



Civic Space Legal Framework

Portugal (April 2021)
Romania (November 2021)

LL File Nos. 2021-020037 & 2021-020389
LRA-D-PUB-002569

This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official
opinion of the United States Government. The information provided
reflects research undertaken as of the date of writing.
It has not been updated.

Contents

Portugal 1

Romania..... 36

Portugal

Eduardo Soares
Senior Foreign Law Specialist

SUMMARY The Portuguese Constitution recognizes that everyone has the right to privacy and legal protection against discrimination. The rights to freedom of expression, assembly, association, and of the press are also protected by the Constitution. Some of these guarantees are further regulated by law.

An open internet is regulated by a law that establishes rules, guarantees, rights, and duties for the use of the internet. A law ensures the implementation of a European Union regulation on the protection of natural persons with regard to the processing of personal data.

Civil society organizations are regulated by the Civil Code, while a decree-law defines the criteria that associations and foundations need to fulfill to be declared to have a purpose of promoting the public interest. Different entities, both private and public, offer funding opportunities to these groups.

Portugal has enacted legislation on terrorist financing and money laundering to comply with directives, regulations and decisions of the EU.

The Constitution provides guidelines for civic participation in the country such as voting in elections, as well as the limitations that can be imposed on civil liberties.

I. Introduction

On April 2, 1976, a Constituent Assembly approved a new Portuguese Constitution,¹ which entered into force on April 25, 1976.² The Constitution protects the rights to speak, to privacy, and against any form of discrimination.³ It also grants the right to access information,⁴ freedom of expression,⁵ assembly,⁶ and association.⁷ Freedom of the press is guaranteed.⁸ Equality is one of

¹ Constituição da República Portuguesa [C.R.P.], VII Revisão Constitucional [2005] art. 296(1), <https://perma.cc/5P3S-RUCE>.

² Id. art. 296(2).

³ See Section II.A *infra*.

⁴ See Section II.B *infra*.

⁵ See Section II.C *infra*.

⁶ See Section II.D *infra*.

⁷ See Section II.E *infra*.

⁸ See Section II.F *infra*.

the fundamental responsibilities of the State, and discrimination is criminalized by the Penal Code.⁹

On June 15, 1978, the Portuguese National Assembly approved the ratification of the European Convention on Human Rights (ECHR),¹⁰ which was promulgated on September 11, 1978, through Law No. 65/78 that was published on October 13, 1978.¹¹

As a member of the European Union (EU), Portugal is also bound by the fundamental rights and freedoms guaranteed in the Charter of Fundamental Rights of the EU,¹² which include several rights also found in the Constitution, such as the right to respect for private and family life, home and communications;¹³ protection of personal data;¹⁴ and freedom of thought.¹⁵

Although the Constitution does not specifically address the open internet, Portugal is bound by an EU regulation on the subject.¹⁶ Personal data used in connection with information technology is a fundamental right guaranteed by the Constitution.¹⁷

Data protection is a fundamental right assured by the Constitution and is further protected by legislation that has been enacted to guarantee the implementation of the general data protection regulation of the EU in the country.¹⁸

The Civil Code regulates civil society organizations and the creation of associations, while entities of the social economy sector are regulated by a specific law for that sector. To be declared an entity of public interest and enjoy tax exemptions and other benefits, an association or foundation must fulfill the requirements established in a decree-law of 1977 governing such entities. Private and public funding for civil society organizations is available.¹⁹

The fight against terrorism and money laundering has been incorporated into Portuguese legislation enacted to comply with relevant decisions, directives and regulations issued by the EU, and in provisions of the Penal Code that specifically define, criminalize and punish money laundering activities.²⁰

⁹ See Section II.G *infra*.

¹⁰ Convention on the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, <https://perma.cc/GDQ8-5GFN>.

¹¹ Lei No. 65/78, de 13 de Outubro, <https://perma.cc/6NUU-8V9Y>.

¹² Charter of Fundamental Rights of the European Union, 2012 O.J. (C 326/391), <https://perma.cc/8VRE-BTEB>.

¹³ *Id.* art. 7.

¹⁴ *Id.* art. 8.

¹⁵ *Id.* art. 10.

¹⁶ See Section II *infra*.

¹⁷ See Section III *infra*.

¹⁸ See Section IV *infra*.

¹⁹ See Section V *infra*.

²⁰ See Section VI *infra*.

Civic participation is enshrined in the Constitution through the enumeration of rights such as the right to vote and the right to initiate a referendum. Specific laws regulate referenda and elections of the President and members of the Assembly, such as laws defining who can vote. Due to the COVID-19 pandemic, an exceptional and temporary regime was established for the exercise of early voting rights in elections and referenda to be held in the year 2021.²¹

Rights, freedoms and guarantees may be restricted only by law in those cases expressly provided for in the Constitution. A state of siege or state of emergency may be declared and must specify the rights, freedoms and guarantees that are suspended, and may not exceed 15 days, except in cases of war.²²

The fundamental rights enshrined in the Constitution must not exclude any others set out in applicable international laws and legal rules.²³ The constitutional precepts concerning fundamental rights must be interpreted and construed in harmony with the Universal Declaration of Human Rights.²⁴

The constitutional precepts with regard to rights, freedoms and guarantees are directly applicable and are binding on public and private entities.²⁵ The law may only restrict rights, freedoms and guarantees in cases expressly provided for in the Constitution, and only when needed to safeguard other constitutionally protected rights and interests.²⁶ Laws that restrict rights, freedoms and guarantees must have a general and abstract nature and may not have a retroactive effect or reduce the extent or scope of the essential content of the constitutional precepts.²⁷

Amendments to the Constitution may not be the subject of referenda.²⁸ Constitutional amendments must be approved by a majority of two-thirds of the deputies entitled to vote.²⁹ Once approved, they must be integrated into a single law of revision.³⁰ The President of the Republic has no power to refuse the promulgation of such a law of revision.³¹

²¹ See Section VII *infra*.

²² See Section VIII *infra*.

²³ C.R.P. art. 16(1).

²⁴ *Id.* art. 16(2). The new Constitution incorporated the precepts established in 1948 by the United Nations Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), <https://perma.cc/J5PE-6KKN>.

²⁵ C.R.P. art. 18(1).

²⁶ *Id.* art. 18(2).

²⁷ *Id.* art. 18(3).

²⁸ *Id.* art. 115(4)(a).

²⁹ *Id.* art. 286(1).

³⁰ *Id.* art. 286(2).

³¹ *Id.* art. 286(3).

II. Constitutional Principles

A. Right to Privacy & Anti-Discrimination

The Portuguese Constitution states that all people have the right to personal identity, personality development, civil capacity, citizenship, good name and reputation, image, the right to speak out, the right to the protection of the privacy of their personal family life, and the right to legal protection against any form of discrimination.³²

B. Access to Information

The law must establish effective guarantees against the procuring and misuse, or use that is contrary to human dignity, of information concerning individuals and families.³³

According to article 35 of the Constitution,

1. All citizens have the right to access any computerized data relating to them; to require its correction and update; and to be informed of the use for which the data is intended, according to the law.
2. The law determines the concept of personal data as well as the conditions applicable to automatic processing, connection, transmission, and use thereof, and must guarantee its protection by means of an independent administrative entity.
3. Computerized storage may not be used for information concerning a person's ideological or political convictions, a person's political party or trade union affiliations, religious beliefs, private life, or ethnic origin, except where there is express consent from the data subject, authorization is provided for under the law with guarantees of nondiscrimination, or in the case of data for statistical purposes that do not identify individuals.
4. Access to personal data of third parties is prohibited, excluding exceptional cases specified by law.
5. It is prohibited to give citizens a national number.
6. Everyone is guaranteed free access to public information networks, and the law defines the regulations applicable to the transnational data flows and the adequate forms of protection for personal data and for data that should be safeguarded in the national interest.
7. Personal data kept on manual files must receive the same protection provided for in article 35 of the Constitution, in accordance with the law.³⁴

Citizens have the right to be informed by the administration, when they so require, about the progress of proceedings in which they are directly interested and to know the final decisions that

³² C.R.P. art. 26(1).

³³ Id. art. 26(2). Article 26(2) of the Constitution was amended by article 5 of Law No. 1 of July 24, 2004 (Sixth Constitutional Revision); the "procuring" of information was added as an offense. Lei No. 1/2004, de 24 de Julho, VI Revisão Constitucional, <https://perma.cc/H3EW-RQ4W>.

³⁴ C.R.P. art. 35.

are taken with respect to them.³⁵ Citizens also have the right to have access to administrative records and files, with exceptions relating to internal and external security, investigation of crimes, and personal privacy.³⁶

Law No. 26 of August 22, 2016,³⁷ regulates access to administrative documents and administrative information, including in environmental matters. It transposes Directive 2003/4/EC, of the European Parliament and of the Council, of January 28, 2003,³⁸ regarding access to the public information on the environment and repealing Council Directive 90/313/EEC.

Article 3(1)(a) defines administrative document as any content, or part of that content, that is in the possession or is held on behalf of the bodies and entities referred to in article 4, in written, electronic, or other material form.³⁹

Article 4(1) lists the bodies and entities subject to the law, which include but is not limited to:

- a) Organs of sovereignty and the organs of the State and autonomous regions that comprise the Public Administration;
- b) Other organs of the state and autonomous regions, insofar as they exercise materially administrative functions;
- c) Organs of public institutes, independent administrative entities and public associations and foundations;
- d) Organs of public companies;
- e) Organs of local authorities, inter-municipal entities and any other local public associations and federations;
- f) Organs of regional, municipal, inter-municipal or metropolitan companies, as well as any other local companies or public municipal services;
- g) Private associations or foundations in which the bodies and entities provided for in article 4(1) of Law No. 26 exercise management control powers or designate, directly or indirectly, the majority of the members of the administrative, management or supervisory body;
- h) Other entities responsible for the management of archives with a public character;
- i) Other entities in the exercise of materially administrative functions or public powers, namely those that hold public service concessions or delegations.⁴⁰

³⁵ Id. art. 268(1).

³⁶ Id. art. 268(2).

³⁷ Lei No. 26/2016, de 22 de Agosto, art. 1, <https://perma.cc/54DY-4CPB>.

³⁸ Directive 2003/4 of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, 2003 O.J. (L 041) 26, <https://perma.cc/8CWC-MCMW>.

³⁹ Lei No. 26/2016, de 22 de Agosto, art. 3(1)(a).

⁴⁰ Id. art. 4(1). For a full list of bodies and entities subject to Law No. 26, see article 4.

Everyone, without the need to declare any interest, has the right of access to administrative documents, which includes the rights of consultation, reproduction, and information about their existence and content.⁴¹ The right of access takes place regardless of the integration of administrative documents in a current, intermediate, or definitive file.⁴² Article 6 lists the restrictions on the right of access.

Each covered body or entity must designate a person responsible for compliance with the provisions of Law No. 26, who is responsible, in particular, for organizing and promoting the active disclosure obligations to which the body or entity is bound, monitoring the processing of requests for access and reuse, and establishing the means to comply with the exercise of powers of the Commission for Access to Administrative Documents (CADA).⁴³ CADA is an independent administrative entity responsible for ensuring compliance with the provisions of Law No. 26.⁴⁴

C. Freedom of Expression

All persons have the right to express and publicize their thoughts freely, by words, images or other means, and to receive information without impediments or discrimination.⁴⁵ The exercise of these rights cannot be impeded or restricted by any kind or form of censorship.⁴⁶ However, offenses committed in the exercise of these rights are punishable under the general principles of criminal law or of the law relating to regulatory offenses, which may be adjudicated in the courts of law or the relevant administrative bodies, respectively.⁴⁷ The Constitution also states that all persons are guaranteed the rights to reply and to make corrections regarding personal information, as well as the right to indemnification for losses suffered.⁴⁸

1. *Law No. 58 of August 8, 2019*

On August 8, 2019, Portugal enacted Law No. 58,⁴⁹ which ensures the implementation in the country of Regulation (EU) 2016/679, the General Data Protection Regulation, GDPR.

According to article 58(1), the protection of personal data, under the terms of the GDPR and Law No. 58, does not prejudice the exercise of freedom of expression, information and the press, including the processing of data for journalistic, academic, artistic or literary purposes.⁵⁰

⁴¹ Id. art. 5(1).

⁴² Id. art. 5(2).

⁴³ Id. art. 9.

⁴⁴ Id. art. 28(1).

⁴⁵ C.R.P. art. 37(1).

⁴⁶ Id. art. 37(2).

⁴⁷ Id. art. 37(3).

⁴⁸ Id. art. 37(4).

⁴⁹ Lei No. 58/2019, de 8 de Agosto, <https://perma.cc/6DCB-V76G>.

⁵⁰ Id. art. 58(1).

The exercise of freedom of information, especially when revealing personal data provided for in article 9(1) of the GDPR and in article 17 of Law No. 58 (both of which are discussed below), must respect the principle of human dignity provided for in the Constitution of the Portuguese Republic, as well as personality rights.⁵¹ The treatment for journalistic purposes must respect the national legislation on access and exercise of the profession.⁵² The exercise of freedom of expression does not legitimize the disclosure of personal data such as addresses and contacts, except for those of general knowledge.⁵³

2. *European Convention on Human Rights*

As a State-party to the ECHR, Portugal is bound to ensure protection of the right to freedom of expression contained in article 10 of the ECHR, which states that everyone has the right to freedom of expression. This right must include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Article 10 of the ECHR states it does not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.⁵⁴ The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.⁵⁵

3. *European Court of Human Rights*

The European Court of Human Rights (ECtHR),⁵⁶ an international court that rules on alleged violations of the ECHR, has had occasion to address Portugal's compliance with article 10 of the Convention. On August 3, 2009, in *Women On Waves and Others v. Portugal*, the Court found that a ban by the Portuguese Secretary of State for the Sea on entry into Portuguese territorial waters of a ship chartered by the applicants to promote debates on reproductive rights violated article 10 of the Convention.⁵⁷ In addition, in cases involving convictions under Portugal's criminal

⁵¹ Id. art. 58(2).

⁵² Id. art. 58(3).

⁵³ Id. art. 58(4).

⁵⁴ ECHR art. 10(1).

⁵⁵ Id. art. 10(2).

⁵⁶ European Court of Human Rights, <https://perma.cc/HNH7-5KWJ>.

