Article 9 of the Romanian Constitution: Trade unions, employers' associations, and vocational associations shall be established and shall carry out their activity according to their statutes, according to the law. They shall contribute to the protection of rights and the promotion of their members' vocational, economic, and social interests."

There is also the Law of Trade-Unions (Legea sindicatelor nr. 54/2003), the Law regarding Collective Labor Agreement (Legea privind contractul colectiv de munc, nr. 130/1996) and other several legal provisions regulating the right of association across a whole range of associations.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Legally, formally, this is true and accurate. However, it is possible to deny the existence of one or another trade union, referring to the lack of representativeness." There are also key sensitive areas of the state apparatus, such as the military and intelligent services forces, which oppose the creations of trade unions, but allow the creation of professional associations. For example, the military, secret services, public prosecutors and magistrates are not allowed to form trade-unions (Law 54/2003, article 4).

References:

– NTUC Cartel ALFA,
The Actors, Sources And Object of The Social Dialogue in Romania",
(paper of NTUC Cartel ALFA that is one of the most important unions confederations)
March 30, 2006,
http://www.cartel-alfa.ro/show_articol.asp?id=194

-Cristina Guseth, executiv director, Freedom House Romania, face to face interview, Aug. 2, 2007:
"Citizens are able to organize into trade unions."

-Ioana Lupea, senior editor, Evenimentul Zilei (one the most important Romanian daily newspaper), phone interview, July 25, 2007:

"The right to organize is practically denied to many privately-owned enterprises and shops, mainly in remote areas, where unemployment is high and people are ready to accept any conditions for pennies. It is largely known that working and living conditions there are dreadful. There is no restriction on working hours, and people are forced to work during the night and even on national holidays without additional payment. Often salaries are not paid for many months or people are fined for damaging materials."

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

Freedom of the media is guaranteed by law, and, in practice, the government generally respects this right.

References:

Article 30 of constitutions guarantees the freedom of media: (1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable; (2) Any censorship shall be prohibited; (3) Freedom of the press also involves the free setting-up of publications; (4) No publication shall be suppressed; (5) The law may impose upon the mass media the obligation to make public their financing source; (6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and to the right to one's own image; (7) Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law; (8) Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Indictable offences of the press shall be established by law.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

The constitution guarantees the freedom of speech and of press, and, in practice, the government generally respects these rights. An independent press, an effective judiciary and a functioning democratic system are combined to ensure freedom of speech and of the press, including academic freedom.

References:

Article 30 (1) of constitution is clear: Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable."

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Print media entities can freely organize without interaction from the government.

References:

-Press Freedom in Romania, 2006", released in May 2007, a report of Media Monitoring Agency, http://www.mma.ro/pressfreedom_in_romania_PDF.pdf

-"Nations in Transit, 2007. Democratization from Central Europe to Eurasia", a study published by Freedom House http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

In Romania, a license for print media is not necessary. This information was confirmed by Gelu Trandafir, member of CNA (Audiovisual National Council), in a phone interview, on July 28, 2007.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In Romania, a license for print media is not necessary.

References:

-Gelu Trandafir, member of CNA (Audiovisual National Council), phone interview, July 28, 2007

-see the Web site of Romanian Press Club <http://www.pressclub.ro>

-If this problem existed, then these two most important reports would mention it:
-Press Freedom in Romania, 2006", released in May 2007, a report of Media Monitoring Agency, http://www.mma.ro/pressfreedom_in_romania_PDF.pdf

-“Nations in Transit, 2007. Democratization from Central Europe to Eurasia”, a study published by Freedom House; http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

-Gelu Trandafir, member of CNA (Audiovisual National Council), phone interview, July 28, 2007

-see the Web site of Romanian Press Club
<http://www.pressclub.ro>

-If this problem existed, then these two most important reports would mention it:

-Press Freedom in Romania, 2006”, released in May 2007, a report of Media Monitoring Agency, http://www.mma.ro/pressfreedom_in_romania_PDF.pdf

-“Nations in Transit, 2007. Democratization from Central Europe to Eurasia”, a study published by Freedom House; http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/romania_final.pdf

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

69

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

In Romania, the government is not responsible for the organization of broadcast media entities. The institution that is responsible for it is the Audio-Visual Council, an independent entity. Sometimes there are exceptions and unofficial barriers to get registration licenses.

References:

– Gelu Trandafir, member of Audio-Visual Council (CNA), said in a phone interview on July 29, 2007, that media groups have equal access to broadcast bandwidth and a fair distribution system.

-Cristina Guseth, executive director, Freedom House Romania, said in a face to face interview that the government doesn't create barriers to form radio and tv media entities, but that the registration process is not easy.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

As with most public authorities, appeals can be made to the Administrative Appeals Court.

References:

Audiovisual Law, nr. 504/2002, art. 95

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Gelu Trandafir, member of the Audio-Visual Council, said in a phone interview on July 29, 2007, that a licence can be generally obtained in six months: There are only administrative problems."

-According to the weekly magazine Business Magazin from May 21, 2007, the government Emergency Ordinance no.79/2002 concerning the General Regulatory Framework for Communications, Article 15, specifies that the licenses for the use of radio-electric frequencies shall be granted through an open, transparent and non-discriminatory procedure, within at most six weeks after the receipt of an application, except for the licenses that are granted through competitive or comparative selection procedures, like TV and radio licenses, for which the term is at most eight months.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Oftentimes companies buy very cheap licenses and then transfer/sell them at a very high price to other companies. According to unofficial information in a small town, the price of a license is between 30,000 and 50,000 Euros (US\$43,900-73,165).

References:

-Gelu Trandafir, member of Audiovisual National Council, said in a phone interview on July 28, 2007, that licenses are free, but their number is limited.
-Cristina Guseth, executive director, Freedom House Romania, said in an interview on Aug. 2, 2007, that often companies buy very cheap licenses and then transfer/sell them at a very high price to other companies.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation in this area, and the government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information.

References:

-Gelu Trandafir, member of the Audiovisual National Council, said in a phone interview on July 29, 2007, that citizens have free access to content published online, and the government does not intervene
-Cristina Guseth, executive director, Freedom House Romania, said in an interview on Aug. 2, 2007, that the government does not prevent Internet users from accessing online content. Some forms of content may be illegal to download or own, but the government does not manipulate networks to prevent access to this information.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating

search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

Comments:

The government doesn't remove online information or disable servers due to their political content.

References:

-Cristina Gushet, executive director, Freedom House Romania, said in an interview on Aug. 2, 2007, that in Romania the government does not censor citizens creating content online and generally does not remove online information or servers for their political content;
-Gelu Tradafir, member of the Audiovisual National Council, said in a phone interview on July 29, 2007, that online domain is free of government interference and other institutional influence.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

75

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Article 30 of the constitution:

(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.(2) Any censorship shall be prohibited.(3) Freedom of the press also involves the free setting up of publications; (4) No publication shall be suppressed.(5) The law may impose upon the mass media the obligation to make public their financing source.
(6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and to the right to one's own image.
(7) Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law"; (8) Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Indictable offences of the press shall be established by law."; <http://www.cdep.ro/pls/dic/site.page?id=339&idl=1>

In the beginning of 2007, the Constitutional Court ruled that the elimination of insult and libel from the Penal Code was unconstitutional, implying that this is the only means to protect a person's dignity:

http://www.mma.ro/pressfreedom_in_romania_PDF.pdf

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Although the independence of the media is guaranteed by constitution, in practice owners or even the government can put pressure on certain journalists or directors of newspapers to delay the exposure of a corruption-related story. Newspapers and television channels recruit the services of a series of leading political figures on a regular basis as political commentators. Depoliticizing the Romania media is a challenge, but for the moment most private electronic media remain openly political, with open connections to political actors or managed by political actors/ partners of political actors. For example, the Conservative Party has TV stations (the influential Antena 1 and Antena 3) and the daily newspaper Jurnalul National. Antena 1 is one of three national networks and Antena 3 is one of the two national 24-hour news channels that define the public agenda. Other media outlets are owned by controversial businessmen, who use their newspapers and TV channels for political and/or economic gains. Their open connections to politicians could delay the exposure of corruption-related stories.

References:

-According to the Report of Media Monitoring Agency: Pres Freedom in Romania, 2006", published in May 2007, "journalists and prominent public figures are willing to use their public image in order to support businessmen in delicate legal situations". In this report one example is that of Mircea Dinescu, poet, influential columnist, TV guest, but also shareholder in the media trust owned by wealthy businessman Dinu Patriciu. Dinescu was present by Patriciu's side in February in the Bucharest Court as a sign of public support for the man who had been indicted for several economic crimes. Another example describes the "Gazeta de Iasi" study case: "At the end of October, six persons in the management local group Gazeta were arrested under the accusation of continuous organized blackmail and accomplices to an organized criminal group, following complaints submitted by local politicians and businessmen. According to the act of indictment, Gazeta trust was using journalistic investigation to gain advertising contracts."

http://www.mma.ro/pressfreedom_in_romania_PDF.pdf

-Nov. 20, 2006, Newsin, News Agency, www.newsin.ro

Cristian Tudor Popescu, president of the Romanian Press Club, said that Romanian media have increasingly poor quality, are used as political and economic pressure instruments, and that journalists are turning into mercenaries.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

One of the sensitive problems for Romanian media are ownership structures, the closeness between owners and politicians (and often it is the same person), and the poor implementation of professional codes for journalists. There are cases of pressure when government officials prevent the publication of controversial corruption stories.

References:

-Interview face to face with Iosif Klein Medesan, general editor at Romania libera, one of the most important daily newspapers, Aug. 3, 2007:

There is no way a corruption story could be stopped dead. There is always a media outlet for it – albeit a non-mainstream one. After the story breaks out, the big papers cannot avoid it – so they put a spin on it. The spin then makes the rounds on the national TV stage. The end result? The story is drowned by the mediatic noise – only to be resurrected at a later date, in many

variants, differing substantially.

When the corruption story is an exclusive one, its sole 'owner' might decide, at the owner's behest, to bury it, or to use it as an insurance policy.

In some instances, the corruption story is a planted one, by enemies of the targeted politician. In such cases, the editorial process should, ideally, weed it out – but only if the owner doesn't find it handy to use it in his/her own interest."

-Cristina Guseth, executive director Freedom House, Romania, interview, Aug. 2, 2007:

"There are business interests of media owners and government officials. Many times the government doesn't need to put pressure because the corruption topics are not to be tackled by the editorial team, (topics which are taboo, which are forbidden). Usually the taboo topics are known by the entire editorial team

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

50

10a. In law, print media companies are required to disclose their ownership.

YES | NO

Comments:

In Romania, media ownership is divided between a number of magnates. The values promoted by these media empires are the interests of their owners. They are not dedicated at all to addressing the public agenda.

References:

Although Article 30 (5) of the constitution specifies that "The law may impose upon the mass media the obligation to make public their financing source", in Romania there are no laws that force print media companies to disclose their ownership.

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

References:

Audiovisual Law nr. 504/2002, Art. 48
http://www.cna.ro/legea504/lege_audiov.pdf

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

Editors and journalists at major media outlets generally avoid altering coverage in exchange for favors, but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

References:

-Interview with Iosif Klein Medesan, general editor at Romania libera, one of the most important daily newspapers, Aug. 3, 2007: Editors and journalists at major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct."

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: "In Romania there are journalists for whom it doesn't matter if news is true, if it sells it goes. These are rather rare cases, but there are. Generally the deontologic code is very little known and rather seldom respected "

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

Mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. The evolution of public funds used for electoral advertising (monies expended by ministries, agencies and state-owned companies) is as follows: 8.8 million (US\$368) (2000); 13.4 million (US\$560) (2001); 13.5 million (US\$565) (2002); 13.1 million (US\$548) (2003); 14.7 million (US\$615) (2004); 3.8 million (US\$159) (2005). The former Social Democrat government increased the advertisement money immediately after it took the helm in 2001, from 8.9 million (US\$372) to 13.4 million (US\$561). After advocacy efforts made by CSOs, the new government dramatically decreased the amount to 3.8 million (US\$159) in 2005. These numbers were published in the report Public advertisement – one year of transparency" on www.cji.ro (in Romanian, soon to be available in English also).

References:

-Interview with Iosif Klein Medesan, general editor at Romania libera, one of the most important daily newspapers, Aug. 3, 2007 : Definitely, there are as many biases as (major) media owners. The news organizations are trying (some of them, are trying hard) to cover their bias, and the media ownership structure not being widely known by the public (and also because the countryside is dominated by the public broadcasters and the local papers), the real targets of the subtle (well, most of the time...) disinformation are not easily identifiable."

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:

In the latest national elections, in 2004, both public and private media coverage favored the Social-Democratic Party, the party in power at that time."

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

Media ownership is divided between foreign publishing houses, former Romanian politicians and domestic businessmen; half of all local television stations are fully or partially-owned by former ruling party officials and related businessmen.

References:

-Report regarding the 2004 elections, made by Media Monitoring Agency; <http://www.mma.ro/BAZA%20DE%20DATE/Politic/raportoct2004en.doc>

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: Always the public radio and television are favorable to governmental parties and their political clientele, although in the last two years the news bulletins of the public television have improved"

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

Although no journalists investigating corruption have been imprisoned, there is a debatable case mentioned by the report of Media Monitoring Agency: in February 2006, a CD with classified information regarding the situation of Romanian troops in Afganistan reached several newspaper. As the information was not of public interest, Romania libera and Ziua put the national security above the journalistic interest and didn't publish the information on that CD. Despite this responsible journalistic conduct, the prosecutors started an investigation against the journalist involved. Marian Garleanu, a local correspondent for Romania libera in Vrancea, was arrested for two days with an impressive display of forces that also included special troops.

References:

-Press Freedom in Romania 2006", released in May 2007, a report made by Media Monitoring Agency, p.6
http://www.freeex.ro/rapoarte/s/raport_freeex_2006.pdf

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: There were no journalists imprisoned because of their work covering corruption last year.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There were no documented cases of journalists being assaulted for their work covering corruption issues.

References:

-Press Freedom in Romania 2006",
released in May 2007,
a report made by Media Monitoring Agency, p.6
http://www.freeex.ro/rapoarte/s/raport_freeex_2006.pdf

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: in the past year, no journalists investigating corruption have been physically harmed.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There were no documented cases of journalists being killed because of their work covering corruption-related issues during the past year.

References:

-Press Freedom in Romania 2006",
released in May 2007,
a report made by Media Monitoring Agency, p.6
http://www.freeex.ro/rapoarte/s/raport_freeex_2006.pdf

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: in the past year, no journalists investigating corruption have been killed.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

There is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope.

References:

Art 31 of the constitutions guarantees the right of public access to information of public interest: A persons right of access to any information of public interest cannot be restricted. The public authorities, according to their competence, shall be bound to provide for correct information to citizens on public affairs and matters of personal interest. The right to information shall not be prejudicial to the protection of the young or to national security; Law on Decisional Transparency in Public Administration, Romania signed the Aarhus Convention in June 1998 and ratified it in July 2000. Governmental Decision no. 878/2005 on public access to environmental information implements EU Directive 2003/4/EC and sets rules on access, Law no. 182 of April 12, 2002, on the protection of classified information, Law Regarding Free Access to Information of Public Interest, nr. 544/2001, 3. Decision on Methodological Norms of Putting into Force Law No. 544/2001 on Free Access to Information of Public Interest.

– Law no. 371/2006 for the modification of Law no. 544/2001 on free access to information of public interest. The modifying law extended the areas of authority / public institutions which fall under Law no. 544/2001 to certain kinds of commercial companies. On the other hand, a new exception was added to the free access to information, consisting of protecting intellectual or industrial copyright. In June 2004, APADOR-CH met with the initiator of the legislative document for modification (a member of the Chamber of Deputies), to whom it introduced a list of amendments to Law no. 544/2001, among which increasing the area of applicability of the law.

– Law no. 380/2006 for the modification and completion of Law no. 544/2001 on free access to information of public interest. The modifying law explicitly included public procurement contracts in the category of public information to be communicated by default.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

There is a formal process of appeal for rejected information requests.

References:

The Law Regarding Free Access to Information of Public Interest, nr. 544/2001, Arts. 21, 22

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

References:

Citizens have a right of appeal, if access to a basic government record is denied, according to the Law Regarding Free Access to Information of Public Interest, nr. 544/2001, Arts. 21, 22;

See also <http://www.apador.org/>.

The mechanism through which citizens can request government records is petitioning to the Appeals Court and ultimately to the Supreme Court (High Court of Cassation and Justice).

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

70

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Generally, records are available on-line, or can be obtained within two weeks, but some additional delays may occur. Sometimes politically-sensitive information may be withheld without sufficient justification.

References:

1)The Association for the Defence of Human rights in Romania The Helsinki Committee (APADOR-CH), Annual report 2006", ssee CAP I, "THE LEGISLATIVE FRAMEWORK" and Cap.II, " ACCESS TO PUBLIC INFORMATION AND DECISION TRANSPARENCY";
<http://www.apador.org/en/index1.htm>

2)-Interview with Cristina Guseth, executive director, Freedom House Romania, Aug. 2, 2007:
"Some politically-sensitive information is hidden and people don't know about their right regarding acces of public information."

