

Overall Score:

80 - Moderate

Legal Framework Score:

97 - Very Strong

Actual Implementation Score:

64 - Weak

Category I. Civil Society, Public Information and Media

I-1. ⁸⁴Civil 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:

Law nr. 246/18-07-2005 on governing associations and foundations guarantees the freedom to establish such groups.

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 is no such restriction in any law, provided general accounting rules are followed.

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:

There is no such obligation in law, provided contracts and accounting documents are properly kept for inspection by fiscal authorities.

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?

83

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:

A formal approval is necessary from the relevant ministry in order to set up any kind of NGO.

References:

– Suzana Dobre, executive director, SAR, Aug. 12, 2008, Bucharest

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

References:

– Suzana Dobre, executive director, SAR, Aug. 12, 2008, Bucharest

– Ioana Avadani, president, Center for Independent Journalism, Aug. 12, 2008, Bucharest

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

References:

- Suzana Dobre, executive director, SAR, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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. YES is a positive score.

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

References:

- Suzana Dobre, executive director, SAR, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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

References:

- Suzana Dobre, executive director, SAR, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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

References:

- Suzana Dobre, executive director, SAR, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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?

100

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

YES | NO

References:

Constitution of Romania, art. 40 (1)

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

References:

- Razvan Bobulescu, leader of Alma Mater national trade union, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

100: Trade unions are common and are an important part of 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.

I-2. Media

5. Are media and free speech protected?

100

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

YES | NO

Comments:

There is no Law of Mass Media in Romania, and as several proposals to pass such a law during the last decade were largely regarded as attempts to curtail media freedoms, the failure to finally adopt such a law can be considered as a positive development. Each draft we have seen so far was meant to actually curtail, not support, the freedom of journalists, by indirectly introducing various restrictions. This being the frame of mind of the legislators, journalists' associations have invariably opposed the very idea of having a Media Law, judging that the current guarantees in the Constitution and the instruments offered by FOIA are sufficient, and that the main effort should be focused on actual enforcement of FOIA provisions.

References:

The Romanian Constitution;
Law of Access to Public Information (FOIA), no. 544/2001
Accepted practice

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

References:

The Romanian Constitution, art. 30;
Accepted practice.

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?

94

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

100 | 75 | 50 | 25 | 0

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

Comments:

No specific license for media printing operations is necessary, apart from those applicable to other non-media printing operations.

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

Comments:

It refers to general procedures of registering a business, which are not always user-friendly; they do not refer to media in particular. To register a business in Romania is quite cheap (up to US\$300, legal fees included) and does not take very long, following reforms implemented in 2001-2003. However, this cannot be done online, and the person must pay a series of visits to some offices, or pay an ambulance-chasing lawyer to do this. Print media companies do not need a special license, being treated like any other business (unlike the electronic media).

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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?

75

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

100 | 75 | 50 | 25 | 0

Comments:

There is a licensing process and allocation of bandwidth which can be expensive and not always transparent.

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

Law 504 / 2002 regarding broadcast media contains provisions for this process.

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

Comments:

The average period is about three months (or more, for broad coverage TV stations) and although a set of criteria exists, the final decisions of the licensing board still convey an impression of arbitrariness (which results in many appeals and requests for explanations from those turned down.) The main problem, however, is the delay in making a decision, which can have an impact on the business plan.

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)

Iulian Comanescu, media analyst, Hotnews

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 on-line.

100 | 75 | 50 | 25 | 0

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)

Iulian Comanescu, media analyst, Hotnews

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 on-line.

100 | 75 | 50 | 25 | 0

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

Comments:

Earlier this year, a maverick MP submitted a draft of a law in which the media were only to report positive news, but the bill was never approved in plenum, being met with general ridicule by the mainstream media and political class. The radical party to which this MP belonged did not make it into the Parliament in the November 2008 elections.

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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:

There is a certain censorship, manifested in the following ways: sidelining anchors, talk show hosts and reporters who tread into no-go areas, in spite of their high ratings (which are irrational decisions, business-wise); promoting journalists who toe the line; having informal black lists of public people who are never invited to comment on current affairs, in spite of their better knowledge of subjects. Thus an artificial public opinion" is created, carefully managed so as to illustrate only a narrow range of viewpoints.

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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?

75

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

YES | NO

Comments:

By the general laws applicable to all companies, owners can be known publicly from the Firms' Public Registry. However, this is only applicable to prima-facie companies holding shares in a media group; second- or third-tier owners, especially individuals, who may be the real owners, are hard to identify, especially if off-shore companies are used as intermediaries.

References:

Law nr. 26 / 1990 regarding companies, which defines how the Firms' Public Registry functions.

YES: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

YES | NO

Comments:

By the general laws applicable to all companies, owners can be known publicly from the Firms' Public Registry. Also, there are limitations in the Law of Broadcast Media (504 / 2002) regarding cross-ownership and concentration on the electronic media market, which implies ownership must be known to the Regulatory Council. However, this is only applicable to prima-facie companies holding shares in a media group; second- or third-tier owners, especially individuals, who may be the real owners, are hard to track down, especially when off-shore companies are used as intermediaries.

References:

Law nr. 26 / 1990 regarding companies, which defines how the Firms' Public Registry operates.

YES: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

100 | 75 | 50 | 25 | 0

Comments:

There are two main types of problems:

1. media groups (with electronic and print channels) that function as mere outlets of a political-business group; in this case there are important political biases in their programs, perceptible bad faith in reporting news, and a lot of self-censorship at the individual level.
2. a number of media channels (mainly newspapers) which are known to practice institutionalized blackmail: aggressive stories targeting public institutions or business people, which are withdrawn in exchange for payment.

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Lulian Comanescu, media analyst, Hotnews

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

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Lulian Comanescu, media analyst, Hotnews

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

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)
Iulian Comanescu, media analyst, Hotnews

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

References:

Ioana Avadani, director, Center for Independent Journalism (CJI)

Iulian Comanescu, media analyst, Hotnews

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.

88

I-3. Public Access to Information

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

References:

Constitution.

Law 544/2001 on access to information of public interest (FOIA)

Law 52/2003 on transparency of the decision-making process (Sunshine Act)

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

References:

Law 544/2001 on access to information of public interest (FOIA)
Law 52/2003 on transparency of the decision-making process (Sunshine Act)

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

Comments:

However, the office of the Ombudsman is not very visible or active.

References:

The office of the Ombudsman, set up by Law 35/1997.

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?

50

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

100 | 75 | 50 | 25 | 0

Comments:

The FOIA law says the data should be provided in 10 (working) days, or alternatively a justification should be given and the term can be extended to 30 (working) days. The problem, as always, is enforcement: some public institutions or companies pretend

they are not covered by the law, if not funded directly from the national budget (they are). And, in general, there is very little information disclosed ex officio in the relevant format by authorities, to reduce the need to send repeated and customized demands for information (the law specifies the bits of info that should be disclosed in the right format”).