⁵⁷ *Women On Waves and Others v. Portugal*, Queixa No. 31276/05, Eur. Ct. H.R. (2009), <https://perma.cc/ZA6U-GM8D>. On August 7, 2004, the Portuguese Secretary of State for the Sea banned the entry into Portuguese territorial waters of the applicant's ship because according to him there were strong indications, formed from news in the national and international media, that it intended to cross the Portuguese territorial sea bound for a national port, to practice, among other things, the distribution or advertisement of pharmaceutical products not authorized by the Portuguese health authorities; to provoke or to incite the practice of certain acts that were unlawful under the Portuguese legal system; and to develop a typical activity of a sanitary facility, without

defamation statute, *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*,⁵⁸ *Alves da Silva v. Portugal*,⁵⁹ and *Lopes Gomes da Silva v. Portugal*,⁶⁰ Portugal was also found in violation of article 10 of the ECHR.

4. Penal Code

Article 180 of the Penal Code punishes with imprisonment up to six months or a fine, “whoever, addressing a third party, attributes to another person, even in the form of suspicion, a fact, or formulates a judgment on him, offensive to his honor or opinion, or reproduces such an imputation or judgment.”⁶¹

Such conduct is not punishable when the imputation is made to carry out legitimate interests;⁶² and the agent proves the truth of the imputation or has had a serious basis to, in good faith, believe it to be true.⁶³ Subject to certain general defenses, this exclusion does not apply when it comes to the imputation of facts relating to the intimacy of private and family life.⁶⁴ The good faith element of the exclusion requires the agent to fulfill the duty to investigate, as appropriate under the circumstances, whether the imputation is true.⁶⁵

Article 31(1) provides generally that conduct will not be punishable if the conduct is not unlawful considering the legal order in its entirety.⁶⁶ In particular, under article 31(2), conduct is not unlawful when practiced:

- a) In self-defense;
- b) In the exercise of a right;
- c) In the fulfillment of a duty imposed by law or by lawful order of the authority; or
- d) With the consent of the holder of the injured legal interest.⁶⁷

licensing or supervision by the Portuguese authorities, creating, due to the impossibility of providing medical care normally considered adequate, a danger to public health.

⁵⁸ *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*, Queixas Nos. 11182/03 e 11319/03, Eur. Ct. H.R. (2007), <https://perma.cc/DMA9-KN69>. The applicants alleged that their conviction for the crime of defamation committed through the press violated article 10 of the Convention.

⁵⁹ *Alves da Silva v. Portugal*, Queixa No. 41665/07, Eur. Ct. H.R. (2009), <https://perma.cc/7W4D-AT2X>. The applicant alleged that his conviction for the crime of defamation violated his freedom of expression.

⁶⁰ *Lopes Gomes da Silva v. Portugal*, Queixa No. 37698/97, Eur. Ct. H.R. (2000), <https://perma.cc/Q7C9-VJH8>. The applicant alleged that his conviction for criminal defamation had infringed his right to freedom of expression.

⁶¹ Código Penal [C.P.], Decreto-Lei No. 48/95, de 15 de Março, as amended by Lei No. 58/2020, de 31 de Agosto, art. 180(1), <https://perma.cc/MG9A-LT2M>.

⁶² Id. art. 180(2)(a).

⁶³ Id. art. 180(2)(b).

⁶⁴ Id. art. 180(3).

⁶⁵ Id. art. 180(4).

⁶⁶ Id. art. 31(1).

⁶⁷ Id. art. 31(2).

In addition to defamation, article 181 of the Penal Code criminalizes insult, providing that “[a]nyone who insults another person, imputing facts to him, even in the form of suspicion, or speaking words to him, offensive to his honor or opinion, is punished with a prison sentence of up to 3 months or a fine.”⁶⁸ In the case of imputation of facts, similar defenses and conditions to those of defamation are correspondingly applicable.⁶⁹

Article 182 provides that defamation and verbal insult may take the form of writing, gestures, images or any other means of expression.⁷⁰

If, in the case of the crimes provided for in articles 180, 181 and 182 of the Penal Code, the offense is committed by means or in circumstances that facilitate its disclosure;⁷¹ or, in the case of imputation of facts, if it is ascertained that the agent knew the imputation was false; the penalties for defamation or insult are increased by one third in their minimum and maximum limits.⁷² If the crime is committed through the media, the agent is punished with a prison sentence of up to two years or a fine.⁷³

Whoever, without consent, reveals secret information of others that he or she became aware of because of his/her occupation or profession is punished with a prison sentence of up to one year or a fine.⁷⁴

To found an organization or develop organized propaganda activities that incite discrimination, hatred or violence against a person or group of people because of their race, color, ethnic or national origin, ancestry, religion, sex, sexual orientation, gender identity or physical or mental disability, or that encourage it;⁷⁵ or to participate in such organization or activities or provide assistance to them, including financing, is punishable with imprisonment from one to eight years.⁷⁶

Anyone who publicly, by words, gestures or written disclosure, or by other means of communication with the public, insults the Republic, the national flag or anthem, or the weapons or emblems of Portuguese sovereignty, or fails to respect them, is punished with a prison sentence of up to two years or a fine.⁷⁷

⁶⁸ Id. art. 181(1).

⁶⁹ Id. art. 181(2) (cross-referencing art. 180 paras. (2), (3), (4)).

⁷⁰ Id. art. 182.

⁷¹ Id. art. 183(1)(a).

⁷² Id. art. 183(1)(b).

⁷³ Id. art. 183(2).

⁷⁴ Id. at. 195.

⁷⁵ Id. art. 240(1)(a).

⁷⁶ Id. art. 240(1)(b).

⁷⁷ Id. art. 332(1).

5. Trade Secrets

Decree-Law No. 110 of December 10, 2018, approved the new Industrial Property Code,⁷⁸ transposing Directives (EU) 2015/2436⁷⁹ and (EU) 2016/943.⁸⁰ Trade secrets are protected by the Code.⁸¹ However, there are limitations. Article 351(1)(a) establishes that the remedies provided for in the Code must be rejected by the court whenever the violation of a trade secret has occurred in the exercise of the right to freedom of expression and information enshrined in the Charter of Fundamental Rights of the EU, including respect for freedom and pluralism in the media.⁸²

D. Freedom of Assembly

Pursuant to article 45 of the Constitution, citizens have the right to assemble peacefully and unarmed, even in public places, without prior authorization.⁸³ All citizens have the right to demonstrate.⁸⁴

Freedom of assembly is also guaranteed and regulated by Decree-Law No. 406 of August 29, 1974,⁸⁵ which according to a legal opinion of the Consultative Council of the Attorney General's Office, is still in force in the country and does not violate the 1976 Constitution.⁸⁶

Article 1(1) of Decree-Law No. 406 states that all citizens are guaranteed the free exercise of the right to assemble peacefully in public places, open to the public and private, regardless of authorizations, for purposes that are not contrary to the law, morals, the rights of natural or legal persons and public order and tranquility.⁸⁷ Article 1(2) determines that, without prejudice to the right to criticism, meetings that by their object offend the honor and consideration due to the organs of sovereignty and the Armed Forces will be prohibited.⁸⁸

⁷⁸ Código da Propriedade Industrial [C.P.I.], Decreto-Lei No. 110/2018, de 10 de Dezembro, <https://perma.cc/FP2M-8LZ3>.

⁷⁹ Directive (EU) 2015/2436 of the European Parliament and of the Council of December 16, 2015 to Approximate the Laws of the Member States Relating to Trade Marks (Text with EEA Relevance), O.J. (L336) 1, <https://perma.cc/6BPM-EE4G>.

⁸⁰ Directive (EU) 2016/943 of the European Parliament and of the Council of June 8, 2016 on the Protection of Undisclosed Know-How and Business Information (Trade Secrets) Against Their Unlawful Acquisition, Use and Disclosure, O.J. (L157) 1, <https://perma.cc/U6YR-V677>.

⁸¹ C.P.I. art. 330.

⁸² Id. art. 351(1)(a).

⁸³ C.R.P. art. 45(1).

⁸⁴ Id. art. 45(2).

⁸⁵ Decreto-Lei No. 406/74, de 29 de Agosto, <https://perma.cc/JQ49-QF8U>.

⁸⁶ Parecer do Conselho Consultivo da PGR No. PGRP00000124 de 29/12/1989, <https://perma.cc/ZB68-9M5P>.

⁸⁷ Decreto-Lei No. 406/74, de 29 de Agosto, art. 1(1).

⁸⁸ Id. art. 1(2).

Persons or entities that intend to hold meetings, rallies, demonstrations, or parades in public places or open to the public must give written notice, at least two working days prior to the event, to the mayor of the municipality with territorial jurisdiction.⁸⁹ The written notice must also contain the indication of the time, place and object of the meeting and, in the case of demonstrations or parades, the route to be followed.⁹⁰ The competent authorities may only prevent meetings whose object or purpose is contrary to article 1 of Decree-Law No. 406.⁹¹

The authorities may only interrupt the holding of meetings, rallies, demonstrations, or parades held in public places or open to the public when they are removed from their purpose by acts contrary to the law or morals or that seriously disturb order and public tranquility or the free exercise of people's rights, or violate the provisions of article 1(2).⁹²

People who are caught armed at meetings, rallies, demonstrations, or parades in public places or open to the public will incur the penalties of the crime of disobedience, regardless of other sanctions that may apply to the case.⁹³ Holding meetings, rallies, or demonstrations with unlawful occupation of public or private buildings is not allowed.⁹⁴

E. Freedom of Association

Article 46(1) of the Constitution states that citizens have the right to form associations freely and without prior authorization, provided that the associations are not intended to promote violence and that their objectives are not contrary to the criminal law.⁹⁵ Associations may pursue their objectives freely and without interference from any public authority, and they may not be dissolved by the state, nor their activities suspended, except by judicial decision in the circumstances specified by law.⁹⁶ No one can be obligated to join an association or compelled to remain in it.⁹⁷ Armed or military-type, militarized or paramilitary associations, or racist organizations or those that share the fascist ideology are not permitted.⁹⁸

Freedom of association includes the right to form or take part in political associations and parties and through them to work jointly and democratically towards the formation of the popular will and the organization of political power.⁹⁹

⁸⁹ Id. art. 2(1) as amended by Lei Orgânica No. 1/2011, de 30 de Novembro, <https://perma.cc/J589-DVW4>.

⁹⁰ Id. at. 3(1).

⁹¹ Id. at. 3(2).

⁹² Id. art. 5(1).

⁹³ Id. art. 8(1).

⁹⁴ Id. art. 12.

⁹⁵ C.R.P. art. 46(1).

⁹⁶ Id. art. 46(2).

⁹⁷ Id. art. 46(3).

⁹⁸ Id. art. 46(4).

⁹⁹ Id. art. 51(1).

Decree-Law No. 594 of November 7, 1974, recognizes and regulates the right of association.¹⁰⁰ All citizens over the age of 18, in the enjoyment of their civil rights, are guaranteed the free exercise of the right to associate for purposes not contrary to law or public morals, without the need for any prior authorization.¹⁰¹

Article 13(2) determines that the promotion and incorporation of international associations in Portugal depends on authorization from the government.¹⁰² On October 6, 2004, the Constitutional Tribunal declared the unconstitutionality of article 13(2) for violation of the provisions of article 46(1) of the Constitution.¹⁰³

F. Freedom of the Press

The freedom of the press is guaranteed by the Constitution¹⁰⁴ and comprises:

- a. The freedom of expression and creativity for journalists and collaborators and, as a function of the journalist, the giving of editorial direction to the relevant organs of social communication, except where the latter are of doctrinal or denominational nature.
- b. The right of journalists, under the terms of the law, to have access to information sources, to protection of their professional independence and confidentiality, and to elect editorial councils.
- c. The right to found newspapers and other publications, without prior administrative authorization, deposit or proof of habilitation.¹⁰⁵

The Constitution requires, in general terms, the disclosure of the ownership and the financing of media entities.¹⁰⁶ The State ensures the freedom and independence of media entities from political and economic powers; imposes the principle of specialty upon companies that own general information media; treats and supports those companies in a non-discriminatory manner, and prevents their concentration, in particular through multiple or interlocking interests.¹⁰⁷ The State ensures the existence and functioning of public radio and television service.¹⁰⁸ The structure and the functioning of public sector media must safeguard their independence from the government and administration and other public powers, and guarantee opportunities for the expression of,

¹⁰⁰ Decreto-Lei No. 594/74, de 7 de Novembro, <https://perma.cc/46PU-MXBS>.

¹⁰¹ Id. art. 1(1).

¹⁰² Id. art. 13(2).

¹⁰³ Tribunal Constitucional, Acórdão No. 589/2004, Processo No. 337/99, <https://perma.cc/B95Y-8QK9>.

¹⁰⁴ C.R.P. art. 38(1).

¹⁰⁵ Id. art. 38(2).

¹⁰⁶ Id. art. 38(3).

¹⁰⁷ Id. art. 38(4).

¹⁰⁸ Id. art. 38(5).

and challenge to, different currents of opinion.¹⁰⁹ Radio and television stations shall operate only under a license granted for the purpose after a public competition, in accordance with law.¹¹⁰

Law No. 2 of January 13, 1999, established the Press Law,¹¹¹ which determines that freedom of the press is guaranteed under the terms of the Constitution and the law.¹¹² Freedom of the press includes the right to inform, to inform and to be informed, without hindrance or discrimination.¹¹³ The exercise of these rights cannot be prevented or limited by any type or form of censorship.¹¹⁴

Freedom of the press implies:

- a) The recognition of the fundamental rights and freedoms of journalists, namely those referred to in article 22 of Law No. 2 of January 13, 1999;
- b) The right to found newspapers and any other publications, regardless of prior administrative authorization, deposit or qualification;
- c) The right to freely print and circulate publications, without anyone being able to oppose it by any means not provided for by law.¹¹⁵

The freedom of the press has as its only limits those that stem from the Constitution and the law, in order to safeguard the rigor and objectivity of information, to guarantee the rights to one's good name, to reserve the intimacy of private life, to protect the image and the word of the citizens, and to defend the public interest and the democratic order.¹¹⁶

According to article 22, the fundamental rights of journalists, the content and extent of which are defined in the Constitution and the Journalist Statute,¹¹⁷ are:

- a) Freedom of expression and of creation;
- b) Freedom of access to information sources, including the right of access to public places and their protection;
- c) The right to professional secrecy;
- d) The guarantee of independence and the conscience clause;
- e) The right to participate in the guidance of the respective information body.

¹⁰⁹ Id. art. 38(6).

¹¹⁰ Id. art. 38(7).

¹¹¹ Lei No. 2/99, de 13 de Janeiro, as amended by Lei No. 78/2015, de 29 de Julho, <https://perma.cc/27S4-F8UN>.

¹¹² Id. art. 1(1).

¹¹³ Id. art. 1(2).

¹¹⁴ Id. art. 1(3).

¹¹⁵ Id. art. 2(1).

¹¹⁶ Id. art. 3.