3)-Memo of public debate initiated by Timisoara Club of Pro Democratia Asociation: it is emphasized that Law 544 regarding the access to public information allows access to many records, but this law is little known by citizens and too many records are hidden under the label of service or national secrets
http://209.85.129.104/search?q=cache:aujVgtX5XYAJ:www.apd.ro/files/Raport-dezbatere_legea_reutilizarii_informatiilor_publice-Timisoara_19_mai_2006.pdf%3FPPHSESSID%3Db1a63d101e73e21da8562a533eabc4f1+raport+acces+la+informatii+publice+2006&hl=ro&ct=clnk&cd=

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free to all citizens, or available for the cost of photocopying.

References:

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: records are available only for the cost of photocopying. She said that in Romania the law of access to information is very little known by citizens (even if it is the best known among transparency laws) and sometimes public authorities do not know the law or consider the information required as not being public."

-The Association for The Defence of Human rRghts in Romania –The Helsinki Committee
Annual report 2006

<http://www.apador.org/en/index1.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-The Association for the Defense of Human Rights in Romania– The Helsinki Committee
Annual report 2006, Cap II, ACCESS TO PUBLIC INFORMATION AND DECISION
TRANSPARENCY; <http://www.apador.org/en/index1.htm>

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: citizens are not very interested by this questions and abandon very soon any administrative problem, but non-governamntal organizations are discontent because appeals to access to information requests often take more than two months.

–Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007: Sometimes, public institutions tend to deny the public access to information, usually invoking the classified information law. Citizens have no other option than to file a lawsuit against that particular institution. The cost of a lawsuit in Romania may be expensive."

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, the appeals mechanism is not an affordable option to middle-class citizens seeking to challenge an access to information rejection.

References:

Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: in Romania appeals are prohibitive for citizens that have a medium income (250 Euros – US\$365 per month), but people are rarely interested in making appeals to receive full access to some public information.”

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug/ 14, 2007: “Sometimes, public institutions tend to deny the public access to information, usually invoking the classified information law. Citizens have no other option than to file a lawsuit against that particular institution. The cost of a lawsuit in Romania may be expensive.”

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The government usually discloses reasons for denying an information request to the requestor, with some exceptions.

References:

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: in the last year, government officials improved their relations with journalists in the field of access to public information, and almost always disclose formal reasons for denying information requests;

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug/ 14, 2007: The government gives reasons for denying the public access to information. But there are institutions, such as the National Administration of the Private Real Estate Property of the State”, RAAAPS, that are not required to comply with the Freedom of Information Act.”

-According to the 2006 Report regarding the acces of public information made by the Agency for Government Strategies, the government always discloses to the requestor the specific, formal reasons for denying information requests;

See: Agency for Government Strategies,
“Report over Implementation of Law 544/2001 Regarding the Access To Information”,
March 2007, Bucharest;
<http://www.publicinfo.ro/pagini/legea-544.php>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

II-1. ⁷⁷Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

The right to vote is guaranteed to all citizens of the country.

References:

Article 36 of the Romanian Constitution guarantees the universal and equal adult suffrage:

(1) Every citizen having turned 18 up to or on the election day shall have the right to vote.

(2) The mentally deficient or alienated persons, laid under interdiction, as well as the persons disenfranchised by a final decision of the court cannot vote."

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

Regular elections are guaranteed by the constitution and all electoral laws.

References:

The Romanian Constitution guarantees that parliamentary elections must be held every four years and presidential elections every five years. Article 63 of the constitution specifies that The Chamber of Deputies and the Senate shall be elected for a term of office of four years, which may be extended de jure in the event of a mobilization, war, siege, or emergency, until such event has ceased to exist"; Article 83 of constitution states that "the term of office of the president of Romania is five years, being exercised from the date the oath was taken."

<http://www.cdep.ro/pls/dic/site.page?id=339&idl=1>

Law No. 68/1992 on the Election to the Chamber of Deputies and the Senate,
Law on Local Public Administration [215/2001, lastly amended in April 2003,
Law on Political Parties, No 14/2003

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

In Romania all adult citizens can vote, but in the last referendum for dismissing the president (May 19, 2007), Romanian citizens residing in other countries were discriminated against.

References:

-Cristina Guseth, executive director Freedom House Romania, interview on Aug. 2, 2007:
All adults can vote

-Ioana Lupea, columnist Evenimentul zilei, noticed in an online interview that all adult citizens can vote

-Raport of Open Society Foundation,
Brief Assessment on Romania's Compliance with some Critical EU Requirements- Accomplishments and Weaknesses ",
Bucharest, April 2006,
http://www.soros.ro/ro/publicatii.php?id_cat=10

-EU Paper "Report on Progress on Accompanying Measures 2007",
June 27, 2007
<http://www.infoeuropa.ro/jsp/page.jsp?cid=14902&lid=2&changeLangEv=1>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

References:

-The research of Asociatia Pro Democratia" that monitored all post-communist elections in Romania, "Pushing the Limits of Democracy – 2004 Romanian Elections" (2005), <http://www.apd.ro/publicatii.php?PHPSESSID=1160ff92aea55e525a3ae5e1f523af0d>

-Cristina Guseth, executive director, Freedom House, interview on Aug. 2, 2007: "ballots are secret."

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Elections are always held according to the schedule.

References:

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
In practice, till now elections have always been held according to a regular schedule.”

-Ioana Lupea, columnist Evenimentul zilei, online interview, Aug. 14, 2007:
elections are held according to a regular schedule

-"Strategy for Romania",
Report of European Bank of Reconstruction and Development,
Dec. 12., 2005;
<http://www.ebrd.com/about/strategy/country/romania/stratrom.pdf>.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

80

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

In law, all citizens almost always have a right to form political parties.

References:

Art. 8 of the constitution,
Art. 1 of the Law on Political Parties, no 14/2003

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

In law, all citizens almost always have a right to run for political office. The right of election is guaranteed by the constitution: eligibility is granted to all citizens having the right to vote, who meet the requirements in Art. 16 (3), unless they are forbidden to join a political party in accordance with Art. 40

References:

Romanian Constitution, Art. 37: (1) Eligibility is granted to all citizens having the right to vote, who meet the requirements in Article 16 (3), unless they are forbidden to join a political party, in accordance with Article 40 (3).
(2) Candidates must have turned, up to or on the election day, at least twenty-three in order to be elected to the Chamber of Deputies or the bodies of local public administration, at least thirty-three in order to be elected to the Senate, and at least thirty-five in order to be elected to the office of President of Romania"

Romanian Constitution, Art. 16: "(3) Access to public, civil, or military positions or dignities may be granted, according to the law, to persons whose citizenship is Romanian and whose domicile is in Romania. The Romanian State shall guarantee equal opportunities for men and women to occupy such positions and dignities.

(4) After Romania's accession to the European Union, the Union's citizens who comply with the requirements of the organic law have the right to elect and be elected to the local public administration bodies".

Art. 40 of the Romanian Constitution: "(1) Citizens may freely associate into political parties, trade unions, employers' associations, and other forms of association.

(2) The political parties or organizations which, by their aims or activity, militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania shall be unconstitutional.

(3) Judges of the Constitutional Court, the advocates of the people, magistrates, active members of the Armed Forces, policemen and other categories of civil servants, established by an organic law, shall not join political parties.

(4) Secret associations are prohibited."

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

In practice, all citizens almost always have a right to form political parties. According to the Law of Political Parties, no prior authorization is needed for citizens to constitute a political party, but a minimum of 25,000 signatures of active voters is required by law. There are other obstacles because political parties must register with the Bucharest Tribunal. The law requires a political party to submit to the Bucharest Tribunal its statutes and program, and a roster of at least 25,000 signatures. These 25,000 founding members" must be from at least 18 counties, including Bucharest, with a minimum of 700 people from each of these counties. The party statutes and program may not include ideas that incite war, discrimination, hatred of a national, racist, or religious nature.

References:

-Michael Schafir, Monica Ciobanu,

The 2004 Romanian Elections: A Test for Democratic Consolidation?",

Radio Free Europe Reports, April 7, 2005, Volume 7, Number 3

They noted that in the last elections (2004) the Hungarian Civic Union, a wing that had split from The Romanian-Hungarian Democratic Union (UDMR-Uniunea Democrata Maghiaro-Romana) "was denied registration in the local elections by an obvious PSD-UDMR connivance, and some of its members unsuccessfully ran for Parliament on the lists of former President Emil Constantinescu's Popular Action Party". Till now this party has not been able to obtain registration.

<http://www.rferl.org/reports/eepreport/default.asp>

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:

"There are some barriers to forma parties because 25,000 founding members are necessary and the registration is not an easy process."

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

For example, the Hungarian minority in Romania is represented by the Democratic Romanian-Hunarian Union (UDMR). In practice, a more radical minority group has been trying for several years to register as a separate party. The media disclosed that the law setting the threshold for registering a party had been modified, increasing the minimum threshold to prevent the radical group from creating competition for UDMR.

References:

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
There are no official barriers, but there are barriers in the main parties."

-Mihai Lupoi, a senator elected on the list of Great Romania Party (PRM-Partidul Romania Mare) declared that each eligible position of this party was paid with sums varying from 50,000 to 200,000 Euros (US\$73,165-US\$293,000);

"Lupoi Discloses How Much A Parliamentary Position Costs on PRM Lists",
Adevarul (Romanian daily newspaper), March 19, 2005, http://www.hotnews.ro/articol_17781-Lupoi-dezvaluie-cat-a-costat-un-loc-de-parlamentar-pe-listele-PRM.htm

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

See also the Web site of the Chamber of Deputies: www.cdep.ro;
and the
Web site of the Senate: www.senat.ro

References:

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
Now in Romania the main opposition party, the Social Democratic Party (PSD-Partidul Social Democrat) has a considerable influence on the legislation process."

-Ioana Lupea, columnist, Evenimentul Zilei (Romanian daily newspaper), on-line interview, Aug. 14, 2007: opposition parties, especially PSD, can successfully introduce legislation

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Permanent Electoral Authority is, according to the Law on Autonomous Administrative Institutions, Art. 27, acting as a legal entity of general competence, that makes sure the provisions of the law on the organization and holding of elections or other national or local consultations are implemented consistently, between two election intervals. The president and vice-presidents of the Permanent Electoral Authority are members of the Central Electoral Bureau, that has attributions during the electoral period. The Central Electoral Bureau is formed of seven judges of the Supreme Court of Justice and 16 representatives of the parties, political formations and political coalitions, participating in the poll.

References:

In Romania there are the Permanent Electoral Authority (Autoritatea Electoral Central) and the Electoral Bureau (BEC-Biroul Electoral Central)

Law 373/2004 on the Election to the Chamber of Deputies and the Senate

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

50

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The law stipulates rules concerning the leadership of the Permanent Election Authority. The president has the status of a minister and is helped by two vice-presidents. The terms in office of the president and vice-presidents of the Permanent Election Authority are eight years each and may cease, according to the law, even before expiration. The Permanent Election Authority is an autonomous administrative institution, but the appointments are supported by the government parties.

References:

Law No. 373/2004 on the Elections for the Chamber of Deputies and Senate, art. 31 (3)

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Oftentimes appointments are made on political considerations. For example, in the last elections in 2004, there were many critics about the non-independent members of the Central Electoral Bureau. The bureau was filled with non-independent judges from the Supreme Court, almost all of them promoted there by the party in power in the 2001-2004 period, the Social Democrat Party (PSD).

References:

-Pro Democratia Report:

Pushing the Limits of Democracy. The Romanian Election in October-December 2004", 2005, p.57

"The text of law which refers to the Permanent Electoral Authority (PEA) should be modified so that PEA could really become an independent and credible institution, lead by persons who cannot be suspected by political biases. Modifying these texts should ultimately lead to changing the actual leadership, especially the president of the institution (who, at the moment of his appointing to this position was a PSD deputy, at his fourth mandate). At the same time, the law should stipulate that the president of PEA become president of the Central Electoral Bureau only at the moment of its set-up, before the elections, as no other persons are capable of presenting experience and competence, superior to those of the PEA president."

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:

in the last elections (2004) the president of the Permanent Electoral Authority was very involved politically

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is a continuous war in the Permanent Electoral Authority between the president and the two vice presidents. This conflict is four years old and the situation is not yet clear.

References:

– Remus Radu,

Jandarmul electoral rateaza alegerile europene",

Cotidianul (daily national newspaper), Jan. 30, 2007,

<http://www.cotidianul.ro/index.php?id=43&art=23849&cHash=9aff2f1ea3>

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
the Permanent Electoral Authority has a full-time staff, but very liked to the political field

-Andreea Pora, coordinating editor, Romania libera (national daily newspaper), phone interview, Aug. 15, 2007:
this agency has a full-time staff, but not very professional and quite politicized

– The staff of the Permanent Electoral Authority is headed by a secretary general and is organized and functions according to the regulations approved by the government;
See the Web site of the Permanent Electoral Authority: www.roaep.ro

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

– Remus Radu,
Jandarmul electoral rateaza alegerile europene",
Cotidianul (daily national newspaper), Jan. 30, 2007,
<http://www.cotidianul.ro/index.php?id=43&art=23849&cHash=9aff2f1ea3>

-Andreea Pora, coordinating editor, Romania libera (national daily newspaper), phone interview, Aug. 15, 2007:
the last reports have been released with delay because the president is a former senator of the Social Democrat Party (PSD) and the two vice presidents were not from the opposite political side; the conflict was acute and delayed the proper organization of the institution.

–Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
the Permanent Electoral Authority should, according to the Law, submit to Parliament a report on the organization and progress of the elections (or of the referendum) including information on participation in the ballot, process of voting, irregularities recorded during voting (including legislative ones) and the results of the elections; this report is made public as a White Book; yearly, the Permanent Electoral Authority submits a report on its activity to Parliament, but in the last two years its activity was blocked by different interests of the top of the agency.

-The last report of the Permanent Electoral Authority is available at:
<http://www.roaep.ro/indexro.html>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Permanent Electoral Authority does not effectively penalize offenders.

References:

-Elena Iorga, program coordinator, Public Policy Institute, phone interview, Aug. 16, 2007:
the Permanent Electoral Authority is unwilling to take on political powerful offenders and is not able to enforce the law;

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007:
the Permanent Electoral Authority does not effectively penalize offenders

-The vice president of the Permanent Electoral Authority, Ionel Flesariu, declared in an interview for MixFM, on Feb. 26, 2006, that the Permanent Electoral Authority has been limping from the beginning." He suggested that this agency is not able to implement the law:

http://biz.hotnews.ro/articol_15936-Autoritatea-Electorală-Permanenta-schioapata-inca-de-la-infiintare.htm

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

83

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote, but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting, or registration lists may at times be inaccessible.

References:

Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
in Romania there is a transparent system of voter registration that provides voters with sufficient time to understand their rights

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007:
The Permanent Electoral Authority, an autonomous entity with the mandate to monitor and control the elaboration and the actualization of voter lists, is not working in practice. The real number of total voters in Romania is unknown: the Ministry of Internal Affairs and the National Statistics Institute have different registrations and the exact number of Romanians working abroad (legally or illegally) is not known. The Romanian authorities did nothing to implement a unique system to identify the voters (IDs, election cards, passports, travel cards) and the system of additional lists produced confusion and suspicions of fraud in the 2004 general elections. The election regulations have been changed in the proximity of the elections."

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Art. 113 of Law No. 373/2004 on the Elections for the Chamber of Deputies and Senate provisions that the electoral results can be contested through the judicial system.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Although the Law on Election for the Chamber of Deputies and the Senate stipulates that electoral results can be contested in court, according to the same law no institution is empowered or compelled to investigate electoral fraud, which must be proven fully by the claimants.

References:

-Andrea Pora, coordinating editor, Romania libera, phone interview, Aug. 14, 2007:
There were allegations of 'double voting' by the Social Democrat Party (PSD) in the presidential elections of 2004", but nothing happened

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
although the election law stipulates that the electoral results can be contested in court, according to the same law no institution is empowered or compelled to investigate electoral fraud, which must be proven fully by the claimants; additionally, no institution has the power to declare elections invalid, except county by county.

-Association Pro Democratia, report regarding the last elections (2004),
"Pushing the Limits of Democracy – 2004 Romanian Elections (2005);"
<http://www.apd.ro/files/publicatii/General%20Elections%202004%20-%20APD%20Report.pdf>

-See for details:
<http://www.scj.ro/SCA%20rezumate%202004/SCA%20r%205559%202004.htm>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

There is no proof, but some columnists suggested that intelligence services could give unofficial support to some candidates in every elections.

References:

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: the security forces may be known to unofficially support or oppose particular candidates or parties. There is no evidence that these forces are not neutral during elections."

-Ioana Lupea, columnist, Evenimentul Zilei (Romanian daily newspaper), phone interview, July 25, 2007: military officers and security forces refrain from supporting or opposing political candidates or commenting on elections. She remarked that former security officers have "interesting" information about some politicians and their old connections with Securitate (the former political police in the Ceausescu era).

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

In law, domestic and international election observers are allowed to monitor elections.

References:

Law No. 373/2004 on Elections for the Chamber of Deputies and Senate, Art. 75

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

The government does not interfere with the observers' activities.

References:

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007: election observers are able to effectively monitor elections

– OSCE report
Romania Parliamentary and Presidential Elections”
Nov. 28 and Dec. 12, 2004, OSCE/ODHR (Office for Democratic Institutions and Human Rights) Assessment Mission Report,
published: Feb. 14, 2005; http://www.osce.org/documents/odhr/2005/02/4281_en.pdf

-Pro Democratia Association (Asociatia Pro Democratia – APD) mentions in its report on the 2004 elections (the last general elections held in Romania) that the number of observers that supported APD actions to observe the election process was 330.