References:

- Monica Macovei, lawyer and civil society activist, APADOR-Helsinki Committee, former minister of Justice, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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

References:

- Monica Macovei, lawyer and civil society activist, APADOR-Helsinki Committee, former minister of Justice, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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

Comments:

Usually when sensitive bits of information are not disclosed upon the first request, a whole uphill struggle is necessary in order to squeeze them out of the institution. Journalists are more likely to be successful in these attempts than ordinary citizens.

References:

- Monica Macovei, lawyer and civil society activist, APADOR-Helsinki Committee, former minister of Justice, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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

References:

- Monica Macovei, lawyer and civil society activist, APADOR-Helsinki Committee, former minister of Justice, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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

References:

- Monica Macovei, lawyer and civil society activist, APADOR-Helsinki Committee, former minister of Justice, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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.

Category II. Elections

81
II-1. Voting & 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

References:

- Romanian Constitution, art. 36
http://www.cdep.ro/pls/dic/site_page?den=act2_1&par1=2#t2c2s0a36

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:

Elections are held every four years for the Parliament and local councils, and every five years for the president of the republic. These are constitutional provisions, so they cannot be altered easily.

References:

Romanian Constitution, art. 63

http://www.cdep.ro/pls/dic/site.page?den=act2_1&par1=2#t2c2s0a36

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?

92

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

100 | 75 | 50 | 25 | 0

References:

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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?

90

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

YES | NO

Comments:

No government approval is needed to form and register a political party.

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

Romanian Constitution, art. 40 – the freedom to form political parties
Law 14 / 2003 of political parties.

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

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

Romanian Constitution, art. 37, which only imposes (reasonable) age thresholds for the highest offices (president and senator).

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:

It is mostly about the high administrative thresholds for registering a political party, or running as an independent candidate. Conditions are among the most restrictive in Europe, but in general are fairly applied.

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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:

The current system is biased against independent candidates and favors existing parties. There is a high administrative thresholds for running as an independent candidate. Conditions are among the most restrictive in Europe, but in general are fairly applied.

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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. A system of party lists may discourage or prevent independent 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

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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

18. Is the election monitoring agency effective?

75

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

YES | NO

References:

The Electoral Law, 35/2008

http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=9055

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

References:

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

– Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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:

For a long while Romania did not have a permanent Electoral Authority. It was set up only in 2004, through Law 373 / 2004, and put in charge of the logistics of the electoral process and the control of party finances. It remains a weak institution, however, as it has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers). Moreover, its voters' database has always been a mess.

References:

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

– Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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

Comments:

It does, if by reports” we mean election results, including detailed breakdown of data by constituencies, etc. There are no other reports released by BEC.

References:

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
– Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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:

Procedures are awkward, as this agency (BEC) must refer the cases to courts. In general, BEC is perceived as reluctant to act against frauds.

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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:

Electoral Law, 35/2008

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:

The deadlines and procedures for such appeals are very restrictive; solid evidence provided by rival groups or NGOs on electoral fraud are regularly dismissed on procedural grounds.

References:

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

– Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest

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

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest

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

References:

Electoral Law, 35/2008

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

References:

- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest

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.

17. 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

References:

Biroul Electoral Central (BEC)

The Electoral Law, 35/2008

http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=9055

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 exists 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.

86 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

100

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

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

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

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 political parties.

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

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

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

YES: A YES score is earned if there are any limits in 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 the disclosure of donations to political parties.

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

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

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, 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 and expenditures of political parties.

YES | NO

Comments:

The audit is performed by the Court of Accounts (the official public auditor).

References:

Law 334/2006, on financing political parties and electoral campaigns

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. 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' finances and expenditures or if such requirements exist but allow for parties to self-audit.

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

YES | NO

References:

The Romanian Court of Accounts

Law 334/2006, on financing political parties and electoral campaigns

http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

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 the financing of political parties. 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 there regulations governing the financing of individual political candidates?

100

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns

http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

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

21b. In law, there are limits on individual donations to political candidates.

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

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

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

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | NO

References:

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. 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 an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

References:

The Romanian Court of Accounts

Law 334/2006, on financing political parties and electoral campaigns
http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=74251

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 the financing of individual political candidates' campaigns. 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.

22. Are the regulations governing the political financing of parties effective?

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The score is mostly due to the weak enforcement of existing rules. For a long while, Romania did not have a permanent Electoral Authority. It was set up only in 2004, through Law 373 / 2004, and put in charge with the logistics of the electoral process and the control of party finances. It remains a weak institution, however, as it has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty.

References:

– Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest
– Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest
<http://www.ipp.ro/alternativale/Political/parties/finance/control.pdf>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The enforcement of existing rules is weak. For a long while Romania did not have a permanent Electoral Authority. It was set up only in 2004, through the Law 373 / 2004, and put in charge with the logistics of the electoral process and the control of party finances. It remains a weak institution, however, as it has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty.

References:

– Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest
– Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest
<http://www.ipp.ro/alternativale/Political/parties/finance/control.pdf>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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:

The permanent Electoral Authority was set up in 2004 and put in charge with the logistics of the electoral process and the control of party finance. Before that, party finances were supposed to be controlled by the Court of Accounts, which was a purely formal process where nobody had ever been found as breaking the rules. This weakness is perpetuated with the EA, however, as the new agency has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty.

References:

– Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest
– Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest
<http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The permanent Electoral Authority was set up in 2004 and put in charge with the logistics of the electoral process and the control of party finance. Before that, party finances were supposed to be controlled by the Court of Accounts, which was a purely formal process where nobody had ever been found as breaking the rules. This weakness is perpetuated with the EA, however, as the new agency has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty. Neither the Electoral Authority, nor the Court of Accounts before it, were able to initiate independent investigations into party accounts.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest
 - Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest
- <http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. 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.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The permanent Electoral Authority was set up in 2004 and put in charge with the logistics of the electoral process and the control of party finance. Before that, party finances were supposed to be controlled by the Court of Accounts, which was a purely formal process where nobody had ever been found as breaking the rules. This weakness is perpetuated with the EA, however, as the new agency has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty. Neither the Electoral Authority, nor the Court of Accounts before it, were able to initiate independent investigations into party accounts. In 18 years, nobody was ever punished.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest
 - Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest
- <http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

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.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The permanent Electoral Authority was set up in 2004 and put in charge with the logistics of the electoral process and the control of party finance. Before that, party finances were supposed to be controlled by the Court of Accounts, which was a purely formal process where nobody had ever been found as breaking the rules. This weakness is perpetuated with the EA, however, as the new agency has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty. Neither the Electoral Authority, not the Court of Accounts before it, were able to initiate independent investigations into party accounts. In 18 years, nobody was ever punished.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest
- Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest

100: Political party 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 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

45

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

Comments:

The controlling system relies on self-reporting only. Visible and suspicious cases of surpassing contribution thresholds were never properly investigated. The permanent Electoral Authority was set up in 2004 and put in charge with the logistics of the electoral process and the control of party finance. Before that, party finances were supposed to be controlled by the Court of Accounts, which was a purely formal process where nobody had ever been found as breaking the rules. This weakness is perpetuated with the EA, however, as the new agency has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty. Neither the Electoral Authority, nor the Court of Accounts before it, were able to initiate independent investigations into party accounts. In 18 years, nobody was ever punished.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest
- Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest

<http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

Comments:

The controlling system relies on self-reporting only. Visible and suspicious cases of surpassing contribution thresholds were never properly investigated. The permanent Electoral Authority was set up in 2004 and put in charge with the logistics of the electoral process and the control of party finance. Before that, party finances were supposed to be controlled by the Court of Accounts, which was a purely formal process where nobody had ever been found as breaking the rules. This weakness is perpetuated with the EA, however, as the new agency has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty. Neither the Electoral Authority, nor the Court of Accounts before it, were able to initiate independent investigations into party accounts. In 18 years, nobody was ever punished.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest
- Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest

<http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The controlling system relies on self-reporting only. Visible and suspicious cases of surpassing contribution thresholds were never properly investigated. The permanent Electoral Authority was set up in 2004 and put in charge with the logistics of the electoral process and the control of party finance. Before that, party finances were supposed to be controlled by the Court of Accounts, which was a purely formal process where nobody had ever been found as breaking the rules. This weakness is perpetuated with the EA, however, as the new agency has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty. Neither the Electoral Authority, nor the Court of Accounts before it, were able to initiate independent investigations into party accounts. In 18 years, nobody was ever punished.

References:

– Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest
– Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest
<http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. 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.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

Comments:

The controlling system relies on self-reporting only. Visible and suspicious cases of surpassing contribution thresholds were never properly investigated. The permanent Electoral Authority was set up in 2004 and put in charge with the logistics of the electoral process and the control of party finance. Before that, party finances were supposed to be controlled by the Court of Accounts, which was a purely formal process where nobody had ever been found as breaking the rules. This weakness is perpetuated with the EA, however, as the new agency has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty. Neither the Electoral Authority, not the Court of Accounts before it, were able to initiate independent investigations into party accounts. In 18 years, nobody was ever punished.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest
- Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest

<http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

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.

23e. In practice, the finances of individual candidates' campaigns are audited.

Comments:

The controlling system relies on self-reporting only. Visible and suspicious cases of surpassing contribution thresholds were never properly investigated. The permanent Electoral Authority was set up in 2004 and put in charge with the logistics of the electoral process and the control of party finance. Before that, party finances were supposed to be controlled by the Court of Accounts, which was a purely formal process where nobody had ever been found as breaking the rules. This weakness is perpetuated with the EA, however, as the new agency has never been able to substantially control the funds of any party and publicly report the findings (it only collects self-reports from party treasurers), or apply a penalty. Neither the Electoral Authority, not the Court of Accounts before it, were able to initiate independent investigations into party accounts. In 18 years, nobody was ever punished.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest
- Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest

<http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

50

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Parties do publish reports sometimes, but not systematically and timely. The problem is the content of these reports, which are notoriously unreliable. There are visible discrepancies between the funds reported and the amount of money spent during campaigns. This practice is encouraged by the weakness of the controlling institutions, which have never initiated proper inspections.

References:

– Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest
– Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest
<http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Parties do publish reports sometimes, but not systematically and timely. The problem is the content of these reports, which are notoriously unreliable. There are visible discrepancies between the funds reported and the amount of money spent during

campaigns. This practice is encouraged by the weakness of the controlling institutions, which have never initiated proper inspections.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest
- Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The main problem is not the cost, but the reliability of data presented.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest
- Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest

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.

25. Can citizens access records related to the financing of individual candidates' campaigns?

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Candidates do publish reports sometimes, but not systematically and timely. The problem is the content of these reports, which are notoriously unreliable. There are visible discrepancies between the funds reported and the amount of money spent during campaigns. This practice is encouraged by the weakness of the controlling institutions, which have never initiated proper inspections.

References:

– Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest
– Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest
<http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

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

75:

50: Individual 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: Individual 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 regularly withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– Adrian Sorescu, civic activist and elections monitor, Asociația Pro Democratia (APD), Bucharest
– Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest
<http://www.ipp.ro/altmateriale/Political/parties/finance/control.pdf>

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

The problem is not the cost, but the trustworthiness of such reports.

References:

- Adrian Sorescu, civic activist and elections monitor, Asociatia Pro Democratia (APD), Bucharest
- Adrian Moraru, civic activist and party finance expert, Institutul de Politici Publice (IPP), Bucharest

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. ⁷⁶Executive Accountability

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

75

27a. In practice, the chief executive gives reasons for his/her policy decisions.

References:

- Dan Tapalaga, investigative reporter, Hotnews agency
- Ionut Popescu, economic columnist, former minister of Finance

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.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The Constitutional Court can pass judgments on the constitutionality of laws or government decisions. In administrative or regular courts, citizens or associations can sue the government, for example on decisions regarding salaries in the public sector.

References:

- Law 554 / 2004 of administrative procedure.
Romanian Constitution, arts. 142-147, regarding the Constitutional Court.

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency
- Bogdan Chiritoiu, presidential advisor on economic and social affairs

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 rely 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.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

References:

- Bogdan Chiritoiu, presidential advisor on economic and social affairs
- Ionut Popescu, economic columnist, former minister of Finance

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.

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

The president can only be investigated for high treason while in office; all other charges are suspended until s/he steps down (the Romanian Constitution).

The prime minister (or any minister) can be investigated after approval of the parliament, in the house where s/he is a member. If ministers are not simultaneously MPs, they can be investigated by prosecutors with no other approval needed (Law 115 / 1999 on Ministerial Responsibility).

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

The prime minister (or any minister) can be investigated after approval of the parliament, in the house where s/he is a member. If ministers are not simultaneously MPs, they can be investigated by prosecutors with no other approval needed (Law 115 / 1999 on Ministerial Responsibility).

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.

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

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Law 115 / 1996 on disclosing personal assets and interests by dignitaries, magistrates and civil servants. New and improved declaration forms were introduced through Law 158 / 2005, and were made public online.

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.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Law 115 / 1996 on disclosing personal assets and interests by dignitaries, magistrates and civil servants. New and improved declaration forms were introduced through Law 158 / 2005, and were made public online.

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Law 115 / 1996 on disclosing personal assets and interests by dignitaries, magistrates and civil servants. New and improved declaration forms were introduced through Law 158 / 2005, including a procedure to disclose gifts and hospitality.

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.

29d. 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

References:

National Integrity Agency (ANI) is the administrative agency in charge of investigating conflicts of interests in public offices, including at the top level. It was set up through Law 144/2007, and has yet to show results in practice.

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.

29e. 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 such restrictions.

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.