¹¹⁷ Id. art. 22. See also Estatuto do Jornalista, Lei n.º 1/99, de 01 de Janeiro, <https://perma.cc/N95J-HHTT>.

In the 2020 World Press Freedom Index issued by the organization Reporters Without Borders, Portugal was ranked in 10th place,¹¹⁸ which indicates an improvement when compared to previous years. In 2019, Portugal was ranked in 12th place¹¹⁹ and in 2018, Portugal occupied the 14th position.¹²⁰

G. Discrimination

One of the fundamental responsibilities of the state defined in the Constitution is to promote the welfare and equality of life of the people, and actual equality between Portuguese in their enjoyment of economic, social, cultural, and environmental rights, through the transformation and modernization of the economic and social structures.¹²¹

All citizens enjoy the rights and are subject to the duties established in the Constitution¹²² and possess the same social dignity and are equal before the law.¹²³ No one may be privileged, favored, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.¹²⁴

1. Penal Code

As discussed in Section II.C, the Penal Code criminalizes, among other things, the development of organized propaganda activities that incite discrimination, hatred or violence against a person or group of people because of their race, color, ethnic or national origin, ancestry, religion, sex, sexual orientation, gender identity, or physical or mental disability, or that encourage it.¹²⁵

2. Law No. 3 of February 15, 2011

Law No. 3 of February 15, 2011, prohibits any discrimination in accessing and exercising independent employment and transposes the following directives to Portuguese domestic law regarding the independent work and procedural legitimacy of organizations whose purpose is to defend or promote the rights and interests of people against discrimination:¹²⁶

¹¹⁸ 2020 World Press Freedom Index, Reporters Without Borders, <https://perma.cc/9S5K-MVXW>; Portugal, Reporters Without Borders, <https://perma.cc/6PRT-2A95>.

¹¹⁹ 2019 World Press Freedom Index, Reporters Without Borders, <https://perma.cc/V794-JH2H>.

¹²⁰ 2018 World Press Freedom Index, Reporters Without Borders, <https://perma.cc/CH6Y-SPZN>.

¹²¹ C.R.P. art. 9(d).

¹²² Id. art. 12(1)

¹²³ Id. art. 13(1).

¹²⁴ Id. art. 13(2).

¹²⁵ C.P. art. 240(1)(a).

¹²⁶ Lei No. 3/2011, de 15 de Fevereiro, <https://perma.cc/3WJZ-98MZ>.

- a) Council Directive No. 2000/43/EC of 29 June, 2000, which applies the principle of equal treatment between people, regardless of racial or ethnic origin;¹²⁷
- b) Council Directive No. 2000/78/EC of November 27, 2000, which establishes a framework for equal treatment in employment and occupation;¹²⁸
- c) Directive No. 2006/54/EC, of the European Parliament and of the Council, of July 5, 2006, on the application of the principle of equal opportunities and equal treatment between men and women in areas related to employment and occupation.¹²⁹

Law No. 3 is applicable to the access and exercise of independent work in the private, cooperative and social sectors, in central, regional and local public administration, in public institutes, and in any companies (*peçoas coletivas*) governed by public law.¹³⁰ For the purposes of Law No. 3, independent work is defined as professional activity carried out without being subject to an employment contract or a legally equivalent situation.¹³¹

A person who applies for independent work or who exercises it has the right to equal opportunities and treatment in access to work, training and the conditions for the provision of the service, and cannot be benefited or harmed due to any factor of discrimination.¹³²

Article 4 defines equal conditions on the provision of services. Article 5 prohibits discrimination, defines what discrimination is and is not, and also defines harassment, including sexual harassment. Articles 9 and 10 establish fines and sanctions for violations.

A person who is a candidate for independent work, or who exercises it, and who is injured by a discriminatory act is entitled to compensation for property and non-property damage, under the general terms of the law.¹³³

3. Labor Code

Law No. 7 of February 12, 2009, established the Labor Code. In regard to equality and non-discrimination, for the purpose of the Code, it is considered:

¹²⁷ Council Directive 2000/43/EC of June 29, 2000, Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial and Ethnic Origin, 2000 O.J. (L 180) 22, <https://perma.cc/J7Y2-77HC>.

¹²⁸ Council Directive 2000/78/EC of November 27, 2000, Establishing a General Framework for Equal Treatment in Employment and Occupation, 2000 O.J. (L 303) 16, <https://perma.cc/VT26-96DR>.

¹²⁹ Directive 2006/54/EC, of the European Parliament and of the Council, of July 5, 2006, on the Application of the Principle of Equal Opportunities and Equal Treatment between Men and Women in Areas Related to Employment and Occupation, 2006 O.J. (L 204) 23, <https://perma.cc/V5XP-VS4X>.

¹³⁰ Lei No. 3/2011, de 15 de Fevereiro, art. 2(1).

¹³¹ Id. art. 2(2).

¹³² Id. art. 3(1).

¹³³ Id. art. 6(1).

- a) Direct discrimination—whenever, due to a factor of discrimination, a person is subject to less favorable treatment than that which is, has been or will be given to another person in a comparable situation;
- b) Indirect discrimination—whenever an apparently neutral provision, criterion or practice is likely to place a person, due to a discrimination factor, at a disadvantage compared to others, unless that provision, criterion or practice is objectively justified by a legitimate aim and that the means to achieve it are adequate and necessary;
- c) Equal work—one in which the functions performed at the service of the same employer are the same or objectively similar in nature, quality and quantity;
- d) Work of equal value—the one in which the functions performed at the service of the same employer are equivalent, taking into account in particular the qualification or experience required, the responsibilities attributed, the physical and psychological effort and the conditions in which the work is carried out.¹³⁴

In addition, a mere order or instruction that has the purpose of harming someone due to a factor of discrimination constitutes discrimination.¹³⁵

According to article 24(1), a worker or jobseeker is entitled to equal opportunities and treatment with regard to access to employment, training and promotion or professional career and working conditions, and cannot be privileged, benefited, impaired, deprived of any right or exemption from any duty due, in particular, to ancestry, age, sex, sexual orientation, gender identity, marital status, family situation, economic status, education, social origin or condition, genetic heritage, reduced work capacity, disability, chronic illness, nationality, ethnic or race origin, territory of origin, language, religion, political or ideological convictions, and union membership; the State should promote equal access to such rights.¹³⁶ A violation of this provision constitutes a very serious infraction.¹³⁷

An employer may not discriminate, directly or indirectly, due in particular to the factors referred to in article 24(1) of the Code.¹³⁸ An act of retaliation that harms the worker as a result of rejection or submission to a discriminatory act is invalid.¹³⁹ A violation of these provisions constitutes a very serious infraction.¹⁴⁰

Article 29 of the Code prohibits harassment,¹⁴¹ which is defined as unwanted behavior based on a discrimination factor, practiced when accessing employment or in employment, work or

¹³⁴ Código do Trabalho, Lei No. 7, de 12 de Fevereiro de 2009, art. 23(1), <https://perma.cc/6BL8-DCA9>.

¹³⁵ Id. art. 23(2).

¹³⁶ Id. art. 24(1).

¹³⁷ Id. art. 24(5).

¹³⁸ Id. art. 25(1).

¹³⁹ Id. art. 25(7).

¹⁴⁰ Id. art. 25(8).

¹⁴¹ Id. art. 29(1).

vocational training, with the aim or effect of disturbing or embarrassing the person, affecting his or her dignity, or to create an intimidating, hostile, degrading, humiliating or destabilizing environment.¹⁴² Sexual harassment constitutes unwanted sexual behavior, in verbal, non-verbal or physical form, with this aim or effect.¹⁴³ The practice of harassment gives the victim the right to compensation,¹⁴⁴ and constitutes a very serious violation, without prejudice to any possible criminal liability provided for under the law.¹⁴⁵

Discrimination on the basis of sex is defined as the exclusion or restriction of access of jobseekers or workers on grounds of sex to a specific activity or to the professional training required to have access to that activity.¹⁴⁶ A violation of this provision constitutes a very serious infraction.¹⁴⁷

Pursuant to article 31(1) of the Code, workers are entitled to equal working conditions, in particular as regards pay, and the elements that determine it must not contain any discrimination based on sex.¹⁴⁸ A violation of this provision constitutes a very serious infraction.¹⁴⁹

In order to determine the applicable fine and taking into account the relevance of the violated interests, labor violations are classified as light, serious, and very serious. Articles 554 and 555 determine the amount of fines.¹⁵⁰

III. Open Internet

A. Basis for Regulation of Internet Use

As an EU member, Portugal is bound by Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015,¹⁵¹ which establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights.¹⁵²

¹⁴² Id. art. 29(2).

¹⁴³ Id. art. 29(3).

¹⁴⁴ Id. art. 29(4).

¹⁴⁵ Id. art. 29(5).

¹⁴⁶ Id. art. 30(1).

¹⁴⁷ Id. art. 30(4).

¹⁴⁸ Id. art. 31(1).

¹⁴⁹ Id. art. 31(6).

¹⁵⁰ Id. arts, 554, 555.

¹⁵¹ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 Laying Down Measures Concerning Open Internet Access and Amending Directive 2002/22/EC on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services and Regulation (EU) No 531/2012 on Roaming on Public Mobile Communications Networks Within the Union (Text with EEA relevance), 2015 O.J. (L 310) 1, <https://perma.cc/8YUW-W8C9>.

¹⁵² Id. art. 1(1).

B. Rights and Guarantees

The EU regulation determines that end-users must have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the information, content, application or service, via their internet access service.¹⁵³

Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, must not limit the exercise of the rights of end-users.¹⁵⁴

Providers of internet access services must treat all traffic equally when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.¹⁵⁵ Furthermore, providers must not engage in traffic management measures and are not allowed to block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services.¹⁵⁶

The regulation also requires providers to include in their contracts information on, among other things, how traffic management measures applied by the provider could impact on the quality of the internet access services, on the privacy of end-users and on the protection of their personal data;¹⁵⁷ and how any volume limitation, speed and other quality of service parameters may in practice have an impact on internet access services, and in particular on the use of content, applications and services.¹⁵⁸

Decree-Law No. 83 of October 19, 2018¹⁵⁹ transposes to domestic law Directive (EU) 2016/2102, of the European Parliament and of the Council, of 26 October 2016, on the accessibility of websites and mobile applications of public sector bodies.¹⁶⁰ Article 2 lists the entities that the decree-law applies to, which include the State, autonomous regions, local authorities, and public institutions.¹⁶¹

¹⁵³ Id. art. 3(1).

¹⁵⁴ Id. art. 3(2).

¹⁵⁵ Id. art. 3(3).

¹⁵⁶ Id.

¹⁵⁷ Id. 4(1)(a).

¹⁵⁸ Id. 4(1)(b).

¹⁵⁹ Decreto-Lei 83/2018, de 19 de Outubro, art. 1, <https://perma.cc/C8R3-B8GB>.

¹⁶⁰ Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the Accessibility of the Websites and Mobile Applications of Public Sector Bodies (Text with EEA Relevance), 2016 O.J. (L 327) 1, <https://perma.cc/NA3E-V9SJ>.

¹⁶¹ Decreto-Lei 83/2018, art. 2.

According to article 3, Decree-Law No. 83 applies to all website content, regardless of the device used to access it, and the mobile applications of the entities listed in article 2.¹⁶² The definition of content includes textual information, non-textual information, all types of documents and downloadable forms, dynamic multimedia content, maps, authentication processes, services, means of payment, and online filling and submission forms.¹⁶³ Article 3 also lists exceptions to decree-law's applicability.¹⁶⁴

The entities listed in article 2 must take the necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust.¹⁶⁵ For this purpose, forms of organization and presentation of digital information must be adopted, whether for websites or mobile applications, in order to facilitate access by people with disabilities, allowing reading, writing and interaction not to depend on the exclusive use of vision, hearing, precise movements, simultaneous actions or the use of pointing devices (such as mouses), and must prioritize technical specifications that ensure maximum interoperability with existing assistive technologies.¹⁶⁶

IV. Data Protection

In Portugal, the protection of personal data used in connection with information technology is a fundamental right guaranteed by article 35 of the Constitution of 1976.¹⁶⁷ However, the country did not adopt its first law until 1991, when it enacted Law No. 10 of April 29, 1991, regulating the use and control of personal data and creating a regulatory agency on the subject.¹⁶⁸

In 1995, the EU issued Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Directive).¹⁶⁹

During Portugal's Constitutional Review of 1997, article 35 of the Constitution was amended to enable an adequate transposition of Directive No. 95/46/EC into Portugal's Constitutional Charter.¹⁷⁰ Subsequently, Law No. 67 of October 26, 1998, was enacted as the new law on

¹⁶² Id. art. 3(1).

¹⁶³ Id. art. 3(2).

¹⁶⁴ Id. art. 3(3-4).

¹⁶⁵ Id. art. 5(1).

¹⁶⁶ Id. art. 5(2).

¹⁶⁷ Constituição da República Portuguesa, VII Revisão Constitucional [2005], art. 35.

¹⁶⁸ Lei No. 10/91, de 29 de Abril, <https://perma.cc/S74V-WJ9U>.

¹⁶⁹ Directive 95/46/EC, of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (1995 Data Protection Directive), 1995 O.J. (L 281) 31, <https://perma.cc/P5FP-2RR8>.

¹⁷⁰ Quarta Revisão Constitucional, Lei No. 1/97, de 20 de Setembro, art. 18, <https://perma.cc/K8R7-J823>.

protection of personal data, which transposed Directive No. 95/46/EC into Portugal's domestic legislation and revoked Law No. 10 of April 29, 1991.¹⁷¹

On April 26, 2016, the EU issued the GDPR, Regulation (EU) 2016/679, and repealed Directive 95/46/EC.¹⁷² On August 8, 2019, Portugal enacted Law No. 58,¹⁷³ which ensures the implementation in domestic law of the GDPR, and revoked Law No. 67 of October 26, 1998.

On April 27, 2016, the EU issued Directive 2016/680¹⁷⁴ on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection, or prosecution of criminal offenses or the execution of criminal penalties, and on the free movement of such data. Portugal also transposed this directive into domestic law on August 8, 2019, by enacting Law No. 59, which approved the rules on the processing of such personal data.¹⁷⁵

A. Definitions

Article 4 of the GDPR provides several definitions, including personal data, which means any information relating to an identified or identifiable natural person (or "data subject"). An identifiable natural person is one who can be identified, directly or indirectly, in particular, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.¹⁷⁶

Processing is defined as any operation or set of operations which is performed on personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction.¹⁷⁷

¹⁷¹ Lei No. 67/98, de 26 de Outubro, Lei da Protecção de Dados Pessoais [Personal Data Protection Law], <https://perma.cc/SQF7-YXAS>.