“CENTRUL acces-Zalu”, Asociatia “Dunrea” Mehedinti, “liga Pro Europa Targu Mures”, “Tirgoviste spre Europa”, “Centrul Regional de Initiative pentru Cetateni PROCIVIC”.

See “Pushing the Limits of Democracy- Report of the Romanian Elections in October-December 2004”, published by Asociatia Pro Democratia, 2007, p.3

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

78 II-3. Political Financing

20. Are there regulations governing political financing?

100

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

Individual and company contributions are acceptable only under certain limits.

References:

Law on Financing Political Parties and Electoral Campaigns 334/ July 17, 2006

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

The individual donations to parties by a single source are restricted to 200 national minimum wages per year (1 n.m.w = 110 euros = US\$161 per month). Donations from companies are restricted to 500 minimum wages per year.

References:

Art 5 of the Law on Financing Political Parties and Electoral Campaigns 334/ July 17, 2006

http://www.cdep.ro/proiecte/2006/500/70/7/leg_pl577_06.pdf

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

Corporate donations are restricted to 200 national minimum wages per year (1 n.m.w = 110 euros =US\$161 per month).

References:

Art 5, Aliniata 3;4;5 of the Law on Financing Political Parties and Electoral Campaigns 334/ July 17, 2006

http://www.cdep.ro/proiecte/2006/500/70/7/leg_pl577_06.pdf

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

Art 33, Al.1 of the Law on Financing Political Parties and Electoral Campaigns 334/ July 17, 2006: every party can spending 25,000 national minimum wages (1 n.m.w = 110 euros =US\$161)

http://www.cdep.ro/proiecte/2006/500/70/7/leg_pl577_06.pdf

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

The law requires the parties and candidates to disclose their donations.

References:

Arts. 32; 38 of the Law on Financing Political Parties and Electoral Campaigns 334/ July 17, 2006
http://www.cdep.ro/proiecte/2006/500/70/7/leg_pl577_06.pdf

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

The Permanent Electoral Authority and the Court of Accounts are the public authorities that control party and candidate financing.

References:

Arts. 35-40 of the Law on Financing Political Parties and Electoral Campaigns 334/ July 17, 2006
http://www.cdep.ro/proiecte/2006/500/70/7/leg_pl577_06.pdf

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

The agencies are the Court of Accounts and the Permanent Electoral Authority.

References:

Art. 35, Aliniates 1 and 2 of the Law on Financing Political Parties and Electoral Campaigns 334/ July 17, 2006
http://www.cdep.ro/proiecte/2006/500/70/7/leg_pl577_06.pdf

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

46

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

Art. 21 of the Law 43/2003 provisions that each candidate for Parliament can spend 150 national minimum wages and every party can spend 25,000 national minimum wages.

References:

Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007:
Limits are reasonably low in the context of the total costs of running a campaign."

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

The limit established by law is not enough in the context of the total costs of running a campaign and the possibilities of individual donations. Art 21 of the Law 43/2003 provisions that each candidate for Parliament can spend 150 national minimum wages, every party can spend 25,000 national minimum wages (in Romania the minimum wage is US\$161, according to www.insse.ro, the site of the National Institute of Statistics). See also the reports of ProDemocratia", an organization specialized in election problems: www.apd.ro

References:

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007
The limits are too low and that a candidate or party needs more money for a normal campaign. This is one of the causes of irregularities."

-Andreea Pora, coordinating editor, Romania libera, (national daily newspaper), phone interview, Aug. 15, 2006:
"There are exceptions and loopholes through which companies can indirectly support candidates or political parties above and beyond those formal limitations."

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Existing limits were exceeded during the last elections campaign. Big donors find ways to break the law, especially through foundations and NGOs.

References:

Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007:
No party's expenditure was audited after the approval of the new law that settles the political financing, because the Permanent Electoral Authority is not working, in practice. The Authority only published the official data received from the political parties regarding the expenditure for the 2007 referendum for the suspension of president Traian Basescu. The Romanian Court of Auditors reported that in the 2004 general elections almost all political parties broke the law by receiving contributions from commercial companies with debts and donations above legal limits. Also, the expenditures were bigger than official earnings. The report was disputed by political parties and no sanctions were applied against the offenders."

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
"The limits are too low, and a candidate or party needs more money for a normal campaign."

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

After elections, the Court of Accounts (Curtea de Conturi) initiated controls of the administration and use of financial resources of parties and candidates.

See the Web site of the Court of Accounts:
www.rcc.ro/rcceng/raf.htm

References:

Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007
The Romanian Court of Auditors has investigated the political financing for the 2004 general elections."

-Elena Iorga, program coordinator, Public Policy Institute, phone interview, Aug. 16, 2007:
the Permanent Electoral Authority has responsibility to monitor this situation, according to the new law, but does not have the mechanism to implement the law

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

When parties do not respect the Law on Financing Political Parties and Electoral Campaigns 43/2003, the Court of Accounts can impose penalties, according to the Law regarding the Court of Accounts, 77/2002, Art . 55, but the Court of Accounts is ineffective in investigating and imposing penalties for violations uncovered by media and watchdog NGOs.

References:

Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007:
No penalties were imposed, until now, on offenders.”

-Elena Iorga, program coordinator, Public Policy Institute, phone interview, Aug. 16, 2007:
The agency has not penalized offenders till now.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

Political party and candidate finances are audited, but audits are limited in some way, i.e. using inadequate auditing standards.

References:

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007:
In practice, only the contributions for the 2004 general elections were audited by the Romanian Court of Auditors.”

-Elena Iorga, program coordinator, Public Policy Institute, phone interview, Aug. 16, 2007:
Political party and candidate finances are regularly audited, but this mechanism is only a formal one because the Court of Accounts is auditing only the lists with donations that are submitted by political parties. The real figures are never known and impossible to check under the current law.

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

42

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007:
Political parties disclose data relating to financial support and expenditures, names and figures on annual basis

-Elena Iorga, program coordinator, Public Policy Institute, phone interview, Aug. 16, 2007:
There are exceptions, but, in general, political parties don't publish their sources of funding or expenditures."

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007:
In practice, citizens have no direct access to the financial records of political parties and candidates, only to the public reports of the authorities on this matter."

-Elena Iorga, program coordinator, Public Policy Institute, phone interview, Aug. 16, 2007:
Citizens can access information with delay, from the Official Gazette

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), on-line interview, Aug. 14, 2007:
For direct access to the financial records and the names of individual and corporate donors, citizens must have a paid subscription to the state publication "Monitorul Oficial" for 300 euros (US\$440) annually. Usually media pay this subscription and sometimes relevant data is published."

-Elena Iorga, program coordinator, Public Policy Institute, phone interview, Aug. 16, 2007:
Citizens can access information with delay, from the Official Gazette

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

Citizens can sue the government for infringement of their civil rights.

References:

Art. 52, (1) of the constitution: Any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by the failure of a public authority to solve his/her application within the lawful time limit, is entitled to the acknowledgement of his/her claimed right or legitimate interest, the annulment of the act and reparation for the damage.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

69

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The prime minister has often given reasons for his policy decisions, especially in Parliament or in press conferences.

References:

– Carmen Vintila, Oana Stancu, Aniela Nine, Tariceanu Returns in Parliament”,

Jurnalul national (Romanian national daily newspaper) July 21, 2006, http://www.eafacere.ro/art_item.asp?artCatID=3&artID=1133; (Calin Popescu Tariceanu is Romanian prime minister from 2004)

-Calin Popescu Tariceanu,

“Discourse in front of Parliament Regarding Censorship Motion”, June 11, 2007, <http://www.gov.ro/presa/afis-doc.php?idpresa=55149&idrubricapresa=2&idrubricaprimm=&idtema=&tip=2&pag=1&dr=>

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:

The prime minister regularly takes critical questions in Parliament or in press conferences

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The judiciary cannot review policy decisions. It can, however, review any act of the executive that is under the control of the legitimacy of the Constitutional Court (Curtea Constitutionala). The Constitutional Court is the only judicial organ that can exercise a limited review over governmental legislative actions. The president of Romania, one of the presidents of the two Chambers, the government, the High Court of Cassation and Justice, the Advocate of the People, may request the Constitutional Court to undertake an anticipatory review of the constitutionality of any provision of governmental decrees.

References:

-Art. 147 of the Romania Constitution, Decisions of Constitutional Court, ARTICLE 147

(1) The provisions of the laws and ordinances in force, as well as those of the regulations, which are found to be unconstitutional, shall cease their legal effects within 45 days of the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government, as the case may be, cannot bring into line the unconstitutional provisions with the provisions of the Constitution. For this limited length of time the provisions found to be unconstitutional shall be suspended de jure.

(2) In cases of unconstitutionality of laws, before the promulgation thereof, the Parliament is bound to reconsider those provisions, in order to bring them into line with the decision of the Constitutional Court.

(3) If the constitutionality of a treaty or international agreement has been found according to article 146 b), such a document cannot be the subject of an objection of unconstitutionality. The treaty or international agreement found to be unconstitutional shall not be ratified.

(4) Decisions of the Constitutional Court shall be published in the Official Gazette of Romania. As from their publication, decisions shall be generally binding and effective only for the future.

-Arts. 146, 147 of the constitution,
Art. 1 of the Law 554/2004 regarding of administrative litigation;
Art. 11 of the Law regarding on Constitutional Court, no 47/1992 with changes introduced by Law 138/1997, Law 124/2000, Law 232/2004;

The results of these actions are published on the Web sites of the Constitutional Court: www.ccr.ro

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

Actions of the executive can be brought before administrative judges and the Constitutional Court. When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. Sometimes, however, it is possible that the Constitutional Court is partisan.

References:

-Antonie Iorgovan Summons Tariceanu", Adevarul (Romanian national daily newspaper), Jan. 7, 2006; http://www.hotnews.ro/articol_40070-Antonie-Iorgovan-il-cheama-in-judecata-pe-Tariceanu.htm; (Antonie Iorgovan is a Romanian senator of the Social Democratic Party, the main opposition party)

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
The government lost many lawsuits in favor of civil servants who had been illegally dismissed

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

-Every year the government gives over 200 emergency ordinances
-Open Society Foundation, Center for Legal Resources, Resource Centre for Legal Communities, BRIEF ASSESSMENT ON ROMANIAS COMPLIANCE WITH SOME CRITICAL EU REQUIREMENTS, Accomplishments and Weaknesses" noted that "It is undeniable that the current government abused of the constitutional possibility of ruling through emergency ordinances as much as its predecessors did. Moreover in a few occasions the possibility of assuming the responsibility was used in order to pass laws (in fact packages of laws) in a very speedy procedure. The perpetual reason has been the compelling need of speeding up to the maximum all necessary steps for Romanias access into the EU. Although it is beyond doubt that there is some truth attached to this explanation, unfortunately, the results have not always been positive. Apart from the fact that these kind of procedures continued to weaken the role of the Parliament, some very important ordinances have been rejected by the Parliament in crucial situations, thus undermining the governmental initiative as well."

References:

-Cristina Guseth, executive director, Freedom House Romania, interview on Aug. 2, 2007:
The government abuses of emergency ordinances

-Open Society Foundation, Center for Legal Resources, Resource Centre for Legal Communities, BRIEF ASSESSMENT ON ROMANIAS COMPLIANCE WITH SOME CRITICAL EU REQUIREMENTS, Accomplishments and Weaknesses", April 2006, p.2

-Doroteea Voicu,
"Guvernul Tariceanu se bate cu propriul record din 2005 la ordonante",
Gandul, July 23, 2007
<http://www.9am.ro/stiri-revista-presei/P/67863/Guvernul-Tariceanu-se-bate-cu-propriul-record-din-2005-la-ordonante>

-Stenogram of the Chamber of Deputies, March 6, 2006 <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6053&idm=1,11&idl=1>

-"PNL-PD Conflict on the Excess of the Emergency Ordinances",
Ziarul financiar, March 7,
2006, http://www.zf.ro/articol_80144/contre_pnl_pd_pe_tema_excesului_de_ordonante_de_urgenta.html

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

50

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

With the exception of the charge of high treason or attack against the constitution, the law protects the head of state from prosecution while he/she is in power.

References:

Article 95 (1) of the constitution: In case of having committed grave acts infringing upon constitutional provisions, the President of Romania may be suspended from office by the Chamber of Deputies and the Senate, in joint sitting, by a majority vote of Deputies and Senators, and after consultation with the Constitutional Court. The President may explain before Parliament with regard to imputations brought against him; Article 96 of the Constitution: The Chamber of Deputies and the Senate may decide the impeachment of the President of Romania for high treason, in a joint session, based on the votes of at least two thirds of the number of deputies and senators.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Art. 109 (2) of the constitution: Only the Chamber of Deputies, the Senate and the President of Romania have the right to demand legal proceedings to be taken against members of the government for acts committed in the exercise of their office. If such legal proceedings have been requested, the president of Romania may decree that they be suspended from office. Institution of proceedings against a member of the government entails his suspension from office. The case shall be within the competence of the High Court of Cassation and Justice

Law no. 90/2005 amending and completing Law no. 115/1999 regarding ministerial accountability has repealed the immunity granted to former ministers and has increases the degree of taking responsibility for the facts and acts carried about while in their mandate.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

53

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

In law, the head of state is required to file an asset disclosure form. The president of the Republic has to present an asset declaration to the Constitutional Court.

References:

– The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations and interest conflicts,
-Law 115/1996 regarding the wealth declarations, Art.2 and Art. 4
-Art. 2 and Art. 4 of Law 161/2003 for changing Law 115/1996 regarding wealth declarations; <http://www.cancelarie.ro/doc/Lege%20161%20din%202003.pdf>

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Members of the government have to publish on the government Web site asset declarations on annual basis. Ministers have to present asset declarations to the office of the prime minister.

References:

– The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations and interest conflicts,
-Law 115/1996 regarding the wealth declarations, Art.2 and Art. 4
-Art. 2 and Art. 4 of Law 161/2003 for changing Law 115/1996 regarding wealth declarations; <http://www.cancelarie.ro/doc/Lege%20161%20din%202003.pdf>

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

-Anexe I, Cap. VI of Law 115/1996 with changes made in the last years,

-The Government Emergency Ordinance no. 14/2005 regarding the wealth declarations; <http://www.publicinfo.ro/pagini/lege-nr-115-din-16-octombrie-1996.php>

According to these laws, Romanian dignitaries can receive gifts of maximum 300 euros (US\$440).

-The Government Emergency Ordinance no. 31/2006

-Law no. 161/2003

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

The National Integrity Agency has not yet begun functioning.

References:

– Arts. 1;2;9; 39 of Law 144/2007 regarding the National Integrity Agency changed with Government Emergency Ordinance 368/ May 30, 2007

http://www.cdep.ro/pls/legis/legis_pck.htm_act?nr=144&an=2007

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

There are no restrictions on heads of state and government and ministers entering the private sector after leaving office.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

Ioana Lupea , columnist, Evenimentul Zilei (national Romanian newspaper), on-line interview, Aug. 14, 2007, and Cristina Guseth, executive director, Freedom House Romania, interview, Aug. 2, 2007, confirmed that in Romania there are no restrictions on heads of state and government and ministers entering the private sector after leaving the government.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

-Ioana Lupea , columnist, Evenimentul Zilei (national Romanian newspaper), on-line interview, Aug. 14, 2007, "The National Agency for Integrity was set up recently. The members of the executive branch will be forced by law to declare the gifts they receive, but at this moment the Agency is not functioning."

Cristina Guseth, executive director, Freedom House Romania, interview, Aug. 2, 2007: "Governing gifts are routinely ignored."

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is law 144/2007 regarding the National Integrity Agency. This Agency will oversee the auditing of asset declarations of public servants, but for the moment it does not operate.

The law regarding the National Integrity Agency (approved by Parliament in June 2007) was criticized for lacking the main features that would ensure an efficient control of the declarations of assets and interests of public officials. The media have also treated the matter with circumspection and the same reserved reaction came from the European Commission, which, after commending Romania for the adoption of the law, announced that it will analyze it in detail before issuing a final evaluation.

References:

-Ioana Lupea , columnist, Evenimentul Zilei (national Romanian newspaper), on-line interview, Aug. 14, 2007: "The executive branch asset disclosures are audited by the Romanian Court of Auditors."

Cristina Guseth, executive director, Freedom House Romania, interview, Aug. 2, 2007: "In law there is the National Integrity Agency, but it's not functioning yet, and the law is very limited."

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

100

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

Records are available and published in the Official Gazette of Romania (Monitorul Oficial). Asset disclosure records are now available on the official electronic sites of the presidency and government, according to the Ioana Lupea, columnist for Evenimentul Zilei (national daily newspaper) and Cristina Guseth, executive director at Freedom House Romania.