29f. 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:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | **25** | 0

References:

- Dan Tapalaga, investigative reporter, Hotnews agency
- Ionut Popescu, economic columnist, former minister of Finance

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

Comments:

The auditing mechanism (ANI) is still new and untested, being created at the end of 2007. The most effective form of auditing so far has been public scrutiny, mostly through NGO and media reports.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

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

100

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

Like in the case of senior civil servants, they are available online and are updated periodically.

References:

Law 158 / 2005

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.

30b. 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

Comments:

Like in the case of senior civil servants, they are available online and are updated periodically.

References:

Law 158 / 2005

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.

30c. 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

Comments:

Like in the case of senior civil servants, they are available online and are updated periodically.

References:

Law 158 / 2005

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.

100

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

YES | NO

Comments:

Citizens can also sue dignitaries and civil servants individually, under criminal or civil rules.

References:

The whole body of administrative laws, governed by the Administrative Code and the Administrative Procedure Code.

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.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

50

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

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency, Bucharest

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

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

83

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The Constitutional Court can review any kind of legislation passed by the Parliament.

References:

Romanian Constitution, arts. 142-147

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Yes, they can be freely investigated and brought to court.
The only restrictions are that MPs cannot be searched or detained during investigations.

References:

Law 196 / 2006 regarding the Status of Senators and Deputies.

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

54

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Law 115 / 1996 on disclosing personal assets and interests by dignitaries, magistrates and civil servants. New and improved declaration forms were introduced through Law 158 / 2005, and they are made public on the chambers' web sites.

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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

References:

There are no such restrictions.

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Laws 115 / 1996 and 158 / 2005, on disclosing personal assets and interests by dignitaries, magistrates and civil servants also cover the issues of gifts and hospitality to MPs.

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

The National Integrity Agency (ANI, administrative agency in charge of investigating conflicts of interests in public office, set up through Law 144/2007) is mandated to audit the asset disclosures of MPs.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

There are no such regulations.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The National Agency for Integrity (ANI), the institution mandated to control and penalize breaches of the law, was only set up recently (2007). It is not yet fully functional and is subject to political interference. Before its creation, the judiciary was supposed to initiate actions itself, but no institutionalized process was ever created to make the information (declaration forms, suspicious gifts) available to prosecutors on a systematic basis. In turn, prosecutors never perceived this as part of their core tasks, so nobody was ever investigated.

References:

– Laura Stefan, former director in the Ministry of Justice, Bucharest

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | **50** | 25 | 0

Comments:

The auditing mechanism (ANI) is still new and untested, being created at the end of 2007.

The most effective form of auditing so far has been public scrutiny, mostly through NGO and media reports.

References:

– Laura Stefan, former director in the Ministry of Justice, Bucharest

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

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

100

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Like in the case of senior civil servants, they are available online on the chambers' web sites and are updated periodically (Law 158 / 2005).

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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Like in the case of senior civil servants, they are available online on the chambers' web sites and are updated periodically (Law 158 / 2005).

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Morar, policy analyst, Institute for Public Policy (IPP), Bucharest

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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Like in the case of senior civil servants, they are available online on the chambers' web sites and are updated periodically (Law 158 / 2005).

The problem is the reliability of the data reported, and the weakness of the auditing mechanism (ANI).

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Morar, policy analyst, Institute for Public Policy (IPP), Bucharest

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.

35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Law 544 / 2001 (FOIA)

Law 52 / 2003 (Sunshine Act": transparency of the decision making process)

Internal regulations of the Lower Chamber and the Senate, through which legislative proposals should be traceable online in all the steps involved, and the final regulation should be accessible in a legislative database. See <http://www.cdep.ro>

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 exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Timeliness and completeness of data may remain an issue, as well as the full compliance with the provisions of the sunshine law”.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Morar, policy analyst, Institute for Public Policy (IPP), Bucharest

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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Morar, policy analyst, Institute for Public Policy (IPP), Bucharest

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.

36. Are judges appointed fairly?

75

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

- Law 304 / 2004 provides for clear steps (exam, training, appointment) through which national judges are appointed:
- entrance exam and training in the Institute for Magistracy
 - vetting by the Supreme Council of Magistracy (CSM) after graduation
 - appointment by the president

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.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Appointments to the high courts, such as the Constitutional Court (which, true, is a hybrid institution nor belonging 100 percent to the judiciary) are made on a political basis. Seniority and networking still matter more than performance or qualification at the top echelons – which in transition countries is a problem, as high seniority usually means a career started under the Communist regime.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

The Supreme Council of Magistracy is the independent, self-regulating body that manages the career of magistrates, including training and appointments. (Romanian Constitution, arts. 132-133)

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).

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

71

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Penal Procedural Code
Civil Procedural Code
Administrative Code

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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | **50** | 25 | 0

Comments:

However, the reasoning may be delayed for weeks or months, the quality of arguing is very uneven and the reasons do not function as a precedent for other cases.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

The Supreme Council of Magistracy is the independent, self-regulating body that manages the career of magistrates, including training, appointments and disciplinary procedures. (Romanian Constitution, arts. 132-133)
Law 303/2004 on the status of magistrates
Law 304/2004 on judicial 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

The Supreme Council of Magistracy is the independent, self-regulating body that manages the career of magistrates, including training, appointments and disciplinary procedures. (Romanian Constitution, arts. 132-133)
The body is elected by the profession and is independent, in theory, of political interference.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

CSM is perceived as politically biased in its functioning, selectively using internal investigations to stop prosecutors who are too pushy” against politicians.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

79

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Law 115 / 1996 on disclosing personal assets and interests by dignitaries, magistrates and civil servants. New and improved declaration forms were introduced through Law 158 / 2005, and are made public online.

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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Laws 115 / 1996 and 158 / 2005, on disclosing personal assets and interests by dignitaries, magistrates and civil servants also cover the issues of gifts and hospitality to judges.

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.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

The National Integrity Agency (ANI), the administrative agency in charge with investigating conflicts of interests in public office, set up through Law 144/2007, is mandated to audit magistrates' asset disclosures.

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.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

Former judges are restricted to practise as attorneys in the same court for two years after leaving the bench.

References:

Law 303/2004 on the status of magistrates.

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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | **25** | 0

Comments:

The auditing mechanism (ANI) is still new and untested, being created at the end of 2007. There is no precedent of magistrates audited by ANI so far. The most effective form of auditing has been public scrutiny, mostly through NGO and media reports.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

67

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

There are irregularities in compliance, however.

References:

Like in the case of senior civil servants, they must be available online, on courts' web sites, and updated periodically (Law 158 / 2005).

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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Timeliness and completeness of data may remain an issue, since the auditor has been ineffective so far.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Morar, policy analyst, Institute for Public Policy (IPP), Bucharest

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest
- Adrian Morar, policy analyst, Institute for Public Policy (IPP), Bucharest

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

40. Can the legislature provide input to the national budget?

75

40a. In law, the legislature can amend the budget.

YES | NO

References:

Law on Public Finance, no. 500/2002.

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.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | **50** | 25 | 0

Comments:

Everything must be approved by the Parliament, but substantial allocations may be decided by the government on fast track procedures and approved by MPs post-factum.