¹⁷² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1, <https://perma.cc/4HPB-DXKW>.

¹⁷³ Lei No. 58/2019, de 8 de Agosto, <https://perma.cc/6DCB-V76G>.

¹⁷⁴ Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal penalties, and on the Free Movement of Such Data, and Repealing Council Framework Decision 2008/977/JHA (Criminal Law Enforcement Data Protection Directive), 2016 O.J. (L 119) 89, <https://perma.cc/7SZF-EQKX>.

¹⁷⁵ Lei No. 59/2019, de 8 de Agosto, <https://perma.cc/C8JR-P5QG>.

¹⁷⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, art. 4(1).

¹⁷⁷ Id. art. 4(2).

B. Application

Law No. 58 of August 8, 2019, applies to the processing of personal data carried out in the national territory, regardless of the public or private nature of the controller or the subcontractor, even if it is carried out in compliance with legal obligations or within the scope of pursuit of public interest missions, applying all the exclusions provided for in article 2 of the GDPR.¹⁷⁸ It also applies to the processing of personal data carried out outside the national territory when it is carried out within the scope of the activity of an establishment located in the national territory; or affects data subjects who are in the national territory, when the processing activities are subject to the provisions of article 3(2) of the GDPR; or affects data that is registered in the consular posts of Portuguese residents abroad.¹⁷⁹

Article 3(2) of the GDPR applies to the processing of personal data of data subjects who are in the EU by a controller or processor not established in the EU, where the processing activities are related to the offering of goods or services, irrespective of whether a payment is required, to such data subjects; or to the monitoring of their behavior as far as their behavior takes place within the EU.¹⁸⁰

C. Exceptions

Article 2(3) of Law No. 58 of August 8, 2019, provides that the law does not apply to personal data files created and maintained under the responsibility of the Information System of the Portuguese Republic, which is governed by specific provisions under the terms of the law.¹⁸¹

Article 2(2) of the GDPR states that the Regulation does not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law; by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the Treaty on European Union (on the common foreign and security policy); by a natural person in the course of a purely personal or household activity; by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.¹⁸²

D. Principles

Article 5 of the GDPR lists the following principles as governing the processing of personal data: lawfulness, fairness, and transparency; purpose limitation; data minimization; accuracy; storage limitation; integrity and confidentiality; and accountability.¹⁸³

¹⁷⁸ Lei No. 58/2019, de 8 de Agosto, art. 2(1).

¹⁷⁹ Id. art. 2(2).

¹⁸⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, art. 3(2).

¹⁸¹ Lei No. 58/2019, de 8 de Agosto, art. 2(3).

¹⁸² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, art. 2(2).

¹⁸³ Id. art. 5.

According to the general principle for transfers stated in article 44 of the GDPR, any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organization shall take place only if, subject to the other provisions of the GDPR, the conditions laid down in this Chapter V of the GDPR are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organization to another third country or to another international organization. All provisions in Chapter V of the GDPR must be applied in order to ensure that the level of protection of natural persons guaranteed by the GDPR is not undermined.¹⁸⁴

Article 9(1) of the GDPR prohibits the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, or the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.¹⁸⁵ Article 9(2) provides exceptions to the application of this rule.¹⁸⁶

Article 17 of Law No 58 of August 8, 2019, states that the personal data of deceased persons are protected under the terms of the GDPR and the law when they fall within the special categories of personal data referred to in article 9(1) of the GDPR, or when they relate to private life intimacy, image or data relating to communications, except as provided for in article 9(2).¹⁸⁷

E. Consent

According to article 6(1)(a) of the GDPR, processing must be lawful only if and to the extent that the data subject has given consent to the processing of his or her personal data for one or more specific purposes.¹⁸⁸

The conditions for consent are set forth in article 7 of the GDPR, which include:

1. Where processing is based on consent, the controller must be able to demonstrate that the data subject has consented to processing of his or her personal data.
2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent must be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of the GDPR must not be binding.
3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent must not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject must be informed thereof. It must be as easy to withdraw as to give consent.

¹⁸⁴ Id. art. 44.

¹⁸⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, art. 9(1).

¹⁸⁶ Id. art. 9(2).

¹⁸⁷ Lei No. 58/2019, de 8 de Agosto, art. 17(1).

¹⁸⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, art. 6(1)(a).

4. When assessing whether consent is freely given, utmost account must be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.¹⁸⁹

Article 8(1) of the GDPR sets the conditions applicable to children's consent in relation to information society services. Where article 6(1)(a) of the GDPR applies (i.e., consent has been given by the subject), in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorized by the holder of parental responsibility over the child.¹⁹⁰ The controller must make reasonable efforts to verify in such cases that consent is given or authorized by the holder of parental responsibility over the child, taking into consideration available technology.¹⁹¹ Article 8(1) of the GDPR must not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.¹⁹²

Article 8(1) of the GDPR also provides that Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years. Law No. 58 of August 8, 2019, establishes that children's personal data can only be processed based on consent when they are 13 years or older. If the child is under the age of 13, treatment is only lawful if consent is given by the child's legal representatives, preferably using secure authentication means.

F. Entry into Force

Law No. 58 of August 8, 2019, was approved on June 14, 2019, promulgated on July 26, 2019, published on the Official Gazette on August 8, 2019, and entered into force on the day following its publication.¹⁹³

V. Civil Society Laws

A. Civil Society Organizations

Civil society organizations are regulated by articles 980 *et seq.* of the Civil Code.¹⁹⁴ They have to be made up of two or more people who are obliged to contribute with goods or services for the joint exercise of a certain economic activity, which must be more than a mere financial investment

¹⁸⁹ Id. art. 7.

¹⁹⁰ Id. art. 8(1). Member States may provide by law for a lower age for those purposes if such lower age is not below 13 years. Id.

¹⁹¹ Id. art. 8(2).

¹⁹² Id. art. 8(3).

¹⁹³ Lei No. 58/2019, de 8 de Agosto, art. 68.

¹⁹⁴ Código Civil, Decreto-Lei No. 47.344/66, de 25 de Novembro, as amended by Lei No. 65/2020, de 4 de Novembro, art. 980, <https://perma.cc/36H8-6Q5X>.

(*que não seja de mera fruição*), in order to share the profits resulting from that activity.¹⁹⁵

B. Associations

The Civil Code defines how an association is created. Article 167 states that the act of creation of an association must specify the goods or services with which the members contribute for the social patrimony, the name, purpose, and headquarters of the legal entity, the form of its operation, as well as its duration if not created indefinitely.¹⁹⁶ The statutes may also specify the rights and obligations of members, the conditions for their admission, departure and exclusion, as well as the terms of the extinction of the legal entity and the consequent return of their assets.¹⁹⁷

C. Social Economy

The social economy sector consists of cooperatives, mutual associations, mercies, foundations, and other entities with different legal forms.¹⁹⁸ These entities have their own legal requirements, but all respond to the Basic Law of the Social Economy (Law No. 30/2013).¹⁹⁹ Law No. 30 defines social economy as the set of economic and social activities, freely carried out by these entities.²⁰⁰ These activities are intended to pursue the general interest of the society, either directly or through the pursuit of the interests of its members, users and beneficiaries, when socially relevant.²⁰¹

D. Statute of Public Utility Entities

Decree-Law No. 460 of November 7, 1977, approved the statute of public utility entities,²⁰² which are defined as associations or foundations that pursue purposes of general interest, or the interests of the national community or of any region or district, cooperating with the central or local administration to ensure the entity deserves the declaration from that administration that it is engaged in actions of “public utility.”²⁰³

Article 2 of Decree-Law No. 460 defines the requirements that associations and foundations need to fulfill to be declared of public utility.²⁰⁴ Legal entities wishing to be declared of public utility must request that declaration from the competent entity, immediately offering all the necessary

¹⁹⁵ Id.

¹⁹⁶ Id. art. 167(1).

¹⁹⁷ Id. art. 167(2).

¹⁹⁸ Lei de Bases da Economia Social, Lei No. 30/2013, de 8 de Maio, art. 4, <https://perma.cc/M8EK-U92K>.

¹⁹⁹ Id. art. 3.

²⁰⁰ Id. art. 2(1).

²⁰¹ Id. art. 2(2).

²⁰² Estatuto das Coletividades de Utilidade Pública, Decreto-Lei No. 460/77, de 7 de Novembro, <https://perma.cc/VQ8E-QWYW>.

²⁰³ Id. art. 1(1).

²⁰⁴ Id. art. 2.

evidence supporting their claim.²⁰⁵ Public utility entities enjoy tax exemptions as provided for by law,²⁰⁶ and the benefits listed in article 10 of Decree-Law No. 460.²⁰⁷

E. Funding

In Portugal, there are some financing opportunities. The Environmental Fund was created by Decree-Law No. 42-A of August 12, 2016,²⁰⁸ for the purpose of supporting environmental policies for the pursuit of sustainable development objectives, and contributing to the fulfillment of national and international objectives and commitments, namely those related to climate change, water resources, waste, and conservation of nature and biodiversity, by financing entities, activities or projects.²⁰⁹

The Montepio Foundation, a public utility entity whose mission is to disseminate the mutualist ideal in Portuguese society, developing a set of actions in favor of social cohesion and sustainable development,²¹⁰ offers financial support for the development of activities of other non-profit entities by assuming the role of social investor and partner.²¹¹

Fundação “laCaixa” is a foundation funded by financial institutions that has its attention on programs with a greater transformative impact, such as those that combat poverty and social exclusion, foster employment, and help improve the living conditions of the most vulnerable people.²¹²

Camões Cooperation and Language Institute is a public institute, integrated in the indirect administration of the State,²¹³ which offers co-financing lines of credit to properly constituted Portuguese non-profit organizations, public institutions, networks and platforms that operate in the areas of Portuguese cooperation.²¹⁴

²⁰⁵ Id. art. 5(1).

²⁰⁶ Id. art. 9.

²⁰⁷ Id. art. 10.

²⁰⁸ Decreto-Lei No. 42-A/2016 de 12 de Agosto, art. 1, <https://perma.cc/BV4U-QLY3>.

²⁰⁹ Id. art. 3. Article 3 lists all the objectives of the fund that qualify for financing.

²¹⁰ Fundação Montepio, Estatutos, art. 4(1), <https://perma.cc/5V5V-YBPA>.

²¹¹ Id. art. 5(2)(a).

²¹² *A Fundação*, Fundação “laCaixa”, <https://perma.cc/R4HE-5SQ4>.

²¹³ Camões Instituto da Cooperação e da Língua, <https://perma.cc/URM9-MTB6>.

²¹⁴ *Candidaturas a Linhas de Cofinanciamento*, Camões Instituto da Cooperação e da Língua, <https://perma.cc/JV9Z-AQ25>.

According to the European Commission, funding sources for non-government organizations²¹⁵ are provided by a number of managing authorities in Portugal.²¹⁶

The Calouste Gulbenkian Foundation fulfils its mission through innovative programs that develop pilot projects and support by providing scholarships and grants for other institutions and social organizations.²¹⁷ According to the foundation, their programs focus on themes of the contemporary society, looking for innovative answers to the problems of the current world.²¹⁸

VI. Laws Governing Terrorism and Money Laundering

A. Law No. 53 of August 22, 2003

On August 22, 2003, Law No. 52²¹⁹ was enacted for the purpose of predicting and punishing terrorist acts and organizations, in compliance with Council Decision No. 2002/475/JHA, on the fight against terrorism.²²⁰

Law No. 52 has been amended several times. The latest amendment occurred on February 14, 2019, when Law No. 16²²¹ transposed into national law Directive (EU) 2017/541 of March 15, 2017,²²² on combating terrorism, replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

Article 2 of Law No. 52 defines terrorist organizations and acts of terrorism;²²³ punishes with eight to 15 years in prison anyone who promotes or founds a terrorist group, organization or association;²²⁴ punishes with 15 to 20 years in prison whoever heads or directs a terrorist group, organization or association;²²⁵ punishes with one to eight years in prison anyone who carries out

²¹⁵ *Funding Opportunities for NGOS*, European Commission, https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/who-eligible-funding/funding-opportunities-ngos_en.

²¹⁶ *Managing Authorities, Portugal (2021-2027)*, European Commission, https://ec.europa.eu/regional_policy/en/atlas/managing-authorities/.

²¹⁷ *Overview*, Calouste Gulbenkian Foundation, <https://gulbenkian.pt/en/the-foundation/overview/>.

²¹⁸ *Programmes*, Calouste Gulbenkian Foundation, <https://gulbenkian.pt/en/initiatives/>.

²¹⁹ Lei No. 52/2003, de 22 de Agosto, art. 1, <https://perma.cc/2K9U-7X2Z>.

²²⁰ Council Framework Decision 2002/475/JHA of June 13, 2002 on Combating Terrorism, 2002 O.J. (L 164) 3, <https://perma.cc/TE53-B95D>.

²²¹ Lei No. 16/2019, de 14 de Fevereiro, <https://perma.cc/H5Z8-NGTL>.

²²² Directive (EU) 2017/541 of the European Parliament and of the Council of March 15, 2017, on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, <https://perma.cc/H8MK-28BU>.

²²³ Lei No. 52/2003, de 22 de Agosto, as amended by Lei No. 16/2019, de 14 de Fevereiro, art. 2(1), <https://perma.cc/J8SG-NWHM>.

²²⁴ Id. art. 2(2).

²²⁵ Id. art. 2(3).

preparatory acts for the constitution of a terrorist group, organization or association;²²⁶ and attenuates or extinguishes the punishment if the agent voluntarily leaves his activity, removes or considerably reduces the danger caused by it, or concretely assists in the collection of decisive evidence for the identification or capture of other responsible persons.²²⁷ Article 4 defines the punishments for the practice of acts listed on article 2(1), and further defines punishable acts and their respective punishments.²²⁸ Financing of terrorism is punished with eight to 15 years in prison.²²⁹

B. Law No. 83 of August 18, 2017

Law No. 83 of August 18, 2017,²³⁰ establishes preventive and repressive measures to combat money laundering or terrorist financing and partially transposes to Portuguese law Directive (EU) 2015/849 of May 20, 2015, of the European Parliament and of the Council, on the prevention of the use of the financial system and of the activities and professions specially designated for the purpose of money laundering, and terrorist financing,²³¹ as well as Council Directive (EU) 2016/2258 of December 6, 2016, which amends Directive (EU) 2011/16, as regards access to anti-money laundering information by tax authorities.²³²

Law No. 83 also establishes the national measures necessary for the effective application of Regulation (EU) 2015/847 of May 20, 2015, of the European Parliament and of the Council, on information that accompanies the transfers of funds and that repeals Regulation (EC) 1781/2006.²³³

²²⁶ Id. art. 2(4).