-For all members of government, including the prime minister, see: <http://www.gov.ro/declavere/afis-index-decl-ai.php>

-For the president and his staff see: http://www.presidency.ro/?_RID=avere

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Ioana Lupea , columnist, Evenimentul Zilei (national Romanian newspaper), on-line interview, Aug. 14, 2007, and
Cristina Guseth, executive director, Freedom House Romania, interview, Aug. 2, 2007, confirmed that records are available on-line.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

-Ioana Lupea , columnist, Evenimentul Zilei (national Romanian newspaper), on-line interview, Aug. 14, 2007, and
Cristina Guseth, executive director, Freedom House Romania, interview, Aug. 2, 2007, confirmed that records are free to all citizens.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

50

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

References:

-Ioana Lupea , columnist, Evenimentul Zilei (national Romanian newspaper), on-line interview, Aug. 14, 2007: Some governmental decisions, such as postponing the European elections, were made at the meetings of the ruling political party and were imposed on the members of government by the liberal Prime Minister Calin Popescu Tariceanu. Sometimes the prime minister organized, in the government building, press conferences touching partly on issues such as the referendum for the suspension of President Traian Basescu."

-Cristina Guseth, executive director, Freedom House Romania, interview, Aug. 2, 2007: There are clear rules, but there are also some exceptions.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

83

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The judiciary can review only actions dealing with control of legitimacy, not those dealing with content of the legislature's actions. The Constitutional Court can adjudicate on the constitutionality of laws, before the promulgation thereof, upon notification by the President of Romania, one of the presidents of the two chambers, the government, the High Court of Cassation and Justice, the Advocate of the People, at least 50 deputies or at least 25 senators, as well as ex officio, on initiatives to revise the Constitution.

References:

Art. 146, (a) of the Constitution; Art. 11 of the Law regarding the Constitutional Court, no. 47/1992 with changes introduced by Law 138/1997, Law 124/2000, Law 232/2004

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

Comments:

When there is a claim of legitimacy, the Constitutional Court has the duty to act; Arts. 146 and 147 of the Constitution; the decisions of the Constitutional Court can be seen at <http://www.ccr.ro>.

References:

-Cristina Guseth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the Constitutional Court can review laws passed, but that this court is sometimes under political influence.

-Iosif Klein, general editor of Romania libera (the national Romanian daily newspaper), in a face-to-face interview on Aug. 8, 2007, said: The judiciary does review the acts of government, when those acts infringe upon the rights of businesses. Also, the constitutionality of some laws can come under scrutiny by the Constitutional Court, but there is (almost) always a lingering doubt: Whose interests are being defended those of the general public or those of certain people in power? I suspect that most of the time it's the latter".

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Members of the legislature can be prosecuted under criminal law, but they cannot be searched, detained or arrested without the consent of the chamber they belong to, after being heard. They cannot be held responsible for the exercise of their functions.

References:

Art. 72, Parliamentary immunity, of Romanian Constitution:

(1) No Deputy or Senator shall be held judicially accountable for the votes cast or the political opinions expressed while exercising their office.

"(2) The Deputies and Senators may be subject to criminal investigation, or criminally prosecuted, for acts that are not connected with their votes or their political opinions expressed in the exercise of their office, but shall not be searched, detained or arrested without the consent of the Chamber they belong to, after being heard. The investigation and prosecution shall only be carried out by the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The High Court of Cassation and Justice shall have jurisdiction over this case.

"(3) If caught in the act, Deputies or Senators may be detained and searched. The Minister of Justice shall inform without delay the president of the Chamber in question on the detention and search. If, after being notified, the Chamber in question finds there are no grounds for the detainment, it shall order the annulment of such a measure at once."

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

46

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

Deputies and senators have to publish on the Deputy Chamber and Senate electronic sites the patrimonial declaration of wealth, yearly. Members of Parliament have to present a patrimonial declaration to the office of the president chamber 15 days after elections.

References:

Government Emergency Ordinance No. 14/2005 regarding wealth declarations, Law 115/1996, Art. 4

Art. 113 of Law 161/2003 for change Law 115/1996 regarding the wealth declaration; <http://www.cancelarie.ro/doc/Lege%20161%20din%202003.pdf>

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

There are no laws to restrict national legislators from entering the private sector after leaving the government, according to Cristina Guseth, executive director, Freedom House Romania (face-to-face interview, Aug. 2, 2007), and Gelu Trandafir, member of the Audio-Visual National Council (telephone interview, July 27, 2007).

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Capitole VI of Annex of Reference: Government Emergency Ordinance no. 14/2005 regarding the wealth declarations, Law 115/1996. According to this law, Romanian dignitaries can receive gifts worth a maximum of 300 euros.

<http://www.publicinfo.ro/pagini/lege-nr-115-din-16-octombrie-1996.php>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

There are the law regarding organization, National Integrity Agency: Law no. 144/2007 and Emergency Ordinance 49/2007 regarding changes to Law 144/2007 regarding to National Integrity Agency, Art. 39

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling-off periods are nonexistent.

References:

Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), said in an online interview on Aug. 14, 2007, and Cristina Guseth, executive director, Freedom House Romania, agreed, that in Romania, there are no regulations restricting postgovernment private-sector employment for national legislators.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced.

References:

-Cristina Guseth, executive director, Freedom House Romania, explained in a face-to-face on Aug. 2, 2007, that generally, the regulations governing gifts are unenforced.

-Andreea Pora, coordinating editor, Romania libera, (national daily newspaper), in a telephone interview on Aug. 14, 2007, pointed out that there is a mechanism to monitor these regulations.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Integrity National Agency: The agency that must do the auditing is not yet functioning.

References:

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), pointed out in an online interview on Aug. 14, 2007: "The legislative branch asset disclosures are audited by the Romanian Court of Auditors."

-Cristina Guseth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that law regarding the Integrity National Agency, which will audit parliamentary assets, are not yet functioning, and they have more limits.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

100

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

Deputies and Senators have to publish annually the patrimonial declaration of wealth on the Deputy Chamber and Senate electronic sites. Members of Parliament have to present a patrimonial declaration to the office of the president chamber, 15 days after elections.

References:

Government Emergency Ordinance no. 14/2005 regarding wealth declarations, Law 115/1996, Art. 4

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are available online.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the access is immediate."

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), pointed out in an online interview on Aug, 14, 2007, that records are available online.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free to all citizens.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that records are free and online."

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), pointed out in an online interview on Aug, 14, 2007, that records are free for all citizens.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

92

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Records are available in the Official Gazette, Monitorul Oficial, and on the sites of the Deputy Chamber and Senate, <http://www.cdep.ro>; www.senat.ro.

References:

Government Emergency Ordinance No. 14/2005 regarding the wealth declarations, Law 115/1996

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Generally, the records are available online, but delays sometimes occur.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the access is immediately online, but some records are protected by classification law."

-Iloana Lupea, columnist, Evenimentul Zilei (national daily newspaper), pointed out in an online interview on Aug. 14, 2007: "The citizens can access records of legislative processes online".

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free to all citizens.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the access is free and online."

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), pointed out in an online interview on Aug, 14, 2007, that records are free and generally online.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

80
III-3. Judicial Accountability

33. Are judges appointed fairly?

83

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

The Constitution provisions that the appointed proposals, as well as the promotion, transfer of and sanctions against judges, shall only be within the competence of the Superior Council of Magistracy, under the terms of its organic law. Judges appointed by President of Romania shall be irremovable, according the law.

References:

Art. 125 of the Constitution; Law No. 317/2004 of Superior Council of Magistracy; Law No. 247/2005 regarding justice reforms; Law No. 303/2004 of magistrate status; Law No. 304/2004 regarding judiciary organization

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

Comments:

Competition is based on individual curriculum and merit. In Romania, with the exception of trainee judges, the appointment is made by the President of Romania, upon the proposal of the Superior Council of the Magistracy. Promotion, transfer and sanctioning of judges appointed according to the aforementioned procedure may be solely performed by the Superior Council of the Magistracy.

Arts. 124 and 125 of the Constitution, Arts. 12-20 of Law No. 303/2004 regarding Magistrates Statute with changes introduced by Law No. 247/2005, and Art. 36 of Law No. 317/2004 regarding Superior Council of Magistracy. But many judges are complaining that the competition exams have become exceedingly difficult for leadership positions. Media reports showed that the level of judicial decision-making is poor.

References:

-EU Commission Monitoring Report, Sept. 26, Brussels, p. 36, http://www.infoeuropa.ro/ieweb/imgupload/Monitoring_report_-_September_2006_EN_final.pdf.

-Public statement of the Initiative for a Clean Justice," made by six nongovernmental organizations (The Advocacy Academy, Freedom House Romania, The Group for Social Dialogue (GDS), The Romanian Academic Society (SAR), Timioara Society, The Association Society for Justice Sojust, published June 7, noted that: "The Superior Council of the Magistracy (SCM), which took over in 2004 the competences regarding the judges and prosecutors' career, including the filling in of vacant positions, the promotions and the procedures for leaving the judiciary, does not exercise these tasks based on a human resources policy or a medium/long term strategy"; <http://www.sar.org.ro/index.php?page=articol&id=203>.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

Appointment to the High Court of Cassation and Justice is by means of a competition, based on curricula, and is open to members of the judiciary, public prosecutors and other jurists of merit, as determined by law. The Superior Council of Magistracy is the body entrusted to appoint, allocate, transfer and promote judges. The Superior Council of Magistracy is a collegial body, independent of the public authorities, and its main duties are related to compliance with the status of the magistrates (i.e. the judges and the public prosecutors) and the disciplinary control of the judges' activity.

The president and vice president of the High Court of Cassation and Justice are appointed by President of Romania upon the proposal of the Superior Council of Magistracy.

References:

Arts. 52, 53 of Law No. 303/2004 regarding Magistrates Statute with changes introduced by the Law on Judges and Prosecutors No. 247/2005; Art. 37 of Law No. 317/2004 regarding Superior Council of Magistracy

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

The verdict contains a substantiated explanation of the crimes for which the accused had been prosecuted and the findings gathered to arrive to the final judgment, but judges are not obliged to give reasons for their decisions.

References:

Arts. 59 and 60 of Law No. 47/1992 regarding the Constitutional Court, amended by Law 232/2004, published in the Official Gazette (OG) (Part. I, etc); the full constitution as amended was republished in OG No. 643, July 16, 2004.

– Art. 45 of the Regulation on the Administrative Organization and Functioning of the High Court of Cassation and Justice, republished in the OG, Part. I, No. 1076, Nov. 11, 2005

– Arts. 354-360 of the Code of Criminal Procedures

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

See also the Web site of the High Court of Cassation and Justice, www.scj.ro, and the Web site of the Constitutional Court, www.ccr.ro.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007 that all judges comply with these requirements.

-Andreea Pora, coordinating editor, Romania libera, said in a telephone interview on Aug. 16, 2007, that judges are formally required to explain their judgments in detail.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The Superior Council of Magistrates is tasked with disciplining magistrates (including for abuses of power) and overseeing an inspection division that investigates complaints.

References:

-Law No. 317/2004 (r1) regarding Superior Council of Magistracy, republished in the Official Gazette (Monitorul Oficial), Part I, No. 827, Sept. 13, 2005

-Law N.303/2004 of magistrate status

-Law No. 304/2004 regarding judiciary organization

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

-Art. 1 of Law No. 317/2004 (r1) regarding Superior Council of Magistracy, republished in Official Gazette (Monitorul Oficial), Part I, No. 827, Sept. 13, 2005

-Art. 124 and 133 of Constitution

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

-Public statement of the Initiative for a Clean Justice" made by six nongovernmental organizations (The Advocacy Academy, Freedom House Romania, The Group for Social Dialogue (GDS), The Romanian Academic Society (SAR), Timioara Society, The Association Society for Justice , Sojust) found out that: "(The) Superior Council of Magistrate (SCM) only took measures in the field, which do not directly affect the position or statute of SCM members, such as: unification of jurisprudence and filling in vacant positions (see A1). In spite of the benchmarks imposed by the framework of European Union accession, SCM continues to be an institution, accountable to no one, that makes fundamental decisions in a nontransparent and unjustified manner and whose standards do not guarantee impartiality in the decision-making process. Moreover, regional representation of SCM inspectors is still limited, considering that 26 out of the 37 inspectors have been recruited from Bucharest courts and prosecutors offices. <http://www.sar.org.ro/index.php?page=articol&id=203>

-Transparency International, "National Corruption Report 2007 (April 2006-April 2007), p. 25, noted that:

"Beyond the elements of perception, there are concrete problems connected to the performance of the institution. We would draw attention to the fact that the Judiciary Inspection activity of the CSM remains modest. In the course of 2006, 3,700 inspection projects were recorded, the majority of which were the result of complaints petitioning for inspection. Out of these, only 59 were officially disposed of concerning the aspects noted in the mass-media, 27 of these being from the inspection service for judges and 32 from the inspection service for prosecutors. It is also important to note that the majority of complaints are rejected by the judiciary

inspection service and not by the corresponding disciplinary commissions, contrary to the legal regulations which grant the capacity to reject cases strictly to the commission"

<http://209.85.129.104/search?>

[q=cache:eHQe5pJA_RgJ:www.transparency.org/ro/politici_si_studii/studii/national_coruptie/2007/NCR_2007_FINAL_site_eng.pdf+court+of+audit+roman](http://www.transparency.org/ro/politici_si_studii/studii/national_coruptie/2007/NCR_2007_FINAL_site_eng.pdf+court+of+audit+roman)

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

The Superior Council of Magistrate (SCM) is inefficient, partially because:

- of the lack of permanent activity of some of its members,
- some decisions are contrary to the law,
- of the undermining of the autonomy of the courts due to excessive centralization by the SCM's decisions regarding the courts' organization and functioning,
- communication deficiencies between the SCM and magistrates,
- excessive bureaucracy,
- the perpetuation of mistakes and inadvertence by internal management.

References:

-Public statement of the Initiative for a Clean Justice" made by six nongovernmental organizations (The Advocacy Academy, Freedom House Romania, The Group for Social Dialogue (GDS), The Romanian Academic Society (SAR), Timioara Society, The Association Society for Justice , Sojust); <http://www.sar.org.ro/index.php?page=articol&id=203>

-European Union Commission Monitoring Report, Sept. 26, Brussels, p.

36, http://www.infoeuropa.ro/ieweb/imgupload/Monitoring_report_-_September_2006_EN_final.pdf

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

50

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

-Arts. 93 and 99 (a) of Law No. 303/2004 of magistrate status, republished on March 21, 2006

-Cap. VI, Art. 11 of Law No. 161/2003 to change Law No. 115/1996 regarding the wealth declaration; <http://www.cancelarie.ro/doc/Lege%20161%20din%202003.pdf>

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

According to law, Romanian dignitaries can receive gifts valued at a maximum of 300 euros.

References:

Annex I, Cap. VI of Law No. 115/1996 with changes made in the last years; Government Emergency Ordinance No. 14/2005 regarding the wealth declarations; <http://www.publicinfo.ro/pagini/lege-nr-115-din-16-octombrie-1996.php>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

-Art. 9 (d), Art. 38 (1), Art. 41 (2) of Law No. 144/2007 changed with Government Emergency Ordinance No. 49/2007, published in the Official Gazette, Bo. 368/30, May 2007, about the National Integrity Agency

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

There are no restrictions for national-level judges entering the private sector after leaving the government, according to the

Cristina Gueth, executive director, Freedom House Romania (face-to-face interview on Aug. 2, 2007) and Gelu Trandafir (telephone interview on July 29, 2007).

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

Following government employment, judges routinely take jobs in the private sector that involve direct lobbying or influencing of former government colleagues. Cooling off periods are nonexistent.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007 said: No low no practice."

-Ioana Lupea, columnist, Evenimentul Zilei (national daily newspaper), said in an online interview on Aug, 14, 2007, "There are no restrictions."

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that in these cases involve more corruption than gifts."

-Andreea Pora, coordinating editor, Romania libera, said in a telephone interview on Aug. 14, 2007, that said that the regulations governing gifts are ignored at this time, but there are laws in the Integrity National Agency that could solve part of problem.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

National-level judiciary asset disclosures are not audited yet because the National Integrity Agency is not functioning.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that Law 144/2007 regarding National Integrity Agency is not yet in practice.

-Andreea Pora, coordinating editor, Romania libera, said in a telephone interview on Aug. 14, 2007, that national-level-judiciary asset disclosures are not audited yet, and in the future, audits will be limited by the Integrity National Law.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

100

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Art. 113 (1) (f) of Law No. 161/2003 for change to Law No. 115/1996 regarding the wealth declaration; <http://www.cancelarie.ro/doc/Lege%20161%20din%202003.pdf>

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are available online.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007 that access to judicial-asset disclosure records are online
-Andreea Pora, coordinating editor, Romania libera, said in a telephone interview on Aug. 16, 2007, that the records are available online.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free to all citizens.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007 that access is free online.

-Andreea Pora, coordinating editor, Romania libera, in a telephone interview on Aug. 14, 2007, that said that records are free for all citizens.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

The Chamber of Deputies and the Senate approve, by Constitution, the state budget and the state social security budget; the legislature, almost always, amends the budget.

References:

Art. 65 of Constitution; Art .11 (f) Law No. 90/2001 of the Law of Government

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

-The government and other bodies of public administration are obliged, within the parliamentary control over their activity, to present the information and documents requested by the the Chamber of Deputies, the Senate, or parliamentary committees, through their respective presidents. In general, for significant public expenditures, the government elaborates projects of law that must receive legislative approval.

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that significant expenditures are approved by the legislature, including defense and secret services projects.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that almost all significant government expenditures are approved by the Parliament."