References:

- Bogdan Chiritoiu, presidential advisor on economic and social affairs
- Ionut Popescu, economic columnist, former minister of Finance

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

- Bogdan Chiritoiu, presidential advisor on economic and social affairs
- Ionut Popescu, economic columnist, former minister of Finance

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.

41. Can citizens access the national budgetary process?

50

41a. 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:

- Bogdan Chiritoiu, presidential advisor on economic and social affairs
- Ionut Popescu, economic columnist, former minister of Finance

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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

There is formal access, but in practice procedures are cumbersome and seldom used.

References:

- Bogdan Chiritoiu, presidential advisor on economic and social affairs
- Ionut Popescu, economic columnist, former minister of Finance

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.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The national budget with all details and items is published in the Official Gazette (the legal repertoire), but practical access to it is costly and cumbersome for ordinary citizens. Budget execution in real time, or after the end of the budget cycle, is rarely accessible and in some cases inaccurate.

References:

- Bogdan Chiritoiu, presidential advisor on economic and social affairs
- Ionut Popescu, economic columnist, former minister of Finance

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.

43. Is the legislative committee overseeing the expenditure of public funds effective?

58

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Reports are unsystematic, usually following ad-hoc requests from the members of the Committees, and often the reliability of data is questioned by MPs.

References:

- Bogdan Chiritoiu, presidential advisor on economic and social affairs
- Ionut Popescu, economic columnist, former minister of Finance

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.

43b. 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:

- Bogdan Chiritoiu, presidential advisor on economic and social affairs
- Ionut Popescu, economic columnist, former minister of Finance

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The Romanian Parliament has little power in overseeing public expenditure once the annual budget (or the half-year adjustments to it) is passed. Independent investigations are rare and usually do not target substantial problems (which exist), but are merely used as opportunities to score political points on trivial, but highly visible issues.

References:

- Bogdan Chiritoiu, presidential advisor on economic and social affairs
- Ionut Popescu, economic columnist, former minister of Finance

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.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES

NO

References:

Parliamentary Budget Committees exist in both chambers, and their role is most important when the budget proposal is discussed: they give an opinion on the budget, which may be overturned by the plenum. The reports they receive afterwards from the executive are not systematic, and their monitoring role in executing the budget is not a strong one. The Court of Accounts checks post-factum the legality of budget execution in all public institutions (see section V-2).

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).

Category IV. Administration and Civil Service

IV-1. ⁷⁵Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Law 188 / 1999 on the Civil Service Status

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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Law 188 / 1999 on the Civil Service Status

Law 15 / 2008 against conflict of interests and incompatibilities in public office

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.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

References:

National Agency for Civil Servants, part of the central government, set up through Law 188 / 1999

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

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

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Civil Service Status (Law 188 / 1999).

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 or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

64

45a. In practice, civil servants are protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

Civil service in Romania continues to be intensely politicized: top and middle management is used to reward party supporters; lower levels are more stable, but not necessarily more professional, as survival strategies are more important than competence.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

By law, this is indeed the case. In practice, at the top levels management contracts count for little, as ministers can change agency heads without giving objective reasons for their decisions. At the lowest levels, there are numerous cases when hiring and promotion rules are bypassed and the performance indicators ignored. Important institutions have been exposed recently as hosting whole networks of family relatives: regulatory agencies (electricity, air transportation authority), the privatization office, etc.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

45c. 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:

In practice, at the top levels management contracts count for little, as ministers can change agency heads without giving objective reasons for their decisions. At the lowest levels, there are numerous cases when hiring and promotion rules are bypassed and the performance indicators ignored. Important institutions have been exposed recently as hosting whole networks of family relatives: regulatory agencies (electricity, air transportation authority), the privatization office, etc.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil 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.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

45f. 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:

Such annual reports compiled by the National Agency for Civil Servants do exist; however, they are not systematic and visible, while the database of the Agency is not yet functional. The law is in general followed on advertising openings and staff headcounting. The major failure is that such dissipated information is not aggregated somehow so as to offer a full picture of the situation. Such a mechanism would be more important as a management tool in the central government, and its hurts less the ordinary citizen.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest

– Vasile Marica, leader of the National Trade Union of Civil Servants

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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

– Laura Stefan, former director in the Ministry of Justice, Bucharest
– Vasile Marica, leader of the National Trade Union of Civil Servants

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Civil Service Law provides explicitly for a lifetime ban for a person who was convicted for corruption (and other offences), provided the sentence is definitive.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

72

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Law 115 / 1996 on disclosing personal assets and interests by dignitaries, magistrates and civil servants.
New and much-improved declaration forms were introduced through Law 158 / 2005.

YES: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. 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 188 / 1999 on the Civil Service Status.
Law 115 / 1996 on disclosing personal assets and interests by dignitaries, magistrates and civil servants.

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

Civil Service Status (Law 188 / 1999).

But the provisions are explicit only in the case of civil servants who work in inspection / monitoring agencies, and who cannot take positions in companies they directly controlled or monitored, for a period of two years.

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Laws Law 115 / 1996 and 158 / 2005, on disclosing personal assets and interests by dignitaries, magistrates and civil servants

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:

The National Integrity Agency is mandated to audit the disclosure forms. It was set up by Law 144 / 2007 (see also the items in section VI-2)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Such regulations are still very loose. It is usual practice to take a position in the private sector in a company which was under the person's regulatory power until a short time ago.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The National Agency for Integrity (ANI), the institution mandated to control and penalize breaches of the law, covering both dignitaries and civil servants, was only set up recently (2007). It is not yet fully functional and is subject to political interference. Before its creation, the judiciary was supposed to initiate action itself, but no institutionalized process was ever created to make the information (declaration forms, suspicious gifts) available to prosecutors on a systematic basis. In turn, prosecutors never perceived this as part of their core tasks, so nobody was ever investigated.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | **50** | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | **50** | 25 | 0

Comments:

The auditing mechanism (ANI) is still new and untested, being created at the end of 2007.
The most effective form of auditing so far has been public scrutiny, mostly through NGO and media reports.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service 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.

47. Can citizens access the asset disclosure records of senior civil servants?

100

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

The forms are available on the web site of the institution.

References:

Laws Law 115 / 1996 and 158 / 2005, on disclosing personal assets and interests by dignitaries, magistrates and civil servants.

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In most cases they are available on web sites.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

48a. 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:

Law 571 / 2004 on the protection of whistleblowers in public institutions.

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.

48b. 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

Comments:

Actual protection for whistleblowers is very difficult to achieve, due to the intensely politicized environment.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

48c. 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:

Although they don't enjoy formal protection through the same laws, the general provisions of the Criminal Code offer protection to those who report on crimes, and make an offense the non-reporting of criminal behavior one may be aware of.

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.