²²⁷ Id. art. 2(5).

²²⁸ Id. art. 4.

²²⁹ Id, art, 5-A.

²³⁰ Lei No. 83/2017, de 18 de Agosto, as amended by Lei No. 58/2020, de 31 de Agosto, art. 1, <https://perma.cc/BNN8-6JRD>.

²³¹ Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015, on the prevention of the use of the financial system and of the activities and professions specially designated for the purpose of money laundering, and terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance), <https://perma.cc/4KGW-LSGN>.

²³² Council Directive (EU) 2016/2258 of December 6, 2016, amending Directive 2011/16/EU as regards access to anti-money laundering information by tax authorities, <https://perma.cc/8AZK-856G>.

²³³ Regulation (EU) 2015/847 of May 20, 2015, of the European Parliament and of the Council, on information that accompanies the transfers of funds and that repeals Regulation (EC) 1781/2006 (Text with EEA relevance), <https://perma.cc/QF3H-UH3F>.

For the purposes of Law No. 83, article 2 provides several definitions, including agent,²³⁴ real estate activity,²³⁵ façade bank,²³⁶ and assets.²³⁷ Money laundering is defined as a conduct foreseen and punished by article 368-A of the Penal Code (discussed below).²³⁸ Participation in one of the acts referred to in article 368-A of the Penal Code, the association to practice said acts, the attempt and complicity in its practice, as well as the fact that it facilitates its execution or advises someone to practice it is also considered money laundering.²³⁹

Article 3 defines the financial entities with headquarters in the national territory that are subject to the provisions of Law No. 83, with the exception of the provisions of chapter XI of the Law, which discusses implementing measures for Regulation (EU) 2015/847 of May 20, 2015.²⁴⁰ Moreover, article 4 list the non-financial entities with headquarters in the national territory that are subject to the provisions of Law No. 83, with the same exception.²⁴¹

Chapter IV of Law No. 83 discusses the general duties of the entities;²⁴² chapter V defines the specific duties of financial entities;²⁴³ chapter VI determines the specific duties of non-financial entities;²⁴⁴ chapter VII defines the competent authorities;²⁴⁵ chapter IX discusses national and international cooperation between authorities;²⁴⁶ chapter XI establishes the implementing measures for Regulation (EU) 2015/847;²⁴⁷ and chapter XII prescribes the sanctioning regime.²⁴⁸

C. Penal Code

Article 368-A of the Penal Code criminalizes money laundering. It defines profits subject to the anti-money laundering law to include those arising from typical illicit acts punishable by imprisonment for a minimum term of more than six months or a maximum term of more than five years, or, regardless of the applicable penalties, of unlawful acts typical of a list of crimes that includes:

²³⁴ Lei No. 83/2017, de 18 de Agosto, art. 2(1)(a).

²³⁵ Id. art. 2(1)(b).

²³⁶ Id. art. 2(1)(g).

²³⁷ Id. art. 2(1)(i).

²³⁸ Id. art. 2(1)(j)(i).

²³⁹ Id. art. 2(1)(j)(iii).

²⁴⁰ Id. art. 3.

²⁴¹ Id. art. 4.

²⁴² Id. arts. 11-61.

²⁴³ Id. arts. 62-73.

²⁴⁴ Id. arts. 74-80.

²⁴⁵ Id. arts. 81-112-B.

²⁴⁶ Id. arts. 122-146.

²⁴⁷ Id. arts. 147-156.

²⁴⁸ Id. arts. 157-185.

- d) Criminal association;
- e) Terrorism;
- f) Trafficking in narcotic drugs and psychotropic substances;
- g) Arms trafficking;²⁴⁹

Anyone who converts, transfers, assists or facilitates any conversion or transfer of profits, obtained by himself or by a third party, directly or indirectly, in order to conceal their illicit origin, or to prevent the perpetrator or participant in such violations to be criminally prosecuted or subjected to a criminal action, is punishable by up to 12 years in prison.²⁵⁰ The same punishment applies to anyone who hides or conceals the true nature, origin, location, disposition, movement or ownership of the benefits, or the rights related thereto.²⁵¹ Anyone who is not the perpetrator of the illegal act from which the profits come who acquires, holds or uses them, knowingly, at the time of acquisition or at the time of the initial holding or use, incurs in the same punishment.²⁵²

VII. Civic Participation

A. Constitutional Principle

The people exercise political power through universal, equal, direct, secret, and periodic suffrage, by referendum and through other forms specified in the Constitution.²⁵³ All citizens over the age of 18 years have the right to vote, unless subject to an incapacity under the general law.²⁵⁴ The exercise of the right to vote is personal and constitutes a civic duty.²⁵⁵

Article 115(1) of the Constitution states that citizens having the right to vote and who are registered in the national territory can be called upon to express their opinions directly and in a binding form through a referendum, on the decision of the President of the Republic following a proposal by the Assembly of the Republic or by the Government, on matters relating to their respective competence, in cases and terms specified by the Constitution and the law.²⁵⁶ A referendum can also be held on the initiative of citizens, directed to the Assembly of the Republic, which shall be presented and considered under the terms and within the periods determined by law.²⁵⁷

²⁴⁹ C.P. art. 368-A(1).

²⁵⁰ Id. art. 368-A(3).

²⁵¹ Id. art. 368-A(4).

²⁵² Id. art. 368-A(5).

²⁵³ C.R.P. art. 10(1).

²⁵⁴ Id. art. 49(1).

²⁵⁵ Id. art. 49(2).

²⁵⁶ Id. art. 115(1).

²⁵⁷ Id. art. 115(2).

Questions for a referendum include those matters of national interest in which the power of decision rests with the Assembly of the Republic or the Government through the approval of an international convention or a legislative act.²⁵⁸ Article 115(4) lists the subjects that are excluded from the scope of referenda.²⁵⁹

Local authorities (*autarquias*) may put to referendum, by the respective electorate, matters falling within the competence of its organs, in the circumstances and terms and with the validity provided by law.²⁶⁰ The law may provide registered voters with the right to initiate a referendum.²⁶¹

B. Law No. 15-A of April 3, 1998

Law No. 15-A of April 3, 1998, governs the cases and terms of the national referendum provided for in article 115 of the Constitution.²⁶²

In regard to a popular initiative, article 16 defines that a referendum may result from an initiative addressed to the Assembly of the Republic by Portuguese voter citizens, in a number of not less than 75,000, regularly registered in the national territory, as well as in the cases provided for in article 37(2) of Law No. 15-A.²⁶³

The popular initiative takes a written form and is addressed to the Assembly of the Republic, containing, in relation to all signatories, their full name and identity card number.²⁶⁴ The Assembly of the Republic may request the public administration to verify the authenticity of the signatures and the identification of the subscribers of the initiative.²⁶⁵

The initiative must include an explanation of the question or questions to be submitted to a referendum, with the identification of the acts under review by the Assembly of the Republic.²⁶⁶ When there is no pending act on which a referendum may incur, the popular initiative must be accompanied by the presentation of a draft of bill of law on the matter to be endorsed.²⁶⁷

²⁵⁸ Id. art. 115(3).

²⁵⁹ Id. art. 115(4).

²⁶⁰ Id. art. 240(1).

²⁶¹ Id. art. 240(2).

²⁶² Lei No. 15-A, de 3 de Abril de 1998, as amended by Lei Orgânica No. 4/2020, de 11 de Novembro, art. 1, <https://perma.cc/XS99-7NR6>.

²⁶³ Id. art. 16

²⁶⁴ Id. art. 17(1).

²⁶⁵ Id. art. 17(2).

²⁶⁶ Id. art. 17(3).

²⁶⁷ Id. art. 17(4).

The initiative of groups of voter citizens, verified that it meets the applicable constitutional, legal, and regimental requirements, takes the form of a draft resolution for the purposes of discussion and voting in the Plenary of the Assembly of the Republic.²⁶⁸

Article 37(2) determines that when the referendum falls on a matter that concerns citizens residing abroad specifically, they are also called upon to participate, provided that they are regularly registered under the provisions of article 121(2) of the Constitution,²⁶⁹ which governs the exercise of the right to vote held by Portuguese citizens resident abroad.²⁷⁰

C. Decree-Law No. 319-A of May 3, 1976

Decree-Law no. 319-A of May 3, 1976, regulates the election of the President of the Republic.²⁷¹ Article 1 determines that voters of the President of the Republic are Portuguese citizens registered in the national territory and Portuguese citizens residing abroad who are registered in the national electoral census.²⁷² Voters of the President of the Republic are also citizens of other Portuguese-speaking countries residing in the national territory and enjoying the status of equal political rights, under the terms of an international convention and under conditions of reciprocity, provided that they are registered as voters in the national territory.²⁷³

Citizens of Portuguese-speaking states who reside permanently in Portugal, who have obtained equal status with respect to most political rights under the terms of article 15(3) of the Constitution, may not vote in elections for the President of the Republic.²⁷⁴ In addition, persons found to be mentally incompetent,²⁷⁵ and persons who are deprived of political rights by a final and unappealable judicial decision, also may not vote in elections for the President of the Republic.²⁷⁶

D. Law No. 14 of May 16, 1979

Law No. 14 of May 16, 1979, enacted the Electoral Law of the Assembly of the Republic.²⁷⁷ Article 1(1) states that Portuguese citizens over 18 years of age have an active electoral capacity.²⁷⁸

²⁶⁸ Id. art. 17(5).

²⁶⁹ Id. art. 37(2).

²⁷⁰ C.R.P. art. 121(2).

²⁷¹ Lei Eleitoral do Presidente da República, Decreto-Lei No. 319-A/76, de 3 de Maio, <https://perma.cc/JM6W-FP6G>.

²⁷² Id. art. 1(1).

²⁷³ Id. art. 1(3).

²⁷⁴ Id. art. 3(1).

²⁷⁵ Id. art. 3(2)(b).

²⁷⁶ Id. art. 3(2)(c).

²⁷⁷ Lei Eleitoral da Assembleia da República, Lei No. 14/79, de 16 de Maio, <https://perma.cc/SLG3-PJ4W>.

²⁷⁸ Id. art. 1(1).

Persons found to be mentally incompetent²⁷⁹ and persons who are deprived of political rights by a final and unappealable judicial decision do not have an active electoral capacity.²⁸⁰

E. Organic Law No. 3 of November 11, 2020

On November 11, 2020, Organic Law No. 3 established an exceptional and temporary regime for the exercise of early voting rights in electoral and referendum acts to be held in the year 2021 by voters who are in mandatory confinement, within the scope of the COVID-19 pandemic, at their home or in another place defined by the health authorities other than a hospital.²⁸¹ The organic law applies to all electoral and referendum acts to be held in the year 2021, with the exception of elections for legislative assemblies of the autonomous regions.²⁸²

Voters who due to the COVID-19 pandemic are in mandatory confinement can vote in advance under the terms of Organic Law No. 3, provided that they are registered in the municipality of the address of the place of confinement or in a neighboring municipality.²⁸³

VIII. Limitations on Civil Liberties

A. Constitutional Principle

The organs of the sovereignty (*órgãos de soberania*) are the President of the Republic, the Assembly of the Republic, the Government, and the Courts.²⁸⁴ The formation, composition, competence and operation of the organs of the sovereignty are governed by the Constitution.²⁸⁵

Article 18 of the Constitution states that the constitutional precepts relating to rights, freedoms, and guarantees are directly applicable to, and binding on, both public and private entities.²⁸⁶ Rights, freedoms, and guarantees may be restricted only by law in those cases expressly provided for in the Constitution; restrictions must be limited to the extent necessary to safeguard other rights or interests protected by the Constitution.²⁸⁷ Laws restricting rights, freedoms and guarantees must be general and abstract in character, cannot have retroactive effect, and cannot limit in extent or scope the essential content of the constitutional principles.²⁸⁸

²⁷⁹ Id. art. 2(b).

²⁸⁰ Id. art. 2(c).

²⁸¹ Lei Orgânica No. 3/2020, de 11 de Novembro, art. 1, <https://perma.cc/6PMU-YMYB>.

²⁸² Id. arts. 2, 12.

²⁸³ Id. art. 3(1).

²⁸⁴ C.R.P. art. 110(1).

²⁸⁵ Id. art. 110(2).

²⁸⁶ Id. art. 18(1).

²⁸⁷ Id. art. 18(2).

²⁸⁸ Id. art. 18(3).

The organs of the sovereignty cannot, jointly or separately, suspend the exercise of rights, freedoms and guarantees, except in case of a state of siege or a state of emergency declared in the manner specified in the Constitution.²⁸⁹

A state of siege or a state of emergency may be declared in all or any part of the national territory, but only in the event of actual or imminent aggression by foreign forces, of serious threat to, or disturbance of, the democratic constitutional order or of a public disaster.²⁹⁰

A state of emergency may be declared when the circumstances mentioned above are of a less serious nature; it may at most give rise to the suspension of some of the rights, freedoms and guarantees that are susceptible to suspension.²⁹¹

When the choice is made between a state of siege and a state of emergency, the principle of proportionality must be respected in making the decision in favor of one or the other state and in giving effect to that decision; in particular, the extent of application, the duration and the measures provided for must be limited to those strictly necessary for the prompt reestablishment of constitutional normality.²⁹²

A declaration of a state of siege or a state of emergency must be based on properly substantiated grounds, and must specify those rights, freedoms and guarantees, the exercise of which is to be suspended; it must be in force for a period of not more than fifteen days or, when the declaration results from a declaration of war, for the period specified by law, but it may from time to time be renewed subject to the same time limits.²⁹³

A declaration of a state of emergency or a state of siege must in no case affect the rights to life, personal integrity and identity, civil capacity, and citizenship, of the person, nor the non-retroactivity of criminal law, the rights of defense of accused persons and the freedom of conscience and religion.²⁹⁴

A declaration of a state of siege or a state of emergency may affect constitutional normality only within the limits set out in the Constitution and in law; in particular, it may not affect the enforcement of the constitutional provisions with respect to the powers and the operation of the organs of the sovereignty and the organs of self-government of the autonomous regions, nor the rights and immunities of their members.²⁹⁵

²⁸⁹ Id. art. 19(1).

²⁹⁰ Id. art. 19(2).

²⁹¹ Id. art. 19(3).

²⁹² Id. art. 19(4).

²⁹³ Id. art. 19(5).

²⁹⁴ Id. art. 19(6).

²⁹⁵ Id. art. 19(7).