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Legislators benefit from a sufficient and qualified staff, as well as adequate financial and physical resources. Lack of capacity is never a reason legislators cannot carry out their duties effectively.

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that legislators have enough financial and physical resources to monitor budget process and provide changes.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that legislators have sufficient capacity to monitor the budget process.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

50

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that budget debates are public, and records of these proceeding are accessible, but not always immediately.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that budget debates are public, and records of these proceeding are accessible.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, Economic Editor of Newsin (National News Agency) said into telephonic interview, 11 August 2007 that citizens and trade unions can provide input, but this information is not relevant to budget decision

-Cristina Guseth, Executive Director Freedom House Romania, said into face to face interview(2August 2007) that especially unions provide input, but this information is often not relevant to budget decisions

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, Economic Editor of Newsin (National News Agency) said into telephonic interview, 11 August 2007 that journalists and other citizens can access itemized lists of budget allocations but this information may be difficult to access, often incomplete and out of date

-Cristina Guseth, Executive Director Freedom House Romania, said into face to face interview(2August 2007) that the access is not difficult for trade unions or NGO's, but for citizens the access is with delay

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

The jurisdictional duties regarding the manner of forming, management and use of the financial resources of the state and of the private sector are incumbent upon, and exercised by, the Court of Accounts (Curtea de Conturi), in its capacity as an autonomous, central, public authority that carries out its activity near the Parliament of Romania.

References:

Law No. 94/1992; Law No. 77/2002

In Romania, there are two legislative committees overseeing the expenditure of public funds: the Committee of Chamber of Deputies for Budget, Finance and the Banks and the Committee of Senate for Budget, Finance and Bank. The only independent institution that in practice oversees the expenditure of public funds is the Court of Accounts (Curtea de Conturi). The parliamentary committees of Budget, Finance and Banks have responsibilities in the state budget and budgetary execution, the state social-insurance budget and its execution; financial policy taxes and the duties system; monetary balance, monetary

circulation, credits and credit system; interest, discount, stock exchange and commercial papers; external loans of the state or guaranteed by the state; and investments out of budgetary credits.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

44

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that heads of ministry- or cabinet-level agencies submit regular reports of expenses to the the Committee of the Chamber of Deputies for Budget, Finance and Banks, and the Committee of Senate for Budget, Finance and Bank.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that department heads regularly submit reports to the committee.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that the Committee of Chamber of Deputies for Budget, Finance and, Banks, and the Committee of Senate for Budget, Finance and, Bank are comprised of legislators from both the ruling party (or parties) and opposition parties, although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

-Patricia Marinescu, Raportul SRTv a fost avizat negativ de comisiile de buget-finante ale Parlamentului, " May 23, 2007, Gardianu (national daily newspaper): http://www.gardianul.ro/2007/05/23/media_cultura-c20/raportul_srtv_a_fost_avizat_negativ_de_comisiile_de_buget_finante_ale_parlamentului-s95021.html

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The parliamentary committees of Budget, Finance and Banks are composed of representatives of all parliamentary parties: Deputy Chamber (www.cdep.ro/pls/parlam/structura.co?idc=2) and Senate (www.senat.ro/PaginaPrincipala.aspx?tdID=45&divID=3&b=0&adr=%2fpagini%2fProceduri+parlamentare%2fAgenda%2factivitatea).

The committees are known to act in a partisan manner, particularly when the majority party in Parliament presses its interests on such committees.

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that the Committee of Chamber of Deputies for Budget, Finance and Banks and the Committee of Senate for Budget, Finance and Bank are both political.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that this committee is to a high degree political."

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that the Committee of Chamber of Deputies for Budget, Finance and Banks and the Committee of Senate for Budget, Finance and Bank start investigations, but are limited in their effectiveness. These committees have slow act, unwilling to take on politically powerful offenders, or, occasionally, unable to enforce its judgments.

-Andreea Pora, coordinating editor, Romania libera, said in a telephone interview on Aug. 14, 2007, that often, the Committee of Chamber of Deputies for Budget, Finance and Banks and the Committee of Senate starts investigations finish with reports.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁸³Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The Civil Servant Statute (The Civil Servant Code of Conduct) demands that public officials be impartial, neutral and objective while exercising their duties.

References:

Civil Servant Code of Conduct (Law No. 7/2004), Art. 3 (e)

Legea No. 251/ 2006 regarding changes to Law No. 188/1999

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

The Civil Servant Code of Conduct provides special provisions to prevent nepotism, cronyism and patronage within the civil service.

References:

Law No. 7/2004 regarding Civil Servant Code of Conduct, Arts. 4 (e), 16 (2) and 16 (3)

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The Civil Service Law does not provide an independent redress mechanism for the civil service, but Art. 68 of Law No. 188/199 of the Civil Servant Statute (the Civil Service Law), republished in the Official Gazette (Monitorul Oficial), No. 251, March 22, 2004, specified the possibility of judicial redress of administrative acts. On the other hand, the judicial redress of administrative acts and compensation rights are recognized in Art. 52 of the Constitution. Any person who believes that his/her legitimate right or interests were infringed upon by a public authority, by means of an administrative act or by the failure of the public authority to solve his/her application within the lawful time limit, is entitled to the acknowledgment of his/her claimed right or legitimate interest, the annulment of the act, and reparation for the damage.

References:

Art. 52 of Constitution; Law No. 188/1999 of the Civil Servant Statute (the Civil Service Law), Art. 68, republished in the Official Gazette, No. 251, March 22, 2004

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Art. 50 of Law No. 188/1999 of the Civil Servant Statute, republished in the Official Gazette (Monitorul Oficial), No. 251, March 22, 2004

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

47

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Civil Service Code of Conduct demands that public officials be impartial, neutral and objective while exercising their duties, but it also imposes on them an obligation of obedience, loyalty to their superiors and secrecy in regard to certain public affairs. The application of these principles is not very harmonious, and they are difficult to put into practice. The tendency toward professionalism in state structures had been initiated, but numerous arbitrary removals still occur.

References:

-Elena Solomon, "High political civil servants," Romania libera (national Romanian daily newspaper), Aug. 11, 2007, <http://www.romanialibera.ro/a103323/inalti-functionari-politici.html>

-Mirela Luca, "PSD accuses the government of politicizing civil servants," Ziarul financiar (national Romanian daily financial newspaper), Jan. 26 2006, http://www.zf.ro/articol_58062psd_acuza_guvernul_de_politizarea_functionarilor_publici.html

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview, that "civil servants are influenced by political or personal matters, especially, civil servants of the high level."

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The previous government had approved a law introducing public competition to high civil services places, which did not work, because the result of competition followed almost always closely followed the political will of the government.

References:

-Soros Foundation, Center for Legal Resources, Resource Center for Roma Communities, Brief Assessment on Romania's Compliance with some Critical EU Requirements-Accomplishments and Weaknesses," April 2006, pp. 23-24, www.fsd.ro

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007: "Often, appointments and professional criteria are based on political consideration or other loyalties."

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Recruitment based on political ties, friendship and family is still a very common practice in central and local government and

administration.

References:

-Ioana Speteanu, "The Army of Civil Servants Invades European Institutions," Oct. 19, 2006, Euractiv (site for European and Romanian news), http://www.euractiv.ro/uniunea-europeana/articles%7Cdisplay=Article/articleID_8429/Armata-functionarilor-publici-romani-invadeaza-institutiile-europene.html

-Cristina Gueth, executive director, Freedom House Romania, in a face-to-face interview on Aug. 2, 2007, noted that "nepotism, cronyism and patronage are often accepted in hiring or promotions of public servants."

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Brief Assessment on Romania's Compliance with some Critical EU Requirements-Accomplishments and Weaknesses," noted: "Agency of Civil Servants is not sufficiently empowered, and one may notice at least a partial failure to implement a unitary system of remuneration. There are still too many public officials with a special status, while Parliaments civil servants are partially in conflict with the law. Since its first issuance in 1999, the law regarding the statute of civil servants has undergone no less than 20 successive modifications. The 21st set of amendments is still waiting to be debated in the Lower Chamber of Parliament."

References:

-Soros Foundation, Center for Legal Resources, Resource Center for Roma Communities, Brief Assessment on Romania's Compliance with some Critical EU Requirements-Accomplishments and Weaknesses," April 2006, p. 23, www.fsd.ro

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that civil servants often have formal job descriptions, but they are not always put in practice. Some civil servants may not be part of the formal assignment of duties and compensations.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants, although exceptions exist in which some civil servants' bonuses represent a significant portion of total pay. Generally, all public servants have two salaries, such as bonus or holiday, but there are other, less transparent bonuses for their work.

References:

-Caterina Nicolae, Salariul maxim al unui functionar public-6.532 RON," Gandul (national daily newspaper), Nov. 16, 2006, <http://www.gandul.info/social/salariul-maxim-unui-functionar-public-6-532-ron.html?3932:270979>

National Agency of Civil Servants (ANAF), "Report on the Management of the Civil Service and Civil Servants for Year 2006," published 2007, http://www.anfp-map.ro/strategii_rapoarte_studii.php?sectiune=Rapoarte&view=23

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Yearly, the National Agency of Civil Servants (ANFP–Agentia Nationala a Functionarilor Publici) publishes a report that contains the number of authorized civil service positions, along with the number of positions actually filled, but there are some delays regarding to the positions of the local administrative institutions.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the National Agency of Civil Servants (ANAF) publishes such a list on regular basis.

ANAF, Report on the Management of the Civil Service and Civil Servants for Year 2006," February 2007, http://www.anfp-map.ro/strategii_rapoarte_studii.php?sectiune=Rapoarte&view=23

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Although an independent redress mechanism for the civil service does not exist, the judicial redress of administrative acts works in most situations, and over the last few years, public services and the government have paid a lot of money for reparations and damages.

References:

-Functionarii publici tulceni au castigat procesele intentate angajatorilor”, Revista nationala de administratie public, May 4, 2007, http://www.administratie.ro/articolnou.php?articol_id=12785#top

-Minister of Internal Affaires, ANAF (National Agency of Civil Servants), Legal Monitoring Report, May 2007, http://www.anfp-map.ro/strategii_rapoarte_studii.php?sectiune=Rapoarte&view=23

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

There are some delays in the payment of legal bonuses.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview that in the las year, no civil servant has been paid late.

-Caterina Nicolae, Sindicatelor din Administratie au cazut la pace cu guvernul,”Jan. 22, 2007, Gandul (national daily newspaper)

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

There are no official monitoring system for civil servants convicted of corruption.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that in Romania, there is no a formal system of blacklisting.

-Ion Alexandru,Eduard Pascu, Functionari cercetati pentru coruptie, repusi in functii. Altii sunt scosi din arest.” Gardianul (national daily newspaper), May 21, 2007; http://www.gardianul.ro/2007/05/21/eveniment-c2/functionari_cercetati_pentru_coruptie_repusi_in_functii_altii_sunt_scosi_din_arest-s94933.html

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

63

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law No. 161/2003 on Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning Corruption, Art. 72

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

Law No. 188/1999 of the Civil Servant Statute (the Civil Service Law), Art. 79, republished in the Official Gazette (Monitorul Oficial), No. 251, March 22, 2004, provides that civil servants cannot be employed for three years after leaving the civil service corps by private companies that they monitored or controlled while in office.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Law No. 7/2004 of Civil Service Code of Conduct, Art. 14

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no official monitoring mechanism to implement the law, and cooling off periods are almost never enforced

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are nonexistent or never enforced.

-I.G., Criza de profesioniști în administrația publică locală," Ziarul financiar, April 10, 2006, http://www.zf.ro/articol_82130/criza_de_profesioniști_in_administrația_publică_locală.html

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

-Cristina Guseth, Executive Director Freedom House Romania said into face to face interview, 2 August 2007, that the provisions of law are not enforced

-Andreea Pora, coordinating editor Romania libera, telephonic interview, 15 August 2007, noticed that civil servants accept in Romania gifts and there are no monitoring system to verify their declaration about these situation

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | **25** | 0

Comments:

National media have reported some cases of incompatibility among civil servants.

References:

-Open Society Foundation, Center for Legal Resources, Resource Center for Roma Communities, Romania and the EU Brief Assessment on Romania's Compliance with Some Critical EU Requirements," April 2006, http://www.fsd.ro/en/publicatii.php?id_cat=10, pp. 23-24

-Sebastian Anghel, "Conflicte de interese in CL Sighisoara", Ziarul de Mures (regional daily newspaper), July 2, 2007, <http://www.ziaruldemures.ro/fullnews.php?ID=7684>

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

92

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

Government Emergency Ordinance No. 14/2005 regarding wealth declarations; Law No. 115/1996 regarding wealth declarations, Arts.2 and. 4

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that records are available online.

-Andreea Pora, coordinating editor, Romania libera (national daily newspaper), telephone interview, Aug. 15, 2007, noted that for high civil servants, records are available online, but more local civil servants records are not on the sites.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

Comments:

Records are free to all citizens.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007

-Andreea Pora, coordinating editor, Romania libera, said in a telephone interview on Aug. 15, 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Arts. 4 (d) and 5 of Law No. 571/2004 regarding whistle-blowing measures

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

-Transparency International, National Corruption Report 2007 (April 2006-April 2007)", p .24; http://209.85.129.104/search?q=cache:eHQe5pJA_RgJ:www.transparency.org/ro/politici_si_studii/studii/national_coruptie/2007/NCR_2007_FINAL_site_eng.pdf+court+of+audit+roman

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that in practice, this mechanism "doesn't work."

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Art. 262, The Procedure Penal Code, references that citizens who report great cases of corruption or abuse of resources could be protected from recrimination; Law No. 78/2000 with changes introduced by Law No. 521/2004 on prevention of corruption

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Cases in which whistle-blowers step forward to denounce wrongdoings are extraordinarily rare.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that there are very rare situations.”

-Open Society Foundation, Center for Legal Resources, Resource Center for Roma Communities, “Romania and the EU Brief Assessment on Romania’s Compliance with Some Critical EU Requirements”, April 2006, http://www.fsd.ro/en/publicatii.php?id_cat=10, pp. 10

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

There is the General Anti-Corruption Directorate (Directia Generala Anticoruptie), subordinated to the Ministry of Administration and Internal Affairs; see also Law No. 161/2005 regarding the steps for preventing corruption in the Ministry of Administration and Internal Affairs, phone hotline: 0800-806-806, http://209.85.129.104/search?q=cache:DYPjCFIDslgJ:www.mie.ro/documente/dialog_Ro_UE/2006/raport_evolutii_extins.pdf+hotline+functionari+publici&hl=ro&ct=clink&cd=5&gl=ro

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

63

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

-Although an Anticorruption Directorate has been established within the Ministry of Administration and Interior, its duties and organization are classified, an approach which is odd for a regime that has pledged to promote transparency as a first tool to reduce corruption.

-The General Anticorruption Directorate (Directia Generala Anticoruptie), of the Ministry of Administration and Internal Affairs, has a full-time staff, but its composition is secret; see <http://www.mai.gov.ro/index1519.htm>.

References:

-Ion Alexandru, Eduard Pascu, Directia Generala Anticoruptie s-a mutat in casa noua," Gardianul (national daily newspaper), Feb. 3, 2007, http://www.gardianul.ro/2007/02/03/eveniment-c2/directia_generala_anticoruptie_s_a_mutat_in_casa_noua-s89656.html

-Open Society Foundation, Center for Legal Resources, Resource Center for Roma Communities,"Romania and the EU Brief Assessment on Romania's Compliance with Some Critical EU Requirements", April 2006, http://www.fsd.ro/en/publicatii.php?id_cat=10, p. 8

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The General Anticorruption Directorate (Directia Generala Anticoruptie) receives a special budget from the Minister of Administration and Internal Affairs; see <http://www.mai.gov.ro/index1519.htm>.

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that this institution has a predictable source of funding.

-Ion Alexandru, Eduard Pascu, Directia Generala Anticoruptie s-a mutat in casa noua," Gardianul (national daily newspaper), Feb. 3, 2007, http://www.gardianul.ro/2007/02/03/eveniment-c2/directia_generala_anticoruptie_s_a_mutat_in_casa_noua-s89656.html

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-European Commission, Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 27 2007, p.17; http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

-Silviu Alupei Doru Dragomir, "Nebunie la Interne," Ziaa (national daily newspaper), July 17, 2007, <http://www.ziaa.net/display.php?data=2007-07-17&id=224008>

-Andrei Tudor, "Comisia Europeana: DGA din MAI, singura structura anticoruptie vizibila," Gardianul (national daily newspaper), June 29, 2007, http://www.gardianul.ro/2007/06/29/actualitate-c24/comisia_europeana_dga_din_mai_singura_structura_anticoruptie_vizibila-s97106.html

-Open Society Foundation, Center for Legal Resources, Resource Center for Roma Communities,"Romania and the EU Brief Assessment on Romania's Compliance with Some Critical EU Requirements," April 2006, http://www.fsd.ro/en/publicatii.php?id_cat=10.p.10

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

According to the European Commission's Report on Romania's Progress on Accompanying Measures Following Accession," the General Anticorruption Directorate of the Ministry of Administration and the Interior (GAD) reported at the end of January 2007 on measures used by the unit to prevent and combat corruption within the ranks of the Ministry of Interior and its services. The Border Police alone—the main focus of GAD in 2006—resorted to more than 6,000 integrity tests, undercover operations and unannounced inspections, which led to the highest number of border officers reporting attempts of corruption (60 percent higher than 2005). There were 67 cases of attempted bribery reported by border police officers to GAD. The largest amount of money offered as a bribe and refused by an officer was 5,000 euros (a case of cigarette smuggling on the Romanian-Ukrainian border).