48d. 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:

Although they don't enjoy formal protection through the same laws, the general provisions of the Criminal Code offer protection to those who report on crimes, and make an offense the non-reporting of criminal behavior one may be aware of.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

38

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Except for the Ministry of Interior, which has created an Internal Affairs department, such mechanisms are mostly PR initiatives which are not funded and staffed adequately.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Except for the Ministry of Interior, which has created an Internal Affairs department, such mechanisms are mostly PR initiatives which are not funded and staffed adequately.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Except for the Ministry of Interior, which has created an Internal Affairs department, such mechanisms are mostly PR initiatives which are not funded and staffed adequately. At best, these structures pass the information to the government's inspection department, or (very rarely) to the prosecutor's office, without being able to launch a minimal investigation.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The clear measure of ineffectiveness for such mechanisms is the fact that there are no major cases of corruption uncovered based on information from such sources.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Vasile Marica, leader of the National Trade Union of Civil Servants

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.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. 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:

Anti-corruption telephone green lines set up by the government in 2003, where reporting can remain in theory anonymous. The Ministry of Interior has its own green line for reporting abuses by police and its other services.

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.

67
IV-3. Procurement

51. Is the public procurement process effective?

78

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Law 337 / 2006 on Public Procurement

Law 188 / 1999 on the Civil Service Status.

Law 115 / 1996 on disclosing personal assets and interests by dignitaries, magistrates and civil servants.

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.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Law 337 / 2006 and the associated secondary legislation, imposing minimal qualification standards for procurement officers.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

– Adrian Savin, practicing commercial lawyer, Bucharest

– Laura Stefan, former director in the Ministry of Justice, Bucharest

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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

Only the generally-applicable legislation and procedures for the whole civil service – see section IV-1. This means the general regime of incompatibilities and the asset disclosure forms, which in principle can be checked by the National Integrity Agency (ANI, see section VI-2)

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.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The thresholds are much lower than the 0.5 percent of the GDP and fully aligned with the procurement rules of the EU.

References:

Law 337 / 2006 on public procurement.

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The rules are fully aligned with the procurement rules of the EU and limit drastically the possibility of sole sourcing.

References:

Law 337 / 2006 on public procurement.

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

It is even considered a problem currently, as many public projects suffer major delays due to the regular practice of appealing automatically by losers. The general view is that the law is erring on the liberal side in this respect.

References:

Law 337 / 2006 on public procurement.

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

It is even considered a problem currently, as many public projects suffer major delays due to the regular practice of suing in court automatically by losers. The general view is that the law is erring on the liberal side in this respect.

References:

Law 337 / 2006 on public procurement.

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | **NO**

References:

There have been repeated attempts to create such a process, but there are legal problems with disqualifying a company from all future tenders: they can sue authorities in court based on fair competition rules. At this moment there is no unified, formal treatment in law of such blacklisted” companies. The main preoccupation of the authorities is to try and exclude those who did not perform according to contracts.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

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

51j. 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

Comments:

There have been repeated attempts to create such a process, but there are legal problems with disqualifying a company from all future tenders: they can sue authorities in court based on fair competition rules. At this moment there is no unified, formal treatment in law of such blacklisted” companies, though some contracting authorities may exclude them, especially if it is a program financed directly by the EU. The main preoccupation of the authorities is to blacklist those who do not perform adequately, and less to chase bribers.

References:

Dan Tapalaga, investigative reporter, Hotnews agency
Adrian Savin, practicing commercial lawyer, Bucharest

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.

52. Can citizens access the public procurement process?

71

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

Dan Tapalaga, investigative reporter, Hotnews agency
Adrian Savin, practicing commercial lawyer, Bucharest

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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Dan Tapalaga, investigative reporter, Hotnews agency
Adrian Savin, practicing commercial lawyer, Bucharest

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Dan Tapalaga, investigative reporter, Hotnews agency
Adrian Savin, practicing commercial lawyer, Bucharest

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Dan Tapalaga, investigative reporter, Hotnews agency
Adrian Savin, practicing commercial lawyer, Bucharest

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.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Dan Tapalaga, investigative reporter, Hotnews agency
Adrian Savin, practicing commercial lawyer, Bucharest

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.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | **50** | 25 | 0

References:

Dan Tapalaga, investigative reporter, Hotnews agency
Adrian Savin, practicing commercial lawyer, Bucharest

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.

IV-4. Privatization

53. Is the privatization process effective?

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Companies and individuals in a situation of bankruptcy, with unpaid debts to the public budgets or who have broken provisions of privatization contracts in the past, should by law be excluded.

Law 337 / 2006 on public procurement, and associated secondary legislation.

Government Ordinance 51 / 1998 regarding the selling of state assets.

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Law 188 / 1999 on the Civil Service Status.

Law 115 / 1996 on disclosing personal assets and interests by dignitaries, magistrates and civil servants.

Law 58 / 1991 (the Privatization Law) , with all subsequent amendments, imposed limitations and controls to prevent situations of conflict of interests among officials. These were more or less reproduced in the special legislation which dealt with individual cases of large privatizations.

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.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

- Adrian Savin, practicing commercial lawyer, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

54. Can citizens access the terms and conditions of privatization bids?

70

54a. In law, citizens can access privatization regulations.

YES | NO

References:

- Law 337 / 2006 on public procurement, and associated secondary legislation.
Government Ordinance 51 / 1998 regarding the selling of state assets.

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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | **50** | 25 | 0

References:

- Adrian Savin, practicing commercial lawyer, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Law 337 / 2006 on public procurement, and associated secondary legislation.
Government Ordinance 51 / 1998 regarding the selling of state assets.

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– Adrian Savin, practicing commercial lawyer, Bucharest
– Dan Tapalaga, investigative reporter, Hotnews agency

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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Costs may be higher than in the case of obtaining information regarding procurement.

References:

- Adrian Savin, practicing commercial lawyer, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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. ⁸⁰National Ombudsman

56. Is the national ombudsman effective?

59

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Law 35 / 1997 provides for bi-partisan appointment and parliamentary control over the office of the Ombudsman.

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In theory independent, the Office of the Ombudsman is not normally subject to political pressure, as it is widely perceived as a weak and inconsequential institution, almost invisible to the public.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Resources may not be sufficient for effective functioning, but this does not seem to be the main obstacle against an increased relevance of the Ombudsman in public life. Its limited powers are determinant in this respect.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Romanian ombudsman office does not have the legal mandate to impose penalties, and therefore its investigations do not carry much weight with the institutions controlled. Officials fear much more the exposure in the media. As a result of this vicious circle, the Ombudsman itself is not very active.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

It does not have the legal mandate to impose penalties.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | **25** | 0

Comments:

When institutions act on Ombudsman's findings, it is mostly in cases of petty administrative irregularities, where redress does not impose significant costs (financial or political).

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

57. Can citizens access the reports of the ombudsman?

92

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

Reports are available, but not systematically or in relevant format, and not ex officio. The most relevant information must be asked explicitly from the institution's offices.