A declaration of a state of siege or a state of emergency confers on the authorities the powers to take actions necessary and appropriate for the prompt reestablishment of the constitutional normality.²⁹⁶

B. Law No. 44 of September 30, 1986

The state of siege or the state of emergency, declared in the manner provided for in the Constitution, is governed by the applicable constitutional rules and the provisions of Law No. 44 of September 30, 1986.²⁹⁷ The law repeats the constitutional principle that a state of siege or state of emergency can only be declared in cases of effective or imminent aggression by foreign forces, serious threat or disturbance of the democratic constitutional order, or public calamity.²⁹⁸

Law No. 44 defines the rights of the citizens that are guaranteed; proportionality and adequacy of the measures;²⁹⁹ territorial scope;³⁰⁰ duration of the measures;³⁰¹ and maintenance of the right to access to courts.³⁰² The law further details the situations when state of siege³⁰³ and state of emergency must be declared.³⁰⁴ Whoever violates the provisions of the declaration of a state of siege or a state of emergency, or the provisions of Law No. 44 about its execution, may be charged with the crime of disobedience.³⁰⁵

The declaration of a state of siege or a state of emergency is the responsibility of the President of the Republic and depends on the hearing of the Government and the authorization of the Assembly of the Republic or, when the Assembly is not in session or its immediate assemble is not possible, of the respective permanent committee.³⁰⁶ When authorized by the permanent committee of the Assembly of the Republic, the declaration of a state of siege or a state of emergency must be ratified by the Plenary as soon as it is possible to bring it together.³⁰⁷ Neither the Assembly of the Republic nor its permanent committee may, respectively, authorize and confirm the authorization with amendments.³⁰⁸

²⁹⁶ Id. art. 19(8).

²⁹⁷ Lei No. 44/86, de 30 de Setembro, art. 1(2), <https://perma.cc/YQP3-QZFC>.

²⁹⁸ Id. art. 1(1).

²⁹⁹ Id. art. 3.

³⁰⁰ Id. art. 4.

³⁰¹ Id. art. 5.

³⁰² Id. art. 6.

³⁰³ Id. art. 8.

³⁰⁴ Id. art. 9.

³⁰⁵ Id. art. 7. The crime of disobedience is punished with up to two years in prison and a fine. C.P. art. 348.

³⁰⁶ Id. art. 10(1).

³⁰⁷ Id. art. 10(2).

³⁰⁸ Id. art. 10(3).

C. Decree of the President of the Republic No. 14-A of March 18, 2020

On March 11, 2020, the World Health Organization qualified the public health emergency caused by the disease COVID-19 as an international pandemic.³⁰⁹ On March 18, 2020, the President of the Republic enacted Decree No. 14-A that declared a state of emergency based on the verification of a situation of public calamity.³¹⁰

The declaration of a state of emergency covered the entire national territory.³¹¹ It lasted for 15 days, starting at midnight on March 19, 2020, and ending at 11:59 pm on April 2, 2020.³¹² Article 4 defined the rights that were partially suspended, including the right of assembly and demonstration.³¹³

D. Resolution of the Assembly of the Republic No. 15-A of March 18, 2020

On March 18, 2020, the Assembly of the Republic enacted Resolution No. 15-A, granting authorization for the declaration of a state of emergency, requested by the President of the Republic.³¹⁴

After the March declaration, the President declared another state of emergency in November, which was extended in December 2020. In January, February, and March 2021, other extensions of the state of emergency took effect. All declarations and extensions of state of emergency have been approved by the Assembly of the Republic.³¹⁵

³⁰⁹ Decreto do Presidente da República No. 14-A/2020, de 18 de Março, <https://perma.cc/E9FM-UY25>.

³¹⁰ Id. art. 1.

³¹¹ Id. art. 2.

³¹² Id. art. 3.

³¹³ Id. art. 4(e).

³¹⁴ Resolução da Assembleia da República No. 15-A/2020, de 18 de Março, <https://perma.cc/B5MW-9BFD>.

³¹⁵ A complete list of declarations of state of emergency enacted by the President of the Republic and the approvals of the Assembly of the Republic are available on the Assembly's website, <https://perma.cc/5RJH-FJ5J>.

Romania

*Georgiana Grozescu
Legal Research Fellow*

SUMMARY The Constitution of Romania recognizes and protects the right of access to public information, freedom of expression, freedom of the press, freedom of assembly and association, freedom of religion, and the right to privacy. Citizens may freely establish and support political parties, trade unions, employers' associations and other forms of association, including civil society organizations. Romanian citizens are equal before the law and public authorities, without any privilege or discrimination. They have the right to vote and be elected regardless of gender, nationality, ethnicity, language, religion, political opinion, income, or social background. After Romania's accession to the European Union, Romanian citizens have the right to vote and to stand as candidates in elections to the European Parliament.

The protection of fundamental rights and freedoms provided by the Romanian constitution extends to any person living on Romanian territory, regardless of citizenship. Upholding these rights is also part of Romania's duty as a European Union member state, and as a State party to the European Convention on Human Rights. The European Court of Human Rights has ruled on violations of the civic space freedoms by the Romanian Government, but has also upheld actions it deemed compatible with the Convention.

Exceptions and exemptions to these rights are set in the Constitution and Romanian legislation. Restrictions on the exercise of such rights can only be imposed if necessary in a democratic society, must be proportionate to the situation that caused it, must be applied in a non-discriminatory manner, and may not eliminate the right or freedom in question. Several restrictions were imposed on civic space freedoms after March 2020 in the context of the COVID-19 pandemic.

The open internet is regulated by a complex legal framework that establishes rules, guarantees, rights, and duties on the use of the internet. The Romanian Constitutional Court has struck down legislation found to infringe upon the right to privacy or to fail to sufficiently safeguard the protection of personal data.

The EU General Data Protection Regulation is directly applicable in Romania. The Romanian Government has passed legislation and has amended laws and regulations on the processing of personal data to stipulate that compliance with the Regulation is mandatory.

I. Introduction

The first democratic Romanian Constitution was adopted in 1991,¹ after the fall of the Communist state, and entered into force on December 8, 1991, after being approved by popular referendum. It affirmed that Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizen's rights and freedoms, the free development of human personality, justice, and political pluralism represent supreme values that shall be guaranteed by the state.² The Constitution protects freedom of expression,³ freedom of the press,⁴ the right to respect of private life,⁵ the right of access to public information,⁶ the right to vote⁷ and be elected,⁸ freedom of association⁹ and assembly,¹⁰ and freedom of religion.¹¹ The Constitution also prohibits discrimination.¹²

The Constitution was amended in 2003.¹³ The amendments extended the application of some constitutional provisions,¹⁴ introduced additional safeguards against deprivation of liberty during criminal trial,¹⁵ affirmed the equal rights of men and women to access public office,¹⁶ and allowed other EU member states citizens to be elected to local administration.¹⁷ Another amendment stated that a restriction in the exercise of rights can only be imposed if necessary in a democratic society, and any such measure must be proportionate to the situation which caused it, has to be applied in a non-discriminatory manner, and may not eliminate the right or freedom in question.¹⁸

¹ Constituția României din 1991 (Rom. Const. 1991), M.Of. pt. I no. 233 of Nov. 21, 1991, <https://perma.cc/GCN7-MXQP> (in Romanian).

² Id. art. 1 (3).

³ Id. art. 30 (1).

⁴ Id. art. 30 (2), (3).

⁵ Id. art. 26 (1).

⁶ Id. art. 31.

⁷ Id. art. 36.

⁸ Id. art. 37.

⁹ Id. art. 40.

¹⁰ Id. art. 39.

¹¹ Id. art. 29.

¹² Id. arts. 4 (2), 16.

¹³ Legea nr. 429/2003 de Revizuire a Constituției, M.Of. no. 758 of Oct. 29, 2003, <https://perma.cc/ET87-ZUSF>.

¹⁴ For instance, art. 9 initially referred only to trade unions; the revision included professional associations and employer's unions.

¹⁵ Legea nr. 429/2003 pct. 10 and 11.

¹⁶ Id. pct. 7.

¹⁷ Id. pct. 9.

¹⁸ Id. pct. 28.

Romanian citizens, foreign citizens, and stateless persons must exercise their constitutional rights and freedoms in good faith, without violating the rights and freedoms of others.¹⁹ The protection of fundamental rights and freedoms extends to any person living on Romanian territory, regardless of citizenship.²⁰

Constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration on Human Rights and other treaties and pacts to which Romania is a party.²¹ In case of an inconsistency between domestic law and the international obligations resulting from the covenants and treaties on fundamental human rights to which Romania is a party, the international obligations shall take precedence, unless the Constitution or the domestic laws contain more favorable provisions.²²

The exercise of certain rights or freedoms may be restricted only by law and only if this is necessary, as the case may be, to defend national security, public order, health, or public morals, or the rights and freedoms of citizens; to investigate a crime; or to prevent the consequences of a natural disaster.²³ As noted above, such restriction can only be imposed if necessary in a democratic society, and must be proportionate and non-discriminatory, and may not eliminate the right or freedom in question.²⁴ Several restrictions were placed on civic space freedoms beginning March 2020, in the context of the COVID-19 pandemic, as discussed below.

Romania is party to most international human rights conventions. It ratified the European Convention on Human Rights (ECHR)²⁵ through Law No. 30/1994,²⁶ which entered into force in June 2014. As a member of the European Union (EU), Romania is also bound by EU regulations and directives.

The Romanian Constitution can only be amended through a referendum.²⁷ Constitutional amendments can be initiated by the President of Romania upon proposal by the Government, at least one-fourth of the deputies or senators, as well as at least 500,000 citizens eligible to vote.²⁸ Citizens who initiate a constitutional amendment must represent at least half the counties of the

¹⁹ Constituția României din 2003 (Rom. Const. 2003), M.Of. pt. I no. 767 of Oct. 31, 2003, art. 57, <https://perma.cc/K48U-SK7V> (in Romanian); <https://perma.cc/RKR8-XRNE> (unofficial English translation).

²⁰ Id. art. 18.

²¹ Id. art. 20 (1).

²² Id. art. 20 (2).

²³ Id. art. 53 (1).

²⁴ Id. art. 53 (2).

²⁵ Convention on the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, <https://perma.cc/ZMG7-RN9R>.

²⁶ Legea nr. 30/1994 privind ratificarea convenției pentru apărarea drepturilor omului și a libertăților fundamentale și a protocoalelor adiționale la această convenție, M.Of. pt. I no. 135 of May 31, 1994, <https://perma.cc/2JWV-XN4B>.

²⁷ Rom. Const. 2003, art. 151 (3).

²⁸ Art. 150 (1).

country, and in each of these counties and in the Bucharest Municipality, at least 20,000 signatures supporting this initiative must be obtained.²⁹

Amendments to the Constitution must be adopted in the following manner:

- (1) The amendment draft or proposal must be approved in the Chamber of Deputies and the Senate by at least a two-thirds majority of the members of each Chamber.
- (2) If no agreement can be reached by a mediation procedure, the Chamber of Deputies and the Senate will decide in joint session by a vote of at least three-fourths of the deputies and senators.
- (3) The revision is final after being approved by a referendum organized within 30 days of the approval of the draft of the recommendation for revision.³⁰

The constitutional provisions concerning the national, independent, unitary, and indivisible character of the Romanian state, the Republic as the form of government, territorial integrity, the independence of the judicial system, political pluralism, and the official language may not be amended.³¹ Likewise, no amendment shall be adopted that would eliminate any of the fundamental rights and freedoms of citizens or guarantees thereof.³² The Constitution may not be amended during periods of martial law, a state of emergency, or wartime.³³

II. Constitutional and Legally Protected Civic Rights

A. Access to Government Information

1. Scope

Access to public interest information was first introduced by the Romanian Constitution in 1991. According to Article 31, a person's right to have access to any information of public interest may not be curtailed. Public authorities are under a duty to provide citizens with correct information concerning public affairs and matters of personal interest falling within their respective jurisdiction.³⁴

In 2001, Romania adopted the law concerning access to public interest information.³⁵ Under this law, the individual's free and unconstrained access to public information represents one of the fundamental principles of the relations between individuals and the public authorities in conformity with the Romanian Constitution and the international documents ratified by the

²⁹ Art. 150 (2).

³⁰ Art. 151.

³¹ Art. 152 (1).

³² Art. 152 (2).

³³ Art. 152 (3).

³⁴ Rom. Const. 1991 art. 31 (2).

³⁵ Legea nr. 544/2001 privind liberul acces la informațiile de interes public, M.Of. pt. 1 no. 663 of Oct. 23, 2001, <https://perma.cc/64PY-J7PW>.

Romanian Parliament.³⁶ The definition of “public authority or institution” includes any public authority or institution which uses or manages public funds, any company where the state or a local authority is sole or majority shareholder, any operator of public utility services, political parties, sports federations, and public utility NGOs which receive public funds.³⁷ Public information means any information related to or resulting from the activities of a public authority or organization, regardless of the medium, material form, or manner in which the information is conveyed.³⁸

All public interest entities must make public *ex officio* certain data pertaining to their organization, contact details, activity and financial reports.³⁹ Any person has the right to request and obtain public interest information.⁴⁰ Any person who justifies an interest may request and obtain a copy of any public procurement contracts.⁴¹ Public entities must reply to requests of information within 10 days, which deadline can be extended to 30 days if the requested information requires complex data or additional investigations.⁴²

2. Exceptions and Exemptions

Law 544/2001 establishes the following exemptions from the right of free access to public information:

- a) Information pertaining to national defense, security and public order, if they are classified information;
- b) Information concerning debates of public authorities and information concerning the political or economic interests of Romania, if such information is classified;
- c) Information concerning commercial or financial activities, if communicating such information may violate intellectual or industrial property rights or infringe the principle of fair competition;
- d) Information concerning personal data [however, such information may become public interest information if it impacts the exercise of a public office or position⁴³];
- e) Information pertaining to a criminal or disciplinary investigation, if disclosure of such information should jeopardize the result of the investigation, reveal confidential sources or endanger a person’s life, safety or health;
- f) Information concerning judicial proceedings, if disclosure of such information would infringe the right to a fair trial or a legitimate interest of any of the parties involved;
- g) Information which, if made public, would be prejudicial to measures taken for the protection of young people.⁴⁴

³⁶ Id. art. 1.

³⁷ Id. art. (2) (a).

³⁸ Id. art. (2) (b).

³⁹ Id. art. 5 (1).

⁴⁰ Id. art. 6 (1)

⁴¹ Id. art. 11.

⁴² Id. art. 7 (1).

⁴³ Id. art. 14 (1)

⁴⁴ Id. art. 12 (1).

