
Debate at the LIBE Committee and EP plenary on the rule of law in Romania 1st and 3rd October 2018 Highlights on restrictions on NGOs operating environment, 2017 - 2018

During the last years, civic engagement has grown strongly in Romania, with the help of NGOs, but also, stemming from citizens previously unrelated to NGOs, leading to one among the most visible citizen movements in Europe, focusing on the fights against corruption and for public transparency. Yet NGOs working in sensitive areas such as human/ minority rights or rule of law and anti-corruption are increasingly facing smear campaigns instilling amongst the general population the idea that NGOs are misappropriating public money, while also acting as secret agents for foreign funders who wish to somehow exploit and oppress Romanians. In addition, since late 2016 a number of legislative measures have been proposed that restrict freedom of association and assembly. Thus:

- Since the beginning of 2017, there have been several different attempts from the governmental forces, to alter the NGO laws. [Plesoianu initiative](#) imposes extremely harsh reporting obligations: to publish all your donors, no matter how small, in the official legislative gazette, twice a year, at your own expense, risking dissolution otherwise. In the [transposition draft law for the 4th Directive on anti-money laundering and combating terrorism](#) civil society is placed in the same category of financial risk as providers of gambling services and banking institutions. With no legitimate cause and no risks assessment made Romanian lawmaker expands the EU directive sphere and creates reporting obligations that cannot be fulfilled in reality thus setting the legal basis for further discretionary control and sanctions. Moreover, the draft law interferes with the right to protection of personal data requiring NGOs to report on their recipients of services and assistance by including them, against the directive scope, in the sphere of beneficial owners.
- Following the violent events at the civic protests in Bucharest on August 10th, NGOs reported on the abuses of the state Gendarmerie and asked for a transparent and rapid investigation of the events. The governmental leaders keep minimizing the accounts of violence and saying this violence was justified. The Minister of Interior announced on September 28th upcoming modifications to the [Law on public assembly](#) that will limit and censor public gatherings based on subjective evaluations of the purpose of the protests.
- [Justice and anticorruption](#) laws system has been subject to numerous attempts of weakening particularly since January 2016. There are the themes that drew spontaneous protests and increase of civic engagement to a level unmet for the last 25 years in Romania and created several forms of civic resistance not necessarily connected to organised NGOs. At the same time, in the discourse of the officials NGOs became the public enemies and instigators for any criticism the ruling coalition might receive for the planned or made legislative changes in these areas. As a result, apart from the negative effects of the modifications on legislation on justice and anticorruption, separate legislative attempts for shrinking the operating environments of all NGOs have been initiated.
- The political agenda is currently occupied by the upcoming referendum to introduce a restrictive definition of family leading to an extreme polarization of the Romanian society and the intensification of hate speech towards LGBTIQ NGOs and supporters, but also the marginalization of single parent families and non-married families.

NGOs and operating environment – Plesoianu Initiative

The “Plesoianu Proposal” amending Governmental Decree 26/2000 on association and foundations is pending in Parliament. If adopted, this would lead to disproportionate and unfair increase of administrative burden and limit freedom of expression of civil society organisations.

In **March 2017**, two Social Democratic MPs table the Plesoianu proposal to radically change the reporting obligations for all NGOs, as well the general conditions of obtaining and maintaining the status ‘public interest organization’. In brief:

- In the name of transparency, the proposal stipulates that any NGO must publish twice a year in the Official Gazette a statement of incomes and expenditures, that includes separately for each income, the person or activity that generated that income and its value. This introduces a difference of treatment compared to other private for profit entities that have an annual reporting requirement without any clear justification. The sanction of not publishing this statement is the dissolution of the association or foundation.
- It also introduces and limits the freedom of expression of public utility organizations. Under the legitimate aim to prohibit these organizations from engaging in partisan activities, the ambiguous wording of the text creates the possibility of revocation of the quality of “public utility” if the organization carries out “campaigns of ... opposition to a political party or candidate for a public office in which the candidate can be named or chosen”. Such a provision would impede organizations to criticize any legislative initiative.

Despite duly motivated civil society criticism, the Senate **approved tacitly the proposal in November 2017**, with no vote due to the lack of the necessary quorum. Although the Senate was in session on the date of the tacit approval and the proposal was on the agenda, the political opposition accused the governmental parties of leaving the Senate without the necessary quorum, exactly before reaching this point in the day’s agenda. Ever since, the legal procedure in the decisions chamber of Parliament, the Chamber of Deputies, is still ongoing, the ruling politicians failing to consent to civil society demands to reject this proposal.

Since then, the proposal has been reviewed by several international bodies:

- 11/12/2017, The Expert Council on NGO Law of the Council of Europe INGO Conference issued a strongly negative opinion on the proposal. The council points to serious shortcomings as regards compliance with international standards. [The opinion is available here](#) (EN).
- 18/01/2018, The Fundamental Rights Agency made a negative mention of the proposal in its report on “Challenges facing civil society organizations working on human rights in the EU”, available here (EN): <http://fra.europa.eu/en/publication/2018/challenges-facing-civil-society-orgs-human-rights-eu>.
- 16/03/2018, The Venice Commission and OSCE/ODIHR issued a common opinion on the proposal, stating the rules concerning NGO reporting should be removed. The opinion also suggests other changes and the full text is available here (EN): [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)004-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)004-e)
- 27/06/2018, The Council of Europe Parliamentary Assembly adopted Resolution 2226 regarding new restrictions on NGO activities. The resolution includes a call on Romania “to reject the recently proposed draft laws imposing additional financial reporting obligations on NGOs unless they are

amended according to the recommendations of the Venice Commission and the OSCE/ODIHR". The resolution is available here (EN): <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=24943&lang=2>.