References:

- Law 35 / 1997
- Law 544 / 2001 (FOIA)

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports do exist on the web site of the ombudsman, however their content is mostly statistical. The little concrete content that exists is also a reflection of the low visibility and relevance of this institution in Romania.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

The Ombudsman Office (the People's Lawyer"), set up through Law 35 / 1997

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.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

69

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Law 94 / 1992 provides for parliamentary control over the Court of Accounts and ensures that in principle this is an independent state agency.

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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The staff exists, but there is a widespread impression among the public that some of them are not up to the task. It is difficult to tell how much of the problem is due to incompetence, and how much to inertia. The fact is that the Court of Accounts has never revealed an important case of fraud or mismanagement of public funds, leading to a conviction in court.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Delays in completing important reports may be of one year or more, and the Court of Accounts fails sometimes to follow up on its findings.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The reports of the Court of Accounts are in general written in vague terms, so as to minimize the pressure on government to act. In turn, executive institutions are quite happy with the situation.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

Comments:

In both law and practice, the Court of Accounts is able to launch its own investigations. From its annual reports it is obvious that the activity targets are met. However, the relevance and impact of its controls are doubtful, both in public institutions and regarding political party financing, as they avoid carefully the sensitive areas of public spending.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

60. Can citizens access reports of the supreme audit institution?

75

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

- Law 77 / 2002 on amending the law of the Court of Accounts
- Law 544 / 2001 (FOIA)

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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Dan Tapalaga, investigative reporter, Hotnews agency

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.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

The Court of Accounts, set up through Law 94 / 1992

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.

81 V-3. Taxes and Customs

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

- Dorin Mantescu, director in the Ministry of Finance, Aug. 12, 2008, Bucharest
- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest

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 tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

- Dorin Mantescu, director in the Ministry of Finance, Aug. 12, 2008, Bucharest
- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest

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.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Customs is one of the most sensitive areas of EU policy, so before a country becomes a member the national customs system must be fully staffed and budgeted, and it must function reasonably well, being subject of regular peer-reviews and inspections from the Commission.

References:

- Dorin Mantescu, director in the Ministry of Finance, Aug. 12, 2008, Bucharest
- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

- Dorin Mantescu, director in the Ministry of Finance, Aug. 12, 2008, Bucharest
- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest

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.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

- National Agency for Fiscal Administration (ANAF)
- Government Decision 495/2007
- <http://anaf.mfinante.ro/wps/portal>

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.

63. Are tax laws enforced uniformly and without discrimination?

75

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

- Dorin Mantescu, director in the Ministry of Finance, Aug. 12, 2008, Bucharest
- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest

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.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

National Customs Authority
<http://www.customs.ro>

- Dorin Mantescu, director in the Ministry of Finance, Aug. 12, 2008, Bucharest
- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest

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.

66. Are customs and excise laws enforced uniformly and without discrimination?

75

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Corruption remains a concern even after the EU accession, even though the customs system is relatively well-staffed and endowed with resources.

References:

- Dorin Mantescu, director in the Ministry of Finance, Aug. 12, 2008, Bucharest
- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest

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

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

40

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest
- Bogdan Chiritoiu, advisor to the president on social and economic affairs, Aug. 12, 2008, Bucharest

YES: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest
- Bogdan Chiritoiu, advisor to the president on social and economic affairs, Aug. 12, 2008, Bucharest

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

As the structure of supervision is so broad and complex, the question in this format has little relevance. But in general, these being rich” and politically strong ministries and agencies, on average they do not suffer too much from budget constraints.

References:

- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest
- Bogdan Chiritoiu, advisor to the president on social and economic affairs, Aug. 12, 2008, Bucharest

100: The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | **50** | 25 | 0

References:

- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest
- Bogdan Chiritoiu, advisor to the president on social and economic affairs, Aug. 12, 2008, Bucharest

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

References:

- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest
- Bogdan Chiritoiu, advisor to the president on social and economic affairs, Aug. 12, 2008, Bucharest

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

55

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

The Law of Access to Public Information (Law 544 / 2001) does specify that the budgets of public authorities are by default public. However, public companies (and even more so firms in which the state is a majority shareholder) have permanently interpreted the law as if it didn't apply to their case. Court decisions on this matter tend to lean towards transparency, but the judiciary practice is far from being consistent.

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.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest
- Bogdan Chiritoiu, advisor to the president on social and economic affairs, Aug. 12, 2008, Bucharest

100: State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

- Ionut Popescu, senator, columnist and former minister of Finance, Aug. 12, 2008, Bucharest
- Bogdan Chiritoiu, advisor to the president on social and economic affairs, Aug. 12, 2008, Bucharest

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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

- Suzana Dobre, executive director, SAR, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

- Suzana Dobre, executive director, SAR, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

State-owned companies fall under the supervision of various ministries and agencies. A distinction can be made between:
– public companies (regies autonomes) such as those owned by the Ministries of Economy, Transportation, Environment, Agriculture, Communication, etc

– and normal, joint-stock companies currently slated for privatization, in which the state still holds all or a majority of shares; this category is administered by a special quasi-ministry called the Authority for State Assets (AVAS)

The list of laws and regulations governing public and state-owned companies is long and constantly changing.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

65
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

YES | NO

References:

Romanian Constitution, art. 45

Law 31 / 1990 on commercial companies

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

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Law 31 / 1990 on commercial companies

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.

70c. 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

References:

Doing Business 2009: Five Years of Doing Business Reforms, World Bank.
Adrian Savin, practicing commercial lawyer, Bucharest.

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.

70d. 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

Comments:

There are fees for licensing, but comparatively speaking these are fairly low.

References:

Doing Business 2009: Five Years of Doing Business Reforms, World Bank.
Adrian Savin, practicing commercial lawyer, Bucharest.

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

These are spread over an immense number of laws and regulations, some national and some imposed at the EU level. Getting a complete and accurate view of this standards may be an issue for an entrepreneur, and impose some costs.

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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

These are spread over a large number of laws and regulations, some national and some imposed from the EU level. Getting a

complete and accurate view of this standards may be an issue for an entrepreneur, and impose substantial costs.

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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

These are spread over a large number of laws and regulations, some national and some imposed at the EU level. Getting a complete and accurate view of this standards may be an issue for an entrepreneur, and impose substantial costs.

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. 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:

There are credible reports of cases when regulations are enforced selectively by regulatory and inspection agencies, either to extract bribes or because of political bias.

References:

Adrian Savin, practicing commercial lawyer, Bucharest
Vasile Marica, leader of the Civil Servants Trade Union

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.

72b. 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:

There are credible reports of cases when regulations are enforced selectively by regulatory and inspection agencies, either to extract bribes or because of political bias.

References:

Adrian Savin, practicing commercial lawyer, Bucharest
Vasile Marica, leader of the Civil Servants Trade Union

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.

72c. 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:

There are credible reports of cases when regulations are enforced selectively by regulatory and inspection agencies, either to extract bribes or because of political bias.