Any information that would abet or conceal violations of law by a public entity is public interest information and cannot be labeled as classified information.⁴⁵ It is also forbidden to classify information, data or documents in order to conceal violations of law or administrative errors, to limit access to public interest information, to illegally limit the exercise of personal rights, or to harm other legitimate interests.⁴⁶

Law 182/2002 defines classified information as any information, data or document of national security interest which, due to the degree of importance or consequences that may arise following the unauthorized disclosure or dissemination, must be protected.⁴⁷ Such information includes state secrets, meaning information pertaining to national security,⁴⁸ and work secrets, meaning information the disclosure of which would prejudice a private or public entity.⁴⁹ Access to classified information is granted to high public officials, upon taking office, and to judges.⁵⁰ Any person of Romanian nationality may appeal against the decision to classify certain information.⁵¹

In March 2020, an order of the Ministry of Interior ordered prefects and public health authorities to ban the publication of county-level information on the number of COVID-19 tests performed and the number of infections.⁵² Due to media and NGO protests, in April the government created a Strategic Communications Task Force to manage messaging during the pandemic and expanded its daily reports to include county-level breakdowns.⁵³

3. Amendments

During the recent COVID-19 pandemic, Presidential Decree no. 195/2020⁵⁴ doubled the deadlines set by Law 544/2001 for public entities to communicate public interest information or to answer petitions.⁵⁵

⁴⁵ Id. art. 13.

⁴⁶ Legea nr. 182/2002 privind protecția informațiilor clasificate, M.Of. pt. 1 no. 248 of April 12, 2002, art.24 (5), <https://perma.cc/Q26E-LJYN>.

⁴⁷ Id. art. 15 (b).

⁴⁸ Id. art. 15 (d).

⁴⁹ Id. art. 15 (e).

⁵⁰ Id. art. 7 (4).

⁵¹ Id. art. 20.

⁵² Centrul pentru Jurnalism Independent, Libertăți fundamentale sub asediu, *Stările de Excepție Creează Antecedente Periculoase Pentru Presa din România* 10 (Sept. 2020), <https://perma.cc/X7B4-8YRB>.

⁵³ Id.

⁵⁴ Decretul nr. 195/2020 privind instituirea stării de urgență pe teritoriul româniei, M.Of. pt. I no. 212 of Mar. 16, 2020, <https://perma.cc/6YGS-ECU9>.

⁵⁵ Id. art. 56.

B. Freedom of Expression

1. Scope

Under the Romanian Constitution, the freedom to express ideas, opinions, and beliefs, and the freedom of creation in any form—orally, in writing, through images, by means of sound, or by any other means of public communication—are inviolable.⁵⁶ Censorship of any kind is prohibited.⁵⁷ However, the exercise of the freedom of expression shall be without prejudice to the dignity, honor or privacy of an individual, or to the right to one’s own image.⁵⁸

The Romanian Civil Code states that everyone has the right to freedom of expression.⁵⁹ The exercise of this right cannot be restricted, except in situations stipulated by the law or international conventions or human rights instruments Romania is party to.⁶⁰ The exercise of this right in good faith and in compliance with international conventions will not constitute a violation of the rights of others.⁶¹

As a State-party to the ECHR, Romania is also bound to ensure protection of the right to freedom of expression. As the ECHR states: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”⁶²

2. Exceptions and Exemptions

a. Romanian Legislation

The Civil Code states that any person has the right to the protection of his/her dignity, image, privacy, and freedom of conscience.⁶³ If any such right has been infringed, the injured party may petition the civil court for measures to cease the violation, order reparations and award damages.⁶⁴

Certain individuals may have their freedom of expression limited by secrecy or the duty of confidentiality. The unlawful disclosure of confidential information concerning evidence or other data relating to a criminal investigation or trial by a magistrate, public servant or witness

⁵⁶ Rom. Const. 2003, art. 30 (1).

⁵⁷ Id. art. 30 (2).

⁵⁸ Id. art. 30 (6).

⁵⁹ Legea nr. 287/2009 Codul Civil din 2009, M.Of. pt. I no. 505 of July 15, 2009, art. 70 (1), <https://perma.cc/CGS6-JZY2>.

⁶⁰ Id. arts. 70 (2), 75 (1).

⁶¹ Id. art. 75 (2).

⁶² ECHR art. 10 (1).

⁶³ Codul Civil art. 252.

⁶⁴ Id. art. 253.

constitutes a punishable offense.⁶⁵ The unlawful disclosure of private information or data, which is likely to be prejudicial to a person, by a professional who has a duty of confidentiality, is a criminal offense.⁶⁶ Lawyers⁶⁷, doctors,⁶⁸ medical staff,⁶⁹ and psychologists⁷⁰ are under such a duty of confidentiality.

Public servants must refrain from actions that may prejudice the image or lawful interest of the institution where they carry out their activity.⁷¹ They are prohibited from expressing in public false allegations or assertions about the activity of the institution, its policies, strategies, or draft bills,⁷² express unauthorized opinions or disclose information about on-going litigation involving the institution,⁷³ or disclose or use secret information.⁷⁴ Public servants who report violations of law that took place within their institutions will be protected from disciplinary or administrative sanctions.⁷⁵

The disclosure of documents or data that constitute state secrets is a punishable offense,⁷⁶ as is the disclosure of state secrets⁷⁷ or work secrets.⁷⁸ Communication or dissemination by any means of news, data, or false or forged documents, knowing the false character thereof, where it endangers national security, is punishable by imprisonment of one to five years.⁷⁹

⁶⁵ Codul Penal din 2009, M.Of. no. 510 of July 17, 2009, art. 277, <https://perma.cc/Z42E-DVGZ>.

⁶⁶ Id, art. 227.

⁶⁷ Legea nr. 51/1995 pentru organizarea și exercitarea profesiei de avocat, republished in M.Of. pt. I no. 113 of Mar. 6, 2001, art. 11, <https://perma.cc/6MBC-TEA6>.

⁶⁸ Legea nr. 95/2006 privind reforma în domeniul sănătății, M.Of. pt. I no. 652 of Aug, 28, 2015, art. 420, <https://perma.cc/R4E-5QN8>.

⁶⁹ Legea nr. 46/2003 privind drepturile pacientului, M.Of. pt. I no. 51 of Jan. 29, 2003, art. 21, <https://perma.cc/EGZ3-ULAF>.

⁷⁰ Hotărârea Colegiului Psihologilor din România nr. 4CN/2013, Codul deontologic al profesiei de psiholog, M.Of. pt. I no. 715 of Nov. 20, 2013, art. V.2, .3, <https://perma.cc/Z33W-XAS3>.

⁷¹ Codul administrativ din iulie 2019, M.Of. pt. I no. 555 of July 5, 2019, art. 434 (1), <https://perma.cc/H9R2-V4DB>.

⁷² Id. art. 434 (2) (a).

⁷³ Id. art. 434 (2) (b).

⁷⁴ Id. art. 434 (2) (c).

⁷⁵ Legea nr. 571/2004 privind protecția personalului din autoritățile publice, instituțiile publice și din alte unități care semnalează încălcări ale legii, M.Of. pt. I no. 1214 of Dec. 17, 2004, art. 7-9, <https://perma.cc/KE9Q-EW2N>.

⁷⁶ Penal Code art. 407.

⁷⁷ Id. art. 303.

⁷⁸ Id. art. 304.

⁷⁹ Id. art. 404.

The act of inciting the public verbally, in writing, or by any other means, to commit a criminal act, is an offense punishable by imprisonment or a fine.⁸⁰

The public distribution or dissemination, in any manner, by means of an information technology system, of racist or xenophobic materials, is a criminal offense punishable by imprisonment from one to five years,⁸¹ except when done in an artistic context, or the interest of science, culture, education or public debate.⁸² The public use of fascist, racist or xenophobic symbols is punishable by imprisonment from three months to three years.⁸³ Public promotion of fascist, racist, xenophobic ideas, concepts or doctrines likewise is punishable by imprisonment from 3 months to 3 years.⁸⁴ Public denial, justification or minimization of existence and effects of the Holocaust, or of genocide, crimes against humanity, or war crimes, is punishable by imprisonment from 6 months to 3 years or a fine.⁸⁵

Presidential Emergency Decree 195/2020,⁸⁶ adopted during the COVID-19 pandemic, included provisions aimed to counter the spread of disinformation related to COVID-19 online and allowed for the removal of reports and entire websites deemed to be spreading false information.⁸⁷ Based on these legal provisions, the government suspended 15 websites.⁸⁸

b. European Convention on Human Rights

With regard to freedom of expression, the European Convention on Human Rights states:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.⁸⁹

⁸⁰ Id. art. 368.

⁸¹ Ordonanța de urgență nr. 31/2002 privind interzicerea organizațiilor, simbolurilor și faptelor cu caracter fascist, legionar, rasist sau xenofob și a promovării cultului persoanelor vinovate de săvârșirea unor infracțiuni de genocid contra umanității și de crime de război, M.Of. pt. 1 no. 214 of Mar. 28, 2002, art. 4, <https://perma.cc/P5T3-DD7N>.

⁸² Id. art. 4 (3).

⁸³ Id. art. 4 (2).

⁸⁴ Id. art. 5.

⁸⁵ Id. art. 6 (1), (2).

⁸⁶ Decretul nr. 195/2020 privind instituirea stării de urgență pe teritoriul româniei.

⁸⁷ Id. art. 54.

⁸⁸ Centrul pentru Jurnalism Independent, *Libertăți fundamentale sub asediu*, supra note 52. See further discussion at Part II.C.2.a. infra.

⁸⁹ ECHR art. 10 (2).

In *Bucur și Toma v Romania*,⁹⁰ the European Court of Human Rights (ECtHR) held that where a public employee makes public details and information about alleged illegal surveillance of the public, when the disclosures were made in good faith, a two-year criminal sentence was disproportionate and contrary to his freedom of expression under the ECHR. In *Gîrleanu v Romania*,⁹¹ the ECtHR ruled that the arrest and fining of a journalist for sharing classified information on national security with a small group of people violated his right to freedom of expression. The Court held that the information was of public interest, there was no evidence that the journalist's disclosure was liable to cause considerable damage to national security, the journalist discussed the information with the institution concerned with the leak, and the courts did not properly weigh the interests and rights at stake in the case. The Court found that the arrest and the fine were not proportionate to the aim pursued, namely the protection of national security and, therefore, there had been a violation of Article 10 of the ECHR.

In *Monica Macovei v. Romania*,⁹² the ECtHR found that Romania was in violation of Article 10 when its domestic courts found the applicant, a member of the European Parliament, guilty of damaging the reputation of a member of Romania's parliament. The Court found that the statements and allegations were of a collective nature, and were aimed merely at providing an example of a system of political corruption. Moreover, the fine and punishment imposed on the applicant constituted a chilling effect on her freedom of expression. The domestic courts failed to strike a fair balance between the relevant interests and to establish a "pressing social need" for putting the plaintiff's reputation (protected by Article 8 of the Convention) above the applicant's right to freedom of expression (under Article 10 of the Convention). The interference with the applicant's right to freedom of expression was not "necessary in a democratic society."

In the case of *Kövesi v. Romania*,⁹³ which concerned the applicant's removal as the chief prosecutor of the National Anticorruption Directorate before the end of her second term following her criticism of legislative reforms addressing corruption, the ECtHR found a violation of Article 10 of the ECHR. The Court found that the applicant's right to freedom of expression had been violated when she was dismissed for criticisms made in the exercise of her duties on a matter of great public interest. One of her duties as anticorruption chief prosecutor had been to express her opinion on legislative reforms, which could have an impact on the independence of the judiciary and on the fight against corruption. The court found her premature removal had defeated the very purpose of maintaining judicial independence, and must have had a chilling effect on prosecutors and judges taking part in public debate on legislative reforms affecting the judiciary and judicial independence.

3. Amendments

There were no amendments to the relevant legal provisions in the three years preceding the report.

⁹⁰ *Bucur și Toma v Romania*, App. No. 40238/02 (Eur. Ct. H.R. Jan. 8, 2013), <https://perma.cc/2Q7G-UXU5>.

⁹¹ *Gîrleanu v Romania*, App. No. 50376/09 (Eur. Ct. H.R. June 26, 2018), <https://perma.cc/R4RB-EVD9>.

⁹² *Monica Macovei v. Romania*, App. No. 53028/14 (Eur. Ct. H.R. July 28, 2020), <https://perma.cc/B9RT-VCLS>.

⁹³ *Kövesi v. Romania*, App. No. 3594/19 (Eur. Ct. H.R. May 5, 2020), <https://perma.cc/73RG-PR82>.

C. Freedom of the Press

1. Scope

According to Article 30 of the Romanian Constitution, on freedom of expression:

- (2) Censorship of any kind is prohibited.
- (3) Freedom of the press also includes the freedom to establish publications.
- (4) No publication may be banned.
- (5) The law may compel the mass media to account publicly for the sources of their financing.
- (6) The exercise of the freedom of expression shall be without prejudice to the dignity, honor or privacy of an individual, or to his/her right to his/her own image.⁹⁴

Article 31 of the Constitution, on the right to information, is also relevant to freedom of the press:

- (4) The public and private mass media organs must ensure that public opinion receives correct information.
- (5) The public services of radio and television are autonomous. They must guarantee that significant social and political groups have the right to broadcast. The organization of these services and the monitoring of their activity by Parliament are regulated by organic law.⁹⁵

Law 544/2001, on the right of free access to public information, states that public authorities must issue press accreditations to journalists and media representatives without discrimination.⁹⁶ Accreditation may be refused or withdrawn only for acts which hinder the normal activity of the public authority, and not in connection to opinions lawfully expressed by the journalist.⁹⁷ Public authorities and institutions must inform mass-media entities about press conferences and public events and may not restrict press access to public events they organize.⁹⁸

Law no. 504/2002⁹⁹ regulates the activity of audio-visual media services in Romania, such as broadcasting. The act prohibits censorship and interference on the part of public authorities or private persons,¹⁰⁰ guarantees confidentiality of sources,¹⁰¹ and maintains that public authorities must ensure the protection of journalists that are subjected to pressures or threats that may interfere with the exercise of their profession.¹⁰² The law also details rules on the content of media programs, and establishes the National Audiovisual Council ("CNA"), an autonomous public

⁹⁴ Rom. Const. 2003 art. 30 (2)-(6).

⁹⁵ Id. art. 31 (4), (5).

⁹⁶ Legea nr. 544/2001 art. 18 (1).

⁹⁷ Id. art. 18 (3).

⁹⁸ Id. art. 19.

⁹⁹ Legea audiovizualului nr. 504/2002, M.Of. pt. I no. 534 of July 22, 2002, <https://perma.cc/93EA-JZDE>.

¹⁰⁰ Id. art. 6.