- See also 06/02/2018, The Open Society Justice Initiative published a report on the proposal, supported by over 40 Romanian and international NGOs. The report states the proposal disrespects EU law and is available here (EN): <https://www.opensocietyfoundations.org/briefing-papers/european-union-law-and-romanian-draft-law-1402017-associations-and-foundations>.

NGOs and operating environment – Draft law on anti-money laundering and combating terrorism

The transposal of the 4th AML Directive, on a fast track for final approval, because of late transposition, imposes highly concerning reporting of NGO beneficiary personal data to the Government

On May 31, 2018, the Romanian Government approved the Draft Law on the Prevention and Control of Money Laundering and Terrorist Financing. On September 24th, the law was approved by the Senate and is now pending debate in the decisional Chamber of Deputies. In trying to transpose the Fourth EU Money Laundering Directive, the government's project has already prompted strong criticism from the NGO sector. In brief:

- The draft imposes on NGOs the status of obliged entity, placing civil society organisations as a whole in the same category of financial risk and under the same due diligence obligations towards partners or individuals as banking institutions, auditors, accountants, notaries, providers of gambling services or real estates, and this without any previous risk assessment.
- The project introduces the obligation to communicate to the Government the identification data of the beneficial owners of all non-governmental organizations (foundations, but also associations and federations) under the extreme sanction of dissolution in case of non-compliance. The transposed definition of the beneficial owners of NGOs includes every single person actually assisted by civil society. Thus, the personal data of abuse victims, vulnerable individuals with human rights under threat, journalists or children participating in any kind of NGO activity should be reported.

Freedom of assembly

Currently, the Law that regulates the freedom of assemblies and protest compels the organizers to notify the public authorities concerning the reason, the place and the time of the public gathering. In the understanding of the current Law, the public authorities are informed in order for them to protect the people who are to participate at the public gathering.

Current discussions on the reform of the law on public assembly aim to drastically transform the notification process into an authorization process, so that the public authority could legally reject a protest; situation that now, theoretically, is impossible. The main concern is that, under the foreseen regulations, public authorities will limit and censor public gatherings based on subjective evaluations of the purpose of the protests.

Moreover, the Law would be modified in order to significantly lower safeguards and scrutiny against the use of force by the police against protesters, in the aftermath of the brutal intervention of 10th August 2018.

Justice and anticorruption

Romania has embarked on a large-scale anti-corruption campaign in the past fifteen years and key to its success was an independent judiciary with both prosecutors and judges being magistrates.

The current amendments to the justice legislation are opening a door for a separation of professional statutes between prosecutors and judges with the Prosecution service moving closer to the executive. The role of the Minister of Justice in the appointment and revocation for key positions in the Prosecution office is unduly augmented, with the Superior Council of Magistracy and the Romanian President retaining only symbolic functions. While this can be an acceptable institutional set-up in mature democracies with a clear separation of powers and accountability rules, in Romania this will lead to political interference into investigations and to a return to the times where impunity was rampant.

New early retirement rules allowing judges and prosecutors to leave the system after only 20 years of practice coupled with the increase of the initial training period from two to four years will generate a huge human resource crisis. This will in turn lead to severe increases of the backlog of cases in courts and prosecutors' offices and an overall low performance of the justice system. Promotion to the Supreme Court is only available to judges with at least 15 who, according to the new rules, may leave the system after five more years. This will significantly weaken the Supreme Court due to the constant fluctuation of personnel. The amendments introduce vague screening procedures for judges and prosecutors that might lead to abuses given the absence of a civil control over the intelligence services.

The Venice Commission was called to review the proposed legislation and although the report has been adopted and sent to the Romanian authorities, the recommendations have not been included in the final adopted text.

Upcoming referendum to introduce a restrictive definition of family

On 6-7 October Romania will organize a referendum to amend the Constitution by replacing the gender-neutral "spouses" from Art. 48 with the following definition: "The family is founded on the freely consented marriage between a man and a woman, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children." This comes in a country where no form of legal recognition is provided to same-sex couples.

Beyond preventing future legislative developments in favour same-sex couples, this leads to marginalization of single parent families, non-married heterosexual families, grandparents raising their grandchildren, and all other families which do not fit under the very narrow definition proposed by the Coalition for Family.

Even more worrying is that by adopting on 18 September, just three weeks before the referendum, the Emergency Ordinance 86/2018, the Government decided that this referendum will be extended over two days instead of one, as the current legislation provides for. Notably, the same Emergency Ordinance announced that the integrated system for the monitoring of the votes, implemented in 2016 in order to prevent electoral fraud, will not be implemented. Both decisions have no reasonable justification except a deliberate attempt to influence the outcome of referendum, by facilitating reaching the 30% threshold of participation required for validation. In this way, the Romanian authorities failed in their duty to remain impartial.