References:

Adrian Savin, practicing commercial lawyer, Bucharest
Vasile Marica, leader of the Civil Servants Trade Union

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

84
VI-1. Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

The attempted form is comprised by definition in the consumed form of the crime which is incriminated in the Criminal Code.

References:

The Penal Code: Law 140 / 1996.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

The Penal Code: Law 140 / 1996.

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

The Penal Code: Law 140 / 1996.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

The Penal Code: Law 140 / 1996.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Law 78/2000 on prevention and fight against corruption.

The law 78/2000 was amended in 2003 by law 161/2003. The articles introduced criminalized corruption of foreign officials. Currently under Romanian law, in order for the provisions in a International Convention to become effective, the convention has to be signed and then ratified by law (in this case by law 27/2002). After that, the provisions have to be transposed in Romanian specific legislation – which happened through law 161/2003, which amended law 78/2000.

The articles currently in force incriminating corruption of foreign officials are (quotations):

Art. 8 1 – Provisions of art. 254-257 from the Criminal Code and of art. 61 and 82 from the present law are also applied to the following categories as well:

- a) officials, contractual personnel or other persons who have similar attributions within international public organizations in which Romania is part;
- b) members of parliamentary assemblies of the international organizations to which Romania is part;
- c) officials, contractual personnel or other persons who have similar attributions within the European Communities.
- d) persons who exercise judiciary attributions in international courts with competence accepted by Romania, as well as clerks working for such courts;
- e) officials of a foreign state;
- f) members of parliamentary or administrative assemblies of foreign states.

Art. 82. Promising, offering, or giving money or other benefits, directly or indirectly to an official representing a foreign state or a public international organization in order to determine that specific official to do or not to do an activity that is in his/her competences, with the purpose of obtaining an undue advantage within international economic operations, is punished with imprisonment from one to seven years.

Art. 9 – In the case of infringements provided for in the present section, if committed in the interest of a criminal organization, association or group or of one of their members or to influence the negotiations of international commercial transactions or the international exchanges or investments, the maximum of the punishment provided by law for such offences shall be increased by five years.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

The Penal Code: Law 140 / 1996.

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.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

The Penal Code: Law 140 / 1996.

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.

73h. In law, money laundering is illegal.

YES | NO

References:

Law 21/1999 on prevention and fight against money laundering and terrorism financing

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Criminal Code.

Law 39/2003 on organized crime.

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

75. Is the anti-corruption agency effective?

64

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

Both laws, in theory, create independent mechanisms for appointing the leadership of the two institutions.

References:

Government Decision 43 / 2002

Law 144/2007

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Both DNA and ANI are facing intense political pressure in their work. For example, DNA was permanently under threat of having its leadership replaced without obvious reason (while its leadership was praised on the most recent monitorization reports of the EU, and the public perceive it as fairly effective and politically independent.)

At ANI, some members of its supervisory board, appointed by parties, try to press the staff to stop investigations. In one recent and widely-publicized case, a member of ANI's supervisory board, who happens to be a lawyer, is representing a client investigated by ANI, against the institution she is supposed to supervise and guide (the Agency). Although the conflict of interest is blatant, the Senate refused to dismiss the person from her official capacity.

References:

– Laura Stefan, former director in the Ministry of Justice, Bucharest

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | **75** | 50 | 25 | 0

Comments:

The most obvious problem is not at the staff level, but in the Committee supervising ANI's management, where members are appointed politically.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Securing enough resources has always been a problem, especially at ANI.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The score should be more like 50 for DNA and 25 for ANI.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

76. Can citizens access the anti-corruption agency?

88

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

- National Anti-Corruption Department (DNA), a special branch of the General Prosecutor's Office – Government Decision 43 / 2002
- National Integrity Agency (ANI), an administrative agency in charge with investigating conflicts of interests in public office – Law 144/2007

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.

84
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

83

77a. In law, there is a general right of appeal.

YES | NO

References:

- Penal Procedural Code
- Civil Procedural Code
- Administrative Code

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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Bribery or more subtle influence in courts may be an issue: for example, leaner sentences for white collar offenders, especially in corruption cases.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

79. Are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Enforcement has always been one of the weakest points of the system.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Romanian Constitution, arts. 124-134

Laws 303 and 304 / 2004 on the structure of the judiciary and the status of magistrates

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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | **50** | 25 | 0

References:

– Laura Stefan, former director in the Ministry of Justice, Bucharest

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

There is an electronic, random distribution of cases.

References:

Laws 304 / 2004 on the structure and functioning of judiciary

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.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Laws 303 / 2004 on the statute of magistrates

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.

81. Are judges safe when adjudicating corruption cases?

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

82. Do citizens have equal access to the justice system?

86

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Roma community may suffer discrimination, but this happens usually outside courts.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Penal Code, Penal Procedural 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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Note: median yearly income does not refer to the middle class” in Romania. For middle class proper the score would be 100,

however for median income citizens the score would be more likely 50, as costs considerations are very important in initiating legal action.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

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. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Lower level courts are fairly dispersed in territory; however, access may be an issue for poor people from isolated villages who do not own a car, for example.

References:

- Laura Stefan, former director in the Ministry of Justice, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Bucharest

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

83. Is the law enforcement agency (i.e. the police) effective?

58

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | **50** | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Aug. 12, 2008, Bucharest
- Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

- Laura Stefan, former director in the Ministry of Justice, Aug. 12, 2008, Bucharest
- Monica Macovei, lawyer and civil society activist, APADOR-Helsinki Committee, former minister of Justice, Aug. 12, 2008, Bucharest

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Selective enforcement of laws is one of the main weaknesses of the Romanian system of governance. Political interference takes place mostly in order to skew the resource allocation and uses the system in order to favor politically-connected companies in the procurement process. Dirty cops do exist at the street level too, but these types of problems are not generally associated with politicians.

References:

- Laura Stefan, former director in the Ministry of Justice, Aug. 12, 2008, Bucharest
- Monica Macovei, lawyer and civil society activist, APADOR-Helsinki Committee, former minister of Justice, Aug. 12, 2008, Bucharest

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.

84. Can law enforcement officials be held accountable for their actions?

79

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

General Anti-Corruption Directorate of the Ministry of Administration and Interior, set up by Law 161/2005. It has a direct telephone line where citizens can make complaints, also about police abuse.

<http://www.mai-dga.ro>

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

84b. 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:

– Laura Stefan, former director in the Ministry of Justice, Aug. 12, 2008, Bucharest

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

General Anti-Corruption Directorate of the Ministry of Administration and Interior, set up by Law 161/2005.
<http://www.mai-dga.ro>

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

– Laura Stefan, former director in the Ministry of Justice, Aug. 12, 2008, Bucharest
– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Law 360 / 2002 – the Statute of the Police Force

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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | **75** | 50 | 25 | 0

References:

– Laura Stefan, former director in the Ministry of Justice, Aug. 12, 2008, Bucharest

– Nicoleta Popescu, lawyer and civil society activist, APADOR-Helsinki Committee, Aug. 12, 2008, Bucharest

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.