References:

-European Commission, Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 6, 2007, pp.17-19; http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

-Ionela Neagu, "Romanii au dat mita anul trecut 33 milioane de euro", Curierul National, Oct. 17, 2006, <http://www.curierulnational.ro/Actualitate%20Companii/2006-10-17/Romanii+au+dat+mita+anul+trecut+33+milioane+de+euro&hl=DGA&tip=toate>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

77
IV-3. Procurement

48. Is the public procurement process effective?

88

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Arts. 66-69 of Government Emergency Ordinance 34/2006 approved by Law No. 337/ 2006 concerning the award of procurement agreements and of concession agreements for public works and services

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

-A new law on public procurements is being debated in Parliament.

-The Public Procurement Directorate (Directia de Achizitii Publice), resulting from a restructuring within the Ministry of Finances, is responsible for drafting procurement legislation, supporting policy development, providing procurement advice to contracting entities, ensuring training and capacity-building.

References:

-Government Decision No. 525 from 30 May 2007 regarding Authority for Procurements (ANRMAP – Autoritatea Nationala pentru Monitorizarea si Reglementarea Achizitiilor Publice)

-Government Decision No. 208/2005 regarding to organization and operation of the Ministry of Public Finances, Arts. 51, 64, 65, 66

-There are many other government decisions. See: http://www.anrmap.ro/index.php?option=com_content&task=category§ionid=2&id=3&Itemid=4=ISO-8859-2

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that conflict of interest regulations exist and some violations may not be enforced.

-Razvan Mihai Vintilescu, Doru Cireasa, Viraj periculos pe Autostrada Bechtel", May3, 2007, Cotidianul (national daily newspaper), <http://www.cotidianul.ro/index.php?id=10511&art=28108&cHash=2968ee0320>

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The National Integrity Agency is not yet functioning.

References:

Art. 39 of the law regarding organization of the National Integrity Agency; Law No. 144/2007 and Emergency Ordinance 49/2007 regarding changes to Law No. 144/2007 regarding the National Integrity Agency

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

References:

Government Emergency Ordinance 34/2006 , Art. 3, approved by Law No. 337/ 2006 concerning the award of procurement agreements and of concession agreements for public works and services

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

The single-source procedure may be used freely only for projects below the 2,000 euro (US\$2,618) threshold; Art. 2 of Government Emergency Ordinance 34/2006 approved, by Law 337/ 2006, concerning the award of procurement agreements and of concession agreements for public works and services

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Arts. 155 and 277 (3) of Government Emergency Ordinance 34/2006, approved by Law No. 337/ 2006

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Art. 255 of Government Emergency Ordinance 34/2006, approved by Law No. 337/2006

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Art. 180 of Government Emergency Ordinance 34/2006, approved by Law No. 337/2006

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that companies guilty of major violations of procurement regulations are not prohibited from participation in future procurement bids.

-Euractiv (European and national news site), Controversa "listelor negre" ale firmelor implicate in proiecte europene", June, 22, 2007, http://www.euractiv.ro/uniunea-europeana/articles%7CdisplayArticle/articleID_10664/Controversa-listelor-negre-ale-firmelor-implicate-in-proiecte-europene.html

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

96

49a. In law, citizens can access public procurement regulations.

YES | NO

References:

Government Emergency Ordinance 34/2006, approved by Law No. 337/2006, Art. 215; Law No. 544/2001 on free access to public-interest information

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Art. 47 of Government Emergency Ordinance 34/2006, approved by Law No. 337/2006

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Euractiv (European and national news site), Controversa "listelor negre" ale firmelor implicate in proiecte europene," Jan. 2007, http://www.euractiv.ro/uniunea-europeana/articles%7CdisplayArticle/articleID_10664/Controversa-listelor-negre-ale-firmelor-implicate-in-proiecte-europene.html

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that citizens have access to public procurement only with delay, especially in politically sensitive cases.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

-Euractiv (European and national news site) Licitatiile publice, doar prin eLicitatie.ro", Jan. 4, 2007, http://www.euractiv.ro/uniunea-europeana/articlesdisplayArticle/articleID_9052/Licitatiile-publice-doar-prin-eLicitatie.ro.html

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that citizens have access online.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that major public procurements are effectively advertised on government sites and in the media.

-Andreea Pora, coordinating editor, Romania libera, said in a telephone interview on Aug. 15, 2007, that advertisements appear in newspapers and on government sites.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the results of public procurement bids are publicly available through a formal process.

-Lidia Moise, Economic Editor of Newsin (news agency), said in a telephone interview on Aug. 12, 2007, that records of public procurement results are publicly available through a formal process.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

50. Is the privatization process effective?

75

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Law No. 137/2002 on Actions to Accelerate Privatization Process, Art. 5(3), stipulate that no individuals or legal entities, Romanian or foreign, may take part in the privatization process if, having entered into share sale-purchase contracts with the public institution involved, such contracts were canceled ex nunc for causes attributable to them alone, by a definitive and irrevocable court or arbitrage decision or as a consequence of the subsequent conditions stipulated in the shares sale-purchase contracts, as well as those that have outstanding budgetary debts.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Law No. 83/1997 on the privatization of commercial banking companies in which the state is a shareholder, Art. 6; Law No. 161/2003 for ensuring the transparency of some public dignities, functions and in the business environment, preventing and sanctioning the corruption, Art. 94 (1, 2)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes, members of government or Parliament are involved in the privatization processes. The last time, the officials were in privatization committees. For example, the head of the Chamber of Deputies was involved in the privatization of Romanian Commercial Bank.

References:

-Ionela Neagu, Valentin Bolocan, Musetescu agatat penal in afacerile ARO si Dacia Roman Brasov," Curierul National (national daily newspaper), Aug. 8, 2006, <http://www.9am.ro/stiri-revista-presei/Actualitate/40268/Musetescu-agatat-penal-in-afacerile-ARO-si-Dacia-Roman-Brasov>

-M.C., "Prezenta ministrilor in comisiile de privatizare nu este morala," Jan. 18, 2007, Hotnews (online news site), http://www.hotnews.ro/articol_63695-Prezenta-ministrilor-in-comisiile-de-privatizare-nu-este-morala.htm

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

100

51a. In law, citizens can access privatization regulations.

YES | NO

Comments:

Although Art. 1 of the Law No. 137/2002 on Actions to Accelerate Privatization, with changes introduced in 2004, ensures the transparency of the privatization process, not all conditions of privatization bids are published in the national newspaper or on the Web site of the Authority for State Assets Recovery, <http://www.avas.gov.ro>. Citizens can access the terms and conditions of privatization bids post factu, by Law No. 544/2001, regarding the free access to the information of public interest.

References:

Law No. 137/2002 on Actions to Accelerate Privatization, with changes introduced in 2004, ensuring the transparency of the privatization process, Art.1; Law No. 544/2001 regarding the free access to information of public interest

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that in practice, privatizations are effectively advertised.

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 12, 2007, that there is a formal process of advertising privatizations. This may include using a government Web site, newspaper advertising or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Government Emergency Ordinance 26/ 2004 regarding privatization, Art. 11; The results of privatization decisions are published in the Official Gazette (Monitorul Oficial) and on the Web site of the Authority for State Assets Recovery (AVAS -Autoritatea pentru Valorificarea Arhivelor Statului): <http://www.avas.gov.ro>.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that in practice, citizens can access privatization information online.

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 12, 2007, that citizens has access privatization regulations online.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that in practice, citizens have free access to privatization information.

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 12, 2007, that access is free and online.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁷⁷National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

Arts. 58-60 of the Constitution; Law No. 35/1997 on the Organization and Functioning of the Institution of the Advocate of the People. Republished in the Official Gazette No. 844 of September 2004

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

50

53a. In law, the ombudsman is protected from political interference.

YES | NO

References:

-Arts. 58-60 of the Constitution

-Art. 2 of Law No. 35/1997 on the Organization and Functioning of the Institution of the Advocate of the People provides that the Advocate of the People cannot be subjected to any imperative or representative mandate and that no one can compel the Advocate of the People to obey any instructions or order. By law, the Romanian ombudsman is an autonomous public authority, independent of any public authority.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

-Country Reports on Human Rights Practices-2006", released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 6, 2007 (<http://www.state.gov/g/drl/rls/hrrpt/2006/78834.htm>) find out that: "An ombudsman's office existed to protect citizens' constitutional rights, but it had limited power and independence from the government." Numerous media reports characterized the office as ineffective. During the first nine months of the year, the office handled 4,718 complaints. The office did not have authority in cases requiring judicial action."

-Cristina Gueth, executive director, Freedom House Romania, in a face-to-face interview on Aug. 2, 2007, considered that the Advocate of the People is typically independent, but sometimes there are political influences.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007, that the ombudsman (Avocatul poporului) is protected: He is safe."

-Andreea Pora, coordinating editor, Romania libera (national daily newspaper), said in a telephone interview on Aug. 16, 2007, that the ombudsman serves a defined term and cannot be removed without a significant justification.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007, that the ombudsman has staff sufficient to fulfill its basic mandate.

-Andreea Pora, coordinating editor, Romania libera, said in a telephone interview on Aug. 16, 2007, that the ombudsman has a full staff.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Parliamentary parties appoint, for example, the management of the ombudsman.

References:

-Mihai Serbanescu, "Candidatii la functiile de adjuncti ai Avocatului Poporului, audiati," Curierul national (national daily newspaper), Oct. 11, 2006; <http://www.curierulnational.ro/Actualitate%20Companii/2006-10-11/Candidatii+la+functiile+de+adjuncti+ai+Avocatului+Poporului%2C+audiati&hl=avocatul%20poporului&tip=fraza>

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007, that appointments are often based on political considerations.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007, that political considerations are not a major factor in determining ombudsman funding.

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 17, 2007, that the ombudsman has a predictable source of funding that is fairly consistent from year to year.

Budget of State for 2007, Ministry of Finance, Annex No.3:

<http://www.mfinante.ro/buget%5Cbuget2007%5Cpdf/tit09.pdf>.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

There are only old annual reports (2004, 2005) on the ombudsman site: <http://www.avp.ro/indexen.html>.

References:

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007: "The activity of the ombudsman in Romania is ornamental," and reports are insubstantial and often unavailable to the public.

-Andreea Pora, coordinating editor, Romania libera (national daily newspaper) said in a telephonic interview on Aug. 17, 2007, that the ombudsman makes only annual reports of activity and that they are published only after a huge delay.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice in Romania, the ombudsman acts only upon request. The are instances when he initiates an investigation by himself, but these are rare.

References:

-Country Reports on Human Rights Practices-2006," released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 6, 2007, (<http://www.state.gov/g/drl/rls/hrrpt/2006/78834.htm>), find out that: "An ombudsman's office exists to protect citizens' constitutional rights, but it had limited power and independence from the government. ... The office did not have authority in cases requiring judicial action."

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007: "Til now, the ombudsman didn't initiate investigations."

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman has no legal prerogative to impose penalties on offender; Law 35/1997, Art. 21 provides that Through his recommendations, the People's Advocate notifies the public administrative authorities about the illegality of administrative acts or facts. The silence of the public administrative bodies and the delay in issuing acts are assimilated to administrative acts." On the other hand, when a public administrative authority or civil servant does not remove such an illegality within 30 days of the notification, the ombudsman shall take it to the hierarchically superior administrative authority, and the latter shall inform the ombudsman on the measures that have been taken, within 45 days of the notification.

References:

-Country Reports on Human Rights Practices 2006", released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 6, 2007: <http://www.state.gov/g/drl/rls/hrrpt/2006/78834.htm>

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007, that the Romanian ombudsman doesn't impose penalties.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman is an institutio liked by the political field but without influence in Romania. Its reports are often ignored.

References:

-Country Reports on Human Rights Practices-2006," released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 6, 2007: <http://www.state.gov/g/drl/rls/hrrpt/2006/78834.htm>

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007, that the Romanian ombudsman is not important in Romania.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Country Reports on Human Rights Practices-2006," released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 6, 2007: <http://www.state.gov/g/drl/rls/hrrpt/2006/78834.htm>

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007, that the Romanian ombudsman cannot investigate complaints quickly. Some abuses are not investigated, for example, problems relating to properties restitution.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

75

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Art. 5 of Law No. 35/1997, on the Organization and Functioning of the Institution of the Advocate of the People, republished in the Official Gazette No. 844 of September 2004, stipulates that:

(1) The Advocate of the People shall submit reports, in joint session of both Chambers of the Parliament, annually or at their request. The Reports must contain information regarding the activity of the Institution of the Advocate of the People. They may contain recommendations concerning the amendment of legislation or measures, of other nature for the protection of the citizens' rights and freedoms.

"(2) The annual report shall present the activity of the institution for one calendar year and shall be forwarded to the Parliament on February 1 of the following year, in order to be debated in the joint session of both Chambers. The annual report is to be made public."

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007, that access to reports of the Romanian ombudsman takes a minimum of 10 days.

-Andreea Pora, coordinating editor, Romania libera (national daily newspaper) said in a telephonic interview on Aug. 17, 2007, that citizens can access the reports of the ombudsman only with substantial delay.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

-Elena Iorga, program coordinator, Public Policy Institute, said in a telephone interview on Aug. 15, 2007, that costs apply only to the making of copies.

-Andreea Pora, coordinating editor, Romania libera (national daily newspaper) said in a telephonic interview on Aug. 17, 2007, that only photocopying must be payed for.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

There is the Court of Audit (Curtea de Conturi), which is the highest body for reviewing the legality, economy, efficiency and effectiveness of public expenditures.

References:

Art. 140 of the Constitution:

(1) The Court of Audit shall exercise control over the formation, administration and use of the financial resources of the state and public sector. Under the terms of the organic law, disputes resulting from the activity of the Court of Audit shall be solved by specialized courts of law.

"(2) The Court of Audit shall annually report to Parliament on the accounts of the national public budget administration in the expired budgetary year, including cases of mismanagement.

"(3) At the request of the Chamber of Deputies or the Senate, the Court of Audit shall check the management of public resources and report on its findings.

"(4) Audit advisers shall be appointed by the Parliament for a term of office of nine years, which cannot be extended or renewed. Members of the Court of Audit shall be independent in exercising their term of office and irremovable throughout its duration. They shall be subject to the incompatibilities the law stipulates for judges.

"(5) The Court of Audit shall be renewed, with one third of the audit advisers appointed by the Parliament, every three years, under the terms stipulated by the organic law of the court.

"(6) Parliament shall be entitled to revoke the members of the Court of Audit in the instances and under the terms stipulated by the law"

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

69

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

-Art. 140 of Constitution, AI (4): Audit advisers shall be appointed by the Parliament for a term of office of nine years, which cannot be extended or renewed. Members of the Court of Audit shall be independent in exercising their term of office and irremovable throughout its duration. They shall be subject to the incompatibilities the law stipulates for judges."

-Art. 1 of Law No. 94/1992 on the Organization of Court of Audit, republished in the Official Gazette No. 116, March 16, 2000.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

-Iulian Anghel, Collision PSD-PNL Over the Court of Account,"Ziarul financiar (national financial daily newspaper), June 29, 2006, http://www.zf.ro/articol_87570/coliziune_pnl_psd_deasupra_curtii_de_conturi.html

-"Dan Doru Saguna remained the president of the Court of Account," Ziua (national Romanian daily newspaper), June 29, 2006, <http://www.infonews.ro/modules.php?name=News&file=article&sid=40512>

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that generally, the president of the Court of Account serves a defined term but in some cases can be removed through a combination of official or unofficial pressure.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Court of Account has a permanent staff of some 1,000 budget positions, 75% of which are assigned to audit tasks. See the court's Web site at <http://www.rcc.ro.t3>

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that the Court of Account has a sufficient staff to fulfill its basic mandate.

-Commission of European Communities, Monitoring Report, Sept. 26, 2006, Brussels, pp.51-52, http://www.infoeuropa.ro/ieweb/imgupload/Monitoring_report_-_September_2006_EN_final.pdf

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the Court of Account has a staff sufficient to fulfill its basic mandate.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

-Appointments are often based on professional qualifications, but there are some cases based on political connections, such as the notorious case of the appointment the Romanian representative on the European Court of Account.

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that appointments are usually based on professional qualifications, but there some exceptions, when appointments are made based on political loyalties

-Iosif Klein Medesan, broadcaster and general editor for Romania Libera (national daily) said in a face-to face interview on Aug. 11, 2007: Although the professional qualifications are taken into consideration when the appointments are made, some of the individuals selected to the audits court have known political affiliations, which are obvious from the positions they had before. It is highly unlikely that those biases don't influence their decisions in their auditing role. They don't have to be biased all of the time, but there is always a moment when they can be useful to their hidden masters, political or otherwise."

-Catalin Antohi, Voichita Rascanu, "Saguna, samsar de functii europene," Oct. 23, 2006, Romania libera (national daily newspaper), <http://www.search-engine.ro/cache.php?id=407183>

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The draft budget is adopted for the Court of Audit and then is sent to the government. See the Annual of the State Budget at <http://www.gov.ro>.