¹⁰¹ Id. art. 7.

¹⁰² Id. art. 8.

authority tasked to monitor program content and ensure that the public interest, transparency, and pluralism of opinions are observed, and that human dignity, persons' right to their own image, and the welfare of children are protected.¹⁰³

The activity of the printed mass media, and the rights and duties of journalists, were regulated by Law no. 3/1974,¹⁰⁴ adopted while Romania was still a Communist state, which affirmed the guiding role of the Communist Party and said the freedom of the press may not be used for purposes contrary to the socialist order.¹⁰⁵ The law was repealed in 2012,¹⁰⁶ and has not been replaced by any similar act.

2. *Exceptions and Exemptions*

a. Romanian Legislation

The Constitution states, “[a]ny defamation of the country and the nation; any incitement to a war of aggression, to ethnic, racial, class or religious hatred, any incitement to discrimination, territorial separatism or public violence as well as any obscene acts contrary to public morals shall be prohibited by law.”¹⁰⁷ It further provides:

The civil liability for any information or creation made public will be borne by the editor or the producer, author, or organizer of an artistic show, by the owner of the means of reproduction, the radio station, or the television station under the terms established by the law. Indictable press offenses shall be established by the law.¹⁰⁸

Legislation provides that the CNA may issue regulations and decisions on the content of media programs consistent with of the law on mass-media and the human rights instruments to which Romania is a party, and that such agency actions will not represent unlawful interference with the freedom of the press.¹⁰⁹

Journalists' freedom of expression is subject to the general limits on freedom of expression.¹¹⁰

Presidential Emergency Decree 195/2020¹¹¹ COVID-19 included provisions aimed to counter the spread of disinformation related to COVID-19 online and allowed for the removal of reports and

¹⁰³ Id. art. 10.

¹⁰⁴ Legea presei din Republic Socialistă România nr. 3/1974, republished in B.Of. no. 3 of Jan. 19, 1978, <https://perma.cc/7M78-QXCG>.

¹⁰⁵ Id. art. 69.

¹⁰⁶ Legea nr. 95/2012 privind abrogarea Legii presei din Republica Socialistă România nr. 3/1974, Part I no. 453 of July 6, 2012, <https://perma.cc/SA6G-YNRL>.

¹⁰⁷ Rom. Const. 2003 art. 30 (7).

¹⁰⁸ Id. art. 30 (8).

¹⁰⁹ Legea no. 504/2002 art. 6 (4).

¹¹⁰ See part II.B.2 supra.

¹¹¹ Decretul nr. 195/2020 Privind Instituirea Stării de Urgență pe Teritoriul României.

entire websites deemed to be spreading false information.¹¹² The decree provided no appeal or redress mechanisms. The National Authority for Management and Regulation in Communications, an institution for communication infrastructure with no expertise in media content, was given responsibility for implementing the decree.¹¹³ Based on these legal provisions, the government suspended 15 websites.¹¹⁴ In response, on March 30, 2020, the Organization for Security and Cooperation in Europe's Representative on Freedom of the Media issued a press release urging authorities to restore the capacity of journalists to act in the public interest without undue restriction and to respect the principles of necessity and proportionality in any decision related to the emergency situation.¹¹⁵

b. European Convention on Human Rights

Limitations to freedom of the press must balance the public right to information and the right to personal life and protection of personal dignity. In this context, the ECtHR found Romania in violation of Article 10 of the ECHR in multiple cases involving journalists being convicted for libel and defamation from the time when such acts still constituted criminal offenses,¹¹⁶ or being ordered to pay damages.¹¹⁷ Among others, the Court considered that, in relation to the legitimate aim pursued and considering the content of the articles, convicting a journalist of a criminal offense and sentencing them to imprisonment amounted to disproportionate interference with the exercise of their freedom of expression and even had a chilling effect on speech. Accordingly, such interference was not "necessary in a democratic society" within the meaning of article 10 (2) of the ECHR.

In *Ghiulfer Predescu v Romania*,¹¹⁸ the ECtHR was called to assess whether the domestic authorities had struck a fair balance between the protection of freedom of expression under article 10 and the protection of the reputation of those against whom allegations are made, a right protected by ECHR article 8. The ECtHR reiterated that there is little scope under article 10 (2) for restrictions on political speech or on debate on matters of public interest, and that the limits of acceptable criticism are therefore wider with regard to a civil servant or a politician acting in his public capacity than in relation to a private individual. Journalistic freedom also covers a degree of

¹¹² Id, art. 54.

¹¹³ Ibid.

¹¹⁴ Centrul pentru Jurnalism Independent, *Libertăți fundamentale sub asediu*, supra note 52.

¹¹⁵ Press Release, OSCE, Coronavirus Response Bill Should Not Curb Freedom of Information in Romania, Stresses OSCE Media Freedom Representative (Mar. 30, 2020), <https://perma.cc/V7UQ-B3AN>.

¹¹⁶ The current Penal Code does not include criminal sanctions for libel and slander. Alice Donald and Philip Leach, *Parliaments and the European Court of Human Rights* 221 (2016).

¹¹⁷ See, e.g., *Dalban v Romania*, App. No. 28114/95 (Eur. Ct. H.R. Sept. 28, 1999), <https://perma.cc/8Y39-VPGS>; *Cumpănă & Mazăre v. Romania*, App. No. 33348/96 (Eur. Ct. H.R. Dec. 17, 2004), <https://perma.cc/WUL3-JNZZ>; *Andrescu v Romania*, App. No. 19452/02 (Eur. Ct. H.R. June 8, 2010), <https://perma.cc/H87H-VT7G>; *Frăsilă & Ciocârlan v Romania*, App. No. 25329/03 (Eur. Ct. H.R. May 10, 2015), <https://perma.cc/7GJZ-BBKF>; *Roșianu v Romania*, App. No. 27329/06 (Eur. Ct. H.R. June 24, 2014), <https://perma.cc/BPL8-DXFG>.

¹¹⁸ *Ghiulfer Predescu v. Romania*, App. No. 29751/09 (Eur. Ct. H.R. June 27, 2017), <https://perma.cc/M252-86QY>.

exaggeration or even provocation, subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.

3. *Amendments*

There were no amendments to the relevant legal provisions in the three years preceding the report.

D. Freedom of Assembly

1. *Scope*

Romania's Constitution states that meetings, demonstrations, parades, or any other form of assembly are free and may be organized and held only in a peaceful manner, without any kind of weapons.¹¹⁹ It also guarantees the right to freedom of movement.¹²⁰

The right to assembly is further regulated by Law no. 60/1991.¹²¹ Public assemblies that are set to take place in public squares, public roads or other open-air spaces must be authorized.¹²² Organizers must apply for a permit to the local mayor's office at least three days in advance.¹²³ The refusal to grant the permit can be appealed before the administrative court.¹²⁴

Public assemblies must be carried out in a civilized manner, without hindering the activity of public or private institutions, and must not continue after 11 p.m.¹²⁵ The organizers must take certain measures to ensure the gathering will proceed in a civilized and lawful manner.¹²⁶ Local police will ensure the protection and safety of the participants¹²⁷ and are mandated to intervene in case of unrest or violence.¹²⁸

2. *Exceptions and Exemptions*

The law prohibits public gatherings which:

¹¹⁹ Rom. Const. 2003 art. 39.

¹²⁰ Id. art. 25.

¹²¹ Legea nr. 60/1991 privind organizarea și desfășurarea adunărilor publice, republished in M.Of. pt. I no 186 of Mar. 14, 2014, <https://perma.cc/8SVS-E4XU>.

¹²² Id. art. 1 (2).

¹²³ Id. art 6 and 7.

¹²⁴ Id. art 10 (2).

¹²⁵ Id. art. 2.

¹²⁶ Id. art. 12.

¹²⁷ Id. art. 16.

¹²⁸ Id. art. 17.

- a) Purport to propagate fascist, communist, racist, xenophobic ideas, support terrorist organizations, defame the country, incite to discrimination, ethnic or religious hatred, public violence or obscene acts;
- b) Organize a coup or any action which threatens national security;
- c) Violate public order, safety or morality, rights and freedoms or endanger the health of citizens.¹²⁹

The mayor may prohibit public assemblies if the competent authorities provide evidence that such assemblies may hinder the activity of private or public institutions, degenerate into violence, or threaten the public order and safety of citizens, or if extended public works are to be carried out at the time and place the assembly would be scheduled for.¹³⁰

In order to prevent the spread of COVID-19, in March 2020, the government limited public circulation outside of homes, put a ban on inside gatherings, and prohibited outside public gatherings of more than 100 persons.¹³¹

3. *Amendments*

There were no amendments to the relevant legislation in the three years prior to the report.

E. Freedom of Association

1. *Scope*

Under Article 11 of the ECHR, “[e]veryone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”

Article 40 of the Romanian Constitution states that citizens may freely establish and adhere to political parties, trade unions, employers' associations and other forms of association.¹³² Article 8 says that political parties “contribute to the definition and expression of the citizens' political will, respecting national sovereignty, territorial integrity, the rule of law, and the principles of democracy.”¹³³ Article 9 states that trade unions, employers' associations and professional associations “contribute to the protection of their members' rights and the promotion of their professional, economic and social interests.”¹³⁴

¹²⁹ Id. art. 9.

¹³⁰ Id. art. 10.

¹³¹ Ordonanța militară nr. 1/2020 privind unele măsuri de primă urgență care privesc aglomerările de persoane și circulația transfrontalieră a unor bunuri, M.Of. no. 219 of Mar. 18, 2020, <https://perma.cc/EV2P-7HZB>; Ordonanța militară nr. 3/2020 privind măsuri de prevenire a răspândirii COVID-19, M.Of. no 242 of Mar. 24, 2020, <https://perma.cc/PBF5-WBRS>.

¹³² Rom. Const. 2003 art. 40.

¹³³ Id. art. 8 (2).

¹³⁴ Id. art. 9.

Only Romanian citizens who have the right to vote may become members of political parties.¹³⁵ A Romanian citizen is not allowed to be members of two or more parties at the same time.¹³⁶ No one may be forced to become a member or not be a member of a certain political party.¹³⁷ A political party needs at least three founding members in order to be legally registered.¹³⁸

Persons with work contracts, public servants, members of cooperatives, and agriculture workers under contract may form or join a union.¹³⁹ For a union to be legally established, at least 15 employees must join together.¹⁴⁰

2. *Exceptions and Exemptions*

a. Romanian Legislation

The Constitution states that “[p]arties or organizations which by their objectives or activities militate against political pluralism, the principle of the rule of law, or the sovereignty, integrity, or independence of Romania, are unconstitutional.”¹⁴¹ It also prohibits associations of a secret nature.¹⁴²

The Constitution prohibits certain officers and government employees from being members of political parties, namely judges of the Constitutional Court, people's advocates, judges and prosecutors, active members of the armed forces, policemen, and other categories of civil servants determined by an organic law.¹⁴³

Legislation prohibits certain persons from forming or joining labor unions, namely those who hold management positions or high public office, magistrates, and personnel within the Ministry of National Defense, the Ministry of Internal Affairs, the Ministry of Justice, the Romanian Information Service, the Protection and Guard Service, the Foreign Information Service, the Special Telecommunication Service, and subordinate units of these offices.¹⁴⁴

¹³⁵ Legea partidelor politice nr. 14/2003, republished in M.Of. pt. I no. 408 of June 10, 2015, art. 6, <https://perma.cc/4V3L-73X9>.

¹³⁶ Id. art. 8 (1).

¹³⁷ Id. art. 8 (5).

¹³⁸ Id. art. 19 (3).

¹³⁹ Legea dialogului social nr. 62/2011, M.Of. pt. I no. 625 of Aug. 31, 2012, art. 3 (1), <https://perma.cc/6QRM-GWS3>.

¹⁴⁰ Id. art. 3 (2).

¹⁴¹ Rom. Const. 2003 art. 40 (2).

¹⁴² Id. art. 40 (4).

¹⁴³ Id. art. 40 (3).

¹⁴⁴ Legea dialogului social nr. 62/2011, art. 4.

b. European Convention on Human Rights

Article 11 (2) of ECHR states that:

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

In the case of *Partidul Comuniștilor (Nepecești) and Ungureanu v Romania*,¹⁴⁵ the ECtHR found that there can be no justification for hindering a political group that complies with fundamental democratic principles solely because it has criticized the country's constitutional and legal order and sought a public debate in the political arena. The Court rejected "the Government's argument that Romania cannot allow the emergence of a new communist party to form the subject of a democratic debate."¹⁴⁶ The ECtHR found Romania had "failed to establish that the applicants' political programme was incompatible with a 'democratic society', let alone that there was evidence of a sufficiently imminent risk to democracy."¹⁴⁷

In *Manole and 'Romanian Farmers Direct' v Romania*,¹⁴⁸ concerning a refusal to register the union of self-employed farmers, the ECtHR found that under the Romanian legislation, farmers had the right to establish trade associations, and such organizations enjoyed essential rights enabling them to defend their members' interests in dealings with the public authorities, without the need to be established in the form of trade unions, a form of association reserved for employees and members of cooperatives.¹⁴⁹ The Court held that under these circumstances the refusal to register the applicant union had not overstepped margin of appreciation available to national authorities in securing the right of freedom of association under ECHR article 11.¹⁵⁰

In *Sindicatul 'Pastorul cel Bun' v Romania*,¹⁵¹ concerning the refusal of a Romanian court to register a trade union formed of members of the clergy and lay staff of the Romanian Orthodox Church, the ECtHR ruled that the State enjoys a wider margin of appreciation in deciding whether or not to recognize trade unions that operate within religious communities and pursue aims that might

¹⁴⁵ *Partidul Comuniștilor (Nepecești) and Ungureanu v Romania*, App. No. 46626/99 (Eur. Ct. H.R. Feb. 3, 2005), <https://perma.cc/4X9P-NZPV>.

¹⁴⁶ *Id.* para. 55.

¹⁴⁷ *Id.* para. 58.

¹⁴⁸ *Manole and 'Romanian Farmers Direct' v Romania*, App. No. 46551/06 (Eur. Ct. H.R. June 16, 2015), <https://perma.cc/4M7Z-XFGW>.

¹⁴⁹ *Id.* para. 73.

¹⁵⁰ *Id.* para. 74.

¹⁵¹ *Sindicatul 'Pastorul cel Bun' v Romania*, App. No. 2330/09 (Eur. Ct. H.R. July 9, 2013), <https://perma.cc/7TXF-UR3M>.

hinder the exercise of such communities' autonomy.¹⁵² Romania's refusal of the applicant union's registration was based on the union's failure to comply with the requirement of obtaining the archbishop's permission, and thus was a direct consequence of