References:

-Commission of European Communities, Monitoring Report, Sept. 26, 2006, Brussels, p.50; <http://www.infoeuropa.ro/jsp/page.jsp?cid=10970&lid=2&changeLangEv=1>

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that the Court of Account has a regular source of funding.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 7, 2007, that the Court of Account has a predictable source of funding.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

According to constitutional provisions, the Court of Audit shall annually report to Parliament on the accounts of the national public budget administration in the expired budgetary year, including cases of mismanagement. The annual reports can be found on Web site of the court (<http://www.rcc.ro>) or the sites of the two Chambers of Parliament (<http://www.cdep.ro>; <http://www.senat.ro>). There are annual reports from Parliament, but the sectorial reports are often delayed.

References:

-Marius Draghici, How evaporated 100 millions euro from the Railway Company (Caile Ferate)", Evenimentul Zilei (one of the most important national Romanian newspaper) 28 March, 2007; <http://evz.ro/article.php?artid=298263>. This article related about the two years delay in Court of Account Report

-Iosif Klein Medesan, broadcaster and general editor for Romania Libera (national daily) said in a face-to face interview on Aug. 11, 2007, that the Court of Account makes available reports to the legislature; yearly reports and other specific reports that are published are sometimes delayed or incomplete.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The Court of Audit holds auditing and jurisdictional powers over acts of a specific nature. In both cases, decisions of the court are binding for the government. According to the last European Union Monitoring Report, the Romanian Court of Account is not yet politically independent.

References:

-Commission of European Communities, Monitoring Report, Sept. 26, 2006, Brussels, pp.51-52, http://www.infoeuropa.ro/ieweb/imgupload/Monitoring_report_-_September_2006_EN_final.pdf

-Razvan Mihai Vintilescu, Tolerance of hundred million euros in health ministry," April 26, 2006, Cotidianul (one of the most influential national Romanian daily newspapers), described how the Court of Account acted over the field of government.

-Some sectorial reports of the Court of Account are on the court's Web site (<http://www.rcc.ro/rccdiac/rapct.htm>), but not all reports are here. The Court of Account has not complied on some politically and governmentally sensitive issues.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

-The Court of Account can generally decide what to investigate: Art. 66 and Art. 122 (M) of Law No. 94/1992 regarding the Organization of Court of Audit, republished in the Official Gazette, No. 116, March 16, 2000. In practice, the Court of Account avoids the sensitive issues.

-Many media reports describe how the Court of Account initiates investigations and how political pressure affects the subject of investigations.

References:

-Commission of European Communities, Monitoring Report, Sept. 26, 2006, Brussels, pp.51-52, http://www.infoeuropa.ro/ieweb/imgupload/Monitoring_report_-_September_2006_EN_final.pdf

-Ionela Neagu Stanila, Privatizarile dubioase, anchete la "secret," June 18, 2007, Curierul National (national daily newspaper); <http://www.curierulnational.ro/Actualitate%20Companii/2007-06-18/Privatizarile+dubioase%2C+anchete+la+%26quot%3Bsecret%26quot%3B&hl=curtea%20de%20conturi&tj=fraza>

-C. Calimac, "The Court of Account Through the Deputy Ursache's Ditches," Monitorul de Neamt (regional daily newspaper), July 13, 2007; <http://www.monitorulneamt.ro/stiri/?editia=20070713&pagina=1=13131>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

75

57a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Art. 40 (2) of the Constitution provides that the Court of Audit shall annually report to Parliament on the accounts of the national public budget administration in the expired budgetary year, including cases of mismanagement. The annual reports can be found on court's Web site (<http://www.rcc.ro>) or the sites of the two Chambers of Parliament (<http://www.cdep.ro>; <http://www.senat.ro>).

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 12, 2007, that many reports of the Court of Account are publishes with significant delay.

-Iosif Klein Medesan, broadcaster and general editor for Romania Libera (national daily), said in a face-to face interview on Aug. 11, 2007: In practice, the audit reports (specific ones) are not accessible by the general public. All they have on the Net are the overall annual reports. For any specifics, the pdf command is not functional. There is no way an ordinary citizen could access info about the results of any specific investigation. It's hard even for journalists—and even for them, not all reports are “fair game.” The Audits Court tries to give the impression of transparency, but it is obvious that, in the rare instances of specific reports being on the Net, they are being posted after the fact—after the media started investigating allegations of improper use of public monies. All in all, the Audits Court is a closed institution, and as such, is open to allegations of political manipulation in its choice of targets and its judgment.”

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

-Iosif Klein Medesan, broadcaster and general editor for Romania Libera (national daily) said in a face-to face interview on Aug. 11, 2007: There is no fee, but there is also no material to be obtained.”

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that reports are free.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

Comments:

The National Agency for Fiscal Administration (Agentia Nationala de Administrare Fiscala) is the service of the Minister of Finance for the management and collection of income taxes, taxes on real estate and general consumption taxes, in accordance with the policy of the government.

References:

There is the National Agency for Fiscal Administration (Agentia Nationala de Administrare Fiscala-ANAF): Government Decisions No. 208/2005 and 1269/2005 (Hotariri de guvern)

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

100

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

-Iosif Klein Medesan, broadcaster and general editor for Romania Libera (national daily), said in a face-to face interview on Aug. 11, 2007: There are no part-time tax men in Romania. Regarding their professionalism, it's hard to judge, but the pay (and the incentives) being good, it seems there is no shortage of employees in this area."

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the National Agency for Fiscal Administration has staff sufficient to fulfill its basic mandate.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

-Iosif Klein Medesan, broadcaster and general editor for Romania Libera (national daily), said in a face-to face interview on Aug. 11, 2007: There is no problem funding the pay of their employees. (This is the case for all the agencies of the government.) If /when there is a shortage of tax people, the reasons are managerial."

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the National Agency for Fiscal Administration has a predictable source of funding.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

50

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

-Art. 56 (2) of the Constitution provides that the legal taxation system must ensure a fair distribution of the tax burden, but there are some exceptions, such as the immobiliari market, that evade tax law.

References:

-Ionut Tudorica, "The black market swallows three rents from four," Cotidianul (national Romanian daily newspaper), March 28, 2007; http://www.hotnews.ro/articol_68474-Piata-neagra-inghite-trei-chirii-din-patru.htm

-Commission of European Communities, Monitoring Report, Sept. 26, 2006, Brussels, p.48, noted that the collection and control capacity of the National Agency for Fiscal Administration "remain weak, whilst the tax collection rate as percentage of gross domestic product has improved slightly."

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

References:

The National Customs Authority; Law No. 86/2006 regarding the Customs Code of Romania. The Romanian Customs Authority (Autoritatea Nationala a Vamilor Romania) is bonated to the National Agency for Fiscal Administration.

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

88

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The National Customs Authority has six national departments and 10 regional directories:
<http://www.customs.ro/vami/Main?categPage=1&smallCategId=103>

References:

-The Commission of European Communities, Monitoring Report, Sept. 26, 2006, Brussels, p.36, suggests that the staff of the national Customs Authority is sufficient to fulfill its basic mandate, but officials don't have enough ability or they are corruptible; http://www.infoeuropa.ro/ieweb/imgupload/Monitoring_report_-_September_2006_EN_final.pdf

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the National Customs Authority has a full-time staff.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

-The agency receives funding from the Ministry of Finance. The amount is fixed yearly by the Minister of Finance for any agency with specific conventions and must be approved by Parliament.

-See also Art. 26 of Government Decision 165/2005 regarding of organization of the National Customs Authority.

References:

-The Commission of European Communities, Monitoring Report, Sept. 26, 2006, Brussels, p.36-37, notes that the National Customs Authority has no problems with funding and that political considerations are not a factor in determining agency funding; http://www.infoeuropa.ro/ieweb/imgupload/Monitoring_report_-_September_2006_EN_final.pdf

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the National Custom Authority has a predictable source of funding.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

-Camelia Popa, Tax on vehicles was changed, but the discrimination remains." Romania libera (national Romanian daily newspaper), April 27, 2007. This report explains that although the the Romanian government decided to change the first registration tax on vehicles, this tax level remains high compared to the car's residual value.

-Request from the European Union Commission: "Car taxation: Infringement Procedures Against Malta and Romania," Brussels, March 21, 2007: "The Commission has decided to send to Romania and Malta formal requests to amend their car registration tax rules, which discriminate against second-hand cars brought from other member states into these countries. The requests take the form of a "letter of formal notice," the first stage of the infringement procedure laid down in Article 226 of the EC Treaty. If the commission does not receive satisfactory responses from these member states within two months, it may proceed with the second stage of said procedure and ultimately bring the cases before the Court of Justice." So far, the commission hasn't received a new answer, even after the government made the some changes in this area.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

There are the Authority for State Assets Recovery (Autoritatea pentru Valorificarea Activelor Statului) and Government Emergency Ordinance No. 23/15.04.2004, published in the Official Gazette, No. 359, April 23, 2004, approved via Law No. 360/2004.

-Government Emergency Ordinance No. 51/15.12.1998, republished in the Official Gazette No. 948, Dec. 24, 2002 with changes of Government Emergency Notice No. 101/2006

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

65

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

The Authority for State Assets Recovery is an agency subordinate to the Romanian government.

-Government Emergency Ordinance No. 23/15.04.2004, published in the Official Gazette, No. 359, April 23, 2004, approved via Law No. 360/2004.

-Government Emergency Ordinance No. 51/15.12.1998, republished in the Official Gazette, No. 948, Dec. 24, 2002, with changes made by Government Emergency Ordinance No. 101/2006 .

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007, that the Authority for State Assets Recovery (AVAS) has a full-time staff.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the Authority for State Assets Recovery has a sufficient staff to fulfill its basic mandate.

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007: "As far as I know, the Authority for State Assets Recovery (AVAS) uses its own funds, as the expenses of the agency represent about 3% of its revenues."

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the Authority for State Assets Recovery has a predictable source of funding.

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

This agency can make investigations, but it acts very slowly.

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007: "The answer results from the agency's report, which stated that the (Authority for State Assets Recovery) initiated investigations, with the final scope to go to courts of justice."

-Cristian Anton, "AVAS ia la puricat privatizarile dubioase din Agricultura," May 21, 2006, Replica de Constant (regional newspaper), republished on Hotnews (a well-known Romanian information Web site); http://www.hotnews.ro/pp_articol_11091-AVAS-ia-la-puricat-privatizarile-dubioase-din-Agricultura.htm

-Razvan Orasanu, former leader of AVAS, "Elemente noi in cazul RAFO," July 24, 2006, at a press conference described the mechanism of investigation into a specific case of abuse on privatization, http://www.avas.gov.ro/index.php?id=160&lang=ro&show_print=3389

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007: The possibility exists; the information is not so rich regarding such cases.”

-V.T., “Balkan Petroleum ar putea primi o amenda de 11 milioane de dolari,” July 24, 2007, Hotnews (a well-known Romanian newsWeb site), http://www.hotnews.ro/articol_52978-Balkan-Petroleum-ar-putea-primi-o-amenda-de-11-milioane-de-dolari.htm

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

60

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

-Law No. 544/2001 regarding the access of public information

-Law No. 52/2003 regarding transparency of public decisions

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007: In practice, the state-owned companies rarely provide financial reports. Best example ever is Transelectrica, which started to present financial reports after it was listed. Before that, it was impossible to get financial information in a timely manner.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that state-owned companies disclose data with delay.

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Financial records of state-owned companies are regularly audited, but the audits are delayed and have no functional value.

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in a telephone interview on Aug. 11, 2007: No, there is a huge gap in the timing of a law which was supposed to apply in Romania regarding IFRS."

-Ionela Neagu Stanila, "Privatizarile dubioase, anchete la 'secret,'" Curierul National (daily newspaper), June 18, 2007; <http://www.curierulnational.ro/Actualitate%20Companii/2007-06-18/Privatizarile+dubioase%2C+anchete+la+%26quot%3Bsecret%26quot%3B&hl=curtea%20de%20conturi&tip=fraza>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in an online interview on Aug. 11, 2007, that there is a huge

delay in this case.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that records are available with delay.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

-Lidia Moise, economic editor, Newsin (national news agency), said in an online interview on Aug. 11, 2007, that there is no information on that issue. As few are listed, it's not an issue to provide information to the public."

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the information is free.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

75 V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

88

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

Persons who were convicted cannot start a business: Art. 21 of Law No. 26/1990 regarding the Trade Register.

References:

-Law No. 31/1990 regarding companies (amended and modified)

-Law No. 26/1990 regarding the Trade Register (modified and completed)

-Order 76/2001 regarding the simplification of administrative formalities of registration and authorization of commercial entities

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Decisions of the public administration can be brought in front of the administrative court.

Law No. 554/2004 regarding administrative litigation

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Licensing is required and takes less than one month. However, there are some exceptions when registrations were delayed.

References:

How to found a company," Bani nostri (daily online business publication), Aug. 11, 2007, http://www.baniinostr.ro/afaceri/afaceri_all.php?ContentID=2. (Licenses can be obtained within 20 days.)

-Lidia Moise, economic editor, Newsin (national news agency), said in an online interview on Aug. 11, 2007, that licenses could be obtained in less than a month.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that in Romania, citizens can obtain any necessary business license within a reasonable period of time.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

-O.P, How to found a company," Bani nostri (daily online business publication), Aug. 11, 2007, http://www.baniinostr.ro/afaceri/afaceri_all.php?ContentID=2. (The cost is 600 lei-less than 200 euros.)

-Lidia Moise, economic editor, Newsin (national news agency), said in an online interview on Aug. 11, 2007, that licenses could be obtained at little cost.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that citizens can obtain any necessary business licenses at a reasonable cost: "(The) official cost is low, but there is a high level of corruption."

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

-Law No. 519 of 12/07/2002 to approve Government Emergency Ordinance No.102/1999 regarding social security and employment of disabled persons

-Normative for Adapting Civil Buildings and Public Space to the Needs of Persons with Handicaps (NP 051/2001)

-Law No. 145/1997, Government Urgency Ordinance No. 30/1998, Government Urgency Ordinance No.72/1998 concerning health insurance

-Law No. 130/1999, Government Urgency Ordinance No. 136/1999, Law No. 322/2001 concerning protection of employed persons.

-Law No. 343/2004 for the amendment and completion of Government Emergency Ordinance No. 102/1999 regarding special protection and employment of persons with handicaps

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

-Law No. 137/1995 and Law No. 294/2003: the Law on Environment

-Governmental Decision 730/1997, cancelled by technical Norm from 28.02.2002 concerning used water evacuation in rivers and other sources

-Government Decision 303/1997, cancelled by the Norm from 28.02.2002 concerning used water evacuation in sewage systems

-Law No. 107/1996 and Law No. 310/2004: the Water Law

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

-The law on Occupational Safety and Health, No. 90/1996

-The order approving the methodology standards prescribed by the Law on Occupational Safety and Health for its application, as passed by the Ministry of Labor and Social Welfare, No. 388/1996

-The General Standards for Labor Protection was passed by the Order of the Ministry of Labor and Social Welfare No. 578/1996 and the Order of the Ministry of Health No. 5846/1996.

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

In the research on corruption, Tonel Tilea noted that officials who must ensure public-health, public-environmental and public-safety standards often receive a bribe to close their eyes and favor some companies and businessmen. In some cases, these officials endanger the life of people through these practices.

Business inspections to ensure that public-health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

References:

-Elena Monica Toaje, Contributions on the Improvement of Labor Inspection Management , Bucharest, 2006, PH.D. thesis, Academy of Economic Studies (ASE); ASE Electronic Library, www.biblioteca.ase.ro, cap. 5. Health and Safety at Work Control in the Enterprise, pp.43-57

-Iosif Klein Medesan, broadcaster and general editor for Romania Libera (national daily), said in a face-to face interview on Aug. 11, 2007: "Public health inspections conduct nationwide inspections according to uniform guidelines, but it seems that some businesses are being checked much more often than others. Anecdotal (sometimes even judicial) evidence shows that there is a direct link between that overzealousness and the unwillingness to "befriend"—to bribe—the inspectors. Also, there are, mainly in catering and food industry, many "black" or "gray" businesses not registered with the tax authorities or producing more than is reported and in undisclosed premises. The enforcement of public health standards in those establishments is practically nonexistent."

-Tonel Tilea, "Impactul crimei organizate asupra economiei mondiale," Bucharest, 2006, PH.D. thesis, Academy of Economic Studies (ASE), cap. X, Corruption like means to sustained organized crime , pp.144 145; ASE Electronic Library, www.biblioteca.ase.ro

-Gabriela Gangioveanu, "Workers from Gorj", 25, July 2007, site of Radio Targu Jiu, a regional radio; <http://www.radiotargujiu.ro/stiri.php?do=locale>

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Decision 440 of May 12, 2005 regarding the National Guard of Environment obliges it, but business inspections to ensure that public-environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

References:

-Iosif Klein Medesan, broadcaster and general editor for Romania Libera (national daily), said in a face-to face interview on Aug. 11, 2007: Public environmental inspections of businesses are conducted under uniform guidelines. The enforcement of the inspectors' decisions (closing or fining of businesses for noncompliance or infringements) is an entirely different matter. Some of the punished" polluting companies are being kept open for long periods—even indefinitely—because "they are the biggest or even the only employer locally." Here too, overzealous inspectors might turn less severe (within the rules), if content. When the business is in the big league, the fight to enforce or not to enforce the laws moves to the highest echelons in the state and involves "media wars."

-Tonel Tilea, "Impactul crimei organizate asupra economiei mondiale," Bucharest, 2006, PH.D. thesis, Academy of Economic Studies (ASE), cap. X, Corruption like means to sustained organized crime , pp.144145; ASE Electronic Library, www.biblioteca.ase.ro. The author found out that owners of companies paid bribes to extract favorable treatment from the environmental inspectors. In this manner, people are put directly in danger by the officials.

-Valeria Cupa, Sorin Ghica, "Profit From Avian Flu, Killer of Environment", Adevarul, Aug. 12, 2007, <http://www.adevarul.ro/articole/profitorii-gripei-aviare-criminalii-mediului/321211>

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspections to ensure that public-safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

References:

-Elena Monica Toaje, Contributions on the Improvement of Labor Inspection Management, Bucharest, 2006, PH.D. thesis, Academy of Economic Studies (ASE); ASE Electronic Library, www.biblioteca.ase.ro, pp.162-167

-Iosif Klein Medesan, broadcaster and general editor for Romania Libera (national daily), said in a face-to face interview on Aug. 11, 2007: "The inspections are as thorough and evenhanded as the inspectors are competent and/or incorruptible. There are great differences in judging the degree of compliance and in the enforcement of needed improvements. Actually, the enforcers of public-safety standards are to be found across many different institutions (government departments, independent state agencies or local government bodies). In practice, one can see gross and widespread disregard for the safety of the public. So, it is safer to say that the inspections must be carried out in a uniform and evenhanded manner, judging by the uniform noncompliance"

-United Nations, Economic and Social Council, Paper on Economic Commission for Europe, "Working Party on Regulatory Cooperation and Standardization Policies," 16th session, Geneva, June 19-21, 2006; http://209.85.129.104/search?q=cache:xDkJfVeX3zwJ:www.unece.org/trade/ctied/wp6/documents/wp6_06/wp6_06_006e.pdf+inspection+public+safety+standards+romania&hl=ro&ct=

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁹⁵Anti-Corruption Law

70. Is there legislation criminalizing corruption?

89

70a. In law, attempted corruption is illegal.

YES | NO

Comments:

Yes, in law, attempted corruption is illegal.

References:

rt. 20 of the Criminal Procedure Code, Law No. 278/2006

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

Comments:

Article 194 refers to Santaj." Extortion in general ("anyone who, with violence...") is criminalized at Article 211 of the Criminal Procedure Code.

References:

Art. 149 of References: Art. 20 of the Criminal Procedure Code, Law No. 278/2006

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

In the Criminal Procedure Code, offering a bribe is illegal.

References:

Art. 256 of the Criminal Procedure Code, Law No. 278/2006

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Receiving a bribe is illegal, according to the Criminal Procedure Code.

References:

Art. 256 of the Criminal Procedure Code, Law No. 278/2006

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

Law No. 27/2002 authorized ratification of the Strasbourg Criminal Convention (Jan. 27, 1999) regarding corruption. Romania does not ratify the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on Dec. 17, 1997. The convention sets an agreed standard for effective national laws to criminalize bribery of foreign officials in international business transactions, ensure strong penalties against such bribery and provide a basis for effective international judicial cooperation.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Art. 257 of the Criminal Procedure Code, Law No. 278/2006.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Art. 257 of the Criminal Procedure Code, Law No. 278/2006

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

Comments:

In law, money laundering is illegal.

References:

Law No. 656/2002 on the prevention and sanctioning of money laundering, with changes introduced by Law No. 230/2005; there are some connections into the Criminal Procedure Code.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Art. 167 of the Criminal Procedure Code, Law No. 278/2006

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

-The National Anticorruption Directorate (DNA), a structure with legal personality functioning with the Prosecutors Office attached to the High Court of Cassation and Justice. DNA functions via Government Emergency Ordinance 43 from April 4, 2002, regarding the National Anticorruption Directorate

-Law No. 78 of May 8, 2000, on preventing, discovering and sanctioning of corruption acts

-Ordinance No. 2184/C/2006

-The National Agency (ANI) functions via Law No. 144/2007. This agency will verify assets, incompatibilities and potential conflicts of interest of a large number of higher public and elected officials. The agency was expected to be operational by

October 2007.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

89

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Art. 2 of Government Emergency Ordinance 43/2002, with changes introduced by Law No. 54/2006, provides that the National Anticorruption Directorate is independent in its relationship with the courts of justice and the prosecutors offices attached to these, as well as in its relationship with the other public authorities, to carry out its role on the basis of laws and in order to ensure that the law is respected by all.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

-European Commission, Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 27, 2007, p.16: This year, the commitment and capacity of the DNA (National Anticorruption Department) in prosecuting high-level corruption cases continued. The number and profile of the new investigations initiated by the DNA in this period (Jan. 1, 2007 to June 27, 2007) contributed to a good track record of nonpartisan investigations into high corruption.

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007: "In practice, the anticorruption agencies are protected from political interference. We have the National Anticorruption Direction (DNA), which is a public prosecution agency, as well as the newly set up and not yet fully functional National Integrity Agency (ANI), which is an administrative body that is looking into conflicts of interest and (il)licit wealth amassed by civil servants, politicians included. As the ANI is not yet functional, the answers are relevant for DNA only. DNA is protected by law from political interference, but the current Justice Minister attempted to sack one of the leading prosecutors without following the required procedural steps."

http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

In August 2007, the Superior Council for Magistracy began discussions again about the nomination and revocation procedure of the General Prosecutor and the Chief Prosecutor of DNA (National Anti-Corruption Department).

References:

-European Commission, Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 27, 2007, p. 16: As to the nomination and revocation procedure of the General Prosecutor and the Chief Prosecutor of DNA (National Anticorruption Department), the decision of the Senate's Legal Committee to activate an older proposal pending in the Senate since 2006 was reversed by the Plenum in late March 2007. It remains to be seen whether the intent to modify the nomination procedure is abandoned irrevocably. The number of personnel changes in the past month is not reassuring in that respect. http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007: "In practice, the head of the Anticorruption Agency (DNA) is protected from removal without relevant justification. The law stipulates a series of objective criteria that allow the removal of the head of DNA. However, in practice, there was a case when the current justice minister attempted to stretch the legal provisions in an attempt to remove the prosecutor mentioned in 72b."

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that appointments to the DNA (National Anticorruption Department) are made based on professional criteria.

-European Commission, Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 27, 2007, p.15; http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

According to the Government Emergency Ordinance 43/2002, as amended, the personnel structure and the positions numbers are as follows: 130 prosecutor positions; 170 police officer positions; 45 expert positions; 85 special auxiliary personnel positions; 80 administrative and economic personnel positions. <http://www.pna.ro/rum/frames.htm>

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, in an online interview on Aug. 6, 2007, confirmed that the National AntiCorruption Department has a full-time staff.

-European Commission, Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 27, 2007, p.15; http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The National Anticorruption Directorate has, by law, financial independence, in the sense that the institution has its own budget line clearly defined in the budget of the Prosecutor's Office attached to the High Court of Cassation and Justice, being the second fund appropriation entity. See Art. 4 (3) of Government Emergency Ordinance 43/2002, with changes introduced by Law No. 54/2006. By law, a deposit of at least 2 million RON is annually constituted for actions regarding the organizing and ascertaining of flagrant corruption offenses and is at the disposal of the Chief Prosecutor of the National Anticorruption Directorate.

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that agency funding is guaranteed.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the DNA (National Anticorruption Department) receives regular funding.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that the DNA (National Anticorruption Department) makes reports annually.

-Many daily newspapers had stories on 7 Feb. 7, 2007, about the DNA Report (published on Feb. 6, 2006, with participation of the President of Romania, Traian Basescu). For example, see Cristian Stanescu, Basescu's List for DNA Prosecutors, Cotidianul (one of the influential national newspapers), Feb. 7, 2007; <http://www.cotidianul.ro/index.php?id=9179&art=24225&chHash=1080a9b226>

-See the annual report made by the National Anticorruption Department on its Web site: <http://www.pna.ro/bilant.jsp>.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that DNA (National Anticorruption Department) has sufficient power to carry out its mandate.

-European Commission, Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 27, 2007, p.15; http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

-European Commission, Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 27, 2007, p.16; http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that DNA (National Anticorruption Department) often initiates investigations.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

75

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007: DNA acts according to the complexity of the case."

-European Commission, "Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 27, 2007, pp.15-17; http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that citizens can complain to the anticorruption agency (DNA) without fear of recrimination.

-Cristina Gueth, executive director, Freedom House Romania, said that in Romania, there are not a culture for citizens to complain about anticorruption institutions; neither is there a mechanism to encourage disclosure of the dilematic" internal mechanisms in this field.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

88 VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

67

74a. In law, there is a general right of appeal.

YES | NO

References:

Art. 21 (1) of the Constitution: Free access to justice:

(1) Every person is entitled to bring cases before the courts for the defense of his legitimate rights, liberties and interests.

"(2) The exercise of this right shall not be restricted by any law.

"(3) All parties shall be entitled to a fair trial and a solution of their cases within a reasonable term.

"(4) Administrative special jurisdiction is optional and free of charge."

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It depends on many details, but according to central and local media reports, the judicial acts are very slowly, and for this reason is expensive.

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that. in practice, appeals are resolved within a reasonable time period.

-Cristina Gueth, executive director, Freedom House Romania, thinks that it is not a short period of time."

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It depends on many details, but according to central and local media reports, the judicial acts are very slowly and for this reason is expensive

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that in practice, citizens can use the appeals mechanism at a reasonable cost.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that appeals are not expensive.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

75

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Not all judgments follow written law, and in 2006, President of Romania Traian Basescu accused many times the high-level of corruption among magistrates. "The judicial system, created after 1990, is a mixture of economic and political interests. Those who created it are still fighting to maintain it, declared the president in the annual forum of the Superior Council of Magistrates, March 9, 2006.

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that the judgments are made according to established legal code and conduct.

-European Commission, Report on Romania's Progress on Accompanying Measures Following Accession," Brussels, June 27, 2007, p.5; http://www.infoeuropa.ro/ieweb/imgupload/romania_report_en_00002.pdf

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

75

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Almost always, judicial decisions are enforced regardless of what is being decided or who is appearing before the court.

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that in practice, most often" judicial decisions are enforced by the state.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that judicial decisions are generally enforced by the state, with some exceptions.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

88

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

References: Art. 124 of the Constitution: Administration of justice
“(1) Justice shall be rendered in the name of the law.
(2) Justice shall be one, impartial and equal for all.
“(3) Judges shall be independent and subject only to the law”.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The law guarantees protection from political interferences (Art.125 of the Constitution; Arts. 1 and 31 of Law No. 317/2004 regarding the Superior Council of Magistrate, with changes introduced by Law No. 247/2005; Arts. 3 (3) and 74 (2) of Law No. 303/2004 regarding the Magistrates Status, with changes introduce by Law No. 247/2005), but in practice, national-level judges often have links with special interests and political groups.

References:

-Gabriela Stefan, The indebt judge–The man who paid off the political duty, Aug. 11, 2007, Gandul (national Romanian daily newspaper); <http://www.gandul.info/eveniment/judecatorul-dator-omul-isi-achita-obligatiile-politice.html?3935:835679>

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that “the national-level judges are protected, but sometimes they are connected with government and political officials.”

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Arts. 10 bis and 126 (1b) of Law No. 304/2004 regarding to the Judiciary Organization, with changes introduced by Law No. 247/2005; Arts. 97 (o) and 50 (5) of Law No. 303/2004 regarding the Magistrates’ Status, with changes introduced by Law No. 247/2005

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Arts. 1 and 2 of Law No. 303/2004 regarding the Magistrates' Status, published in the Official Gazette, No. 826, Part I

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

-Marilena Stancu, journalist, 22 (national political weekly magazin) and speaker of former Minister of Justice Monica Macovei, confirmed, into on-line interview, August 6, 2007, that no judge has been harmed because of adjudicating corruption cases"

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that in last year, no judges have been physically harmed because of adjudicating corruption cases.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, in an online interview on Aug. 6, 2007, and Cristina Gueth, executive director, Freedom House Romania, in a face-to-face interview on Aug. 2, 2007, agreed that in the last year, no judges have been killed because of adjudicating corruption cases.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

There are some problems with Roma ethnic discrimination. Under Romanian antidiscrimination law, access to justice in cases of Roma discrimination has been arbitrarily limited since a decision by the National Council Combating Discrimination (CNCD), the body in charge of implementation of Romanian antidiscrimination law. There was final and no appeal on the merits of the case was possible. Further, access to the CNCD was difficult, as there was only one office in the capital city. Finally, the CNCD was not able to award damages to victims; victims had to take a finding from the body to a court in order to receive compensation.

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007: There are complaints by ethnic Roma that some judicial decisions have been biased on ethnic grounds."

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007: "There is a significant level of racism in Romania. This affects the judicial system."

-IHF Report 2006: Human Rights in the OSCE (Organization for Security and Cooperation in Europe) Region (Romania 321); http://www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc_id=6859

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, in an online interview on Aug. 6, 2007, and Cristina Gueth, executive director, Freedom House Romania, in a face-to-face interview on Aug. 2, 2007, agreed that women have full access to the judicial system."

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

-Art. 24 (2) of the Constitution, Right to defense:

(1) The right to defense is guaranteed.

"(2) All throughout the trial, the parties shall have the right to be assisted by a lawyer of their own choosing or appointed ex officio."

-Art. 171 of the Criminal Procedure Code

-Art 118 of the Civil Procedure Code

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, online interview on Aug. 6, 2007

-Cristina Gueth, executive director, Freedom House Romania, face-to-face interview on Aug. 2, 2007

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The monthly median income is almost 250 euros, according the National Institute of Statistics (www.insse.ro). Many lawyers believe that the median income is enough to bring a legal suit, if it is a suit without wide-spreading

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that in the most cases, citizens can afford to bring a legal suit.

-Cristina Gueth, executive director, Freedom House Romania, thinks that in some cases, the cost is prohibitive.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, in an online interview on Aug. 6, 2007, and Cristina Gueth, executive director, Freedom House Romania, in a face-to-face interview on Aug. 2, 2007, agreed that the legal system is an affordable option for a small retail business.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that in most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

See also Art. 6 of Law No. 304/2004 regarding the Judiciary Organization, with changes introduced by Law No. 247/2005

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that almost always, citizens have access to a court of law.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that courts are available to most citizens, but some people are unable to reach a courtroom at low cost due to its location.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

83

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 6, 2007, that most often, "appointments to these agencies are made according to professional criteria.

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that "often," individuals appointed have clear party loyalties.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, in an online interview on Aug. 6, 2007, and Cristina Gueth, executive director, Freedom House Romania, in a face-to-face interview on Aug. 2, 2007, agreed that the law enforcement agencies have a budget sufficient to carry out their mandate.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, in an online interview on Aug. 8, 2007, declared: "Most often, the law enforcement agencies are protected from political interference. However, there were cases in which politicians attempted either to intimidate law enforcement officers or to remove them from the office."

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that "often, the agencies are protected from political pressures."

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

83

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

The General Anticorruption Directorate subordinates the Minister of Administration and Internal Affairs. Law No. 161/2005 regarding steps for prevention of corruption acts in the Ministry of Administration Reform and Internal Affairs, telephone hotline: 0800 806 806

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, in an online interview on Aug. 8, 2007, and Cristina Gueth, executive director, Freedom House Romania, in a face-to-face interview on Aug. 2, 2007, consider that the General AntiCorruption Directorate subordinates the Minister of Internal Affairs, that the National Anticorruption Directorate don't resolve complaints quickly and that serious abuses are not investigated with any urgency.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The General Anticorruption Directorate subordinates the Minister of Administration and Internal Affairs, and the National Anticorruption Directorate, a structure with legal personality functioning within the Prosecutors Office, is attached to the High Court of Cassation and Justice.

References:

Law No. 161/2005 regarding measures to prevent and fight corruption in the Ministry of Internal Affairs (Internal and Administrative Reform Ministry), especially Art .13 (1b).

Law No. 54/2006 regarding the National Anticorruption Directorate (a structure with legal personality functioning within the Prosecutors Office attached to the High Court of Cassation and Justice)

Art. 13 (1b) of Government Emergency Ordinance 43/2002 ,with changes introduced by Law No. 54/2006

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

The central media often publish stories about investigations initiated by the the General Anticorruption Directorate and the National Anticorruption Directorate. See: Cotidianul, July 31, 2006: <http://www.cotidianul.ro/index.php?id=6333&art=15802&cHash=0b302e9100>

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, said in an online interview on Aug. 8, 2007: Yes, but often these investigations have been labeled by their press as cover-ups.”

-Cristina Gueth, executive director, Freedom House Romania, said in a face-to-face interview on Aug. 2, 2007, that the National Anticorruption Directorate starts investigations, but there are some political pressures about it.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Arts. 55-65 of Law No. 360/2002 of the Policeman Statute

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement officers are subject to criminal investigation for official misconduct, and no crimes are exempt from prosecution.

References:

-Marilena Stancu, journalist, 22 (national political weekly magazine) and speaker for former Minister of Justice Monica Macovei, in an online interview on Aug. 6, 2007, and Cristina Gueth, executive director, Freedom House Romania, in a face-to-face interview on Aug. 2, 2007, agreed that law enforcement officials are not immune from criminal proceedings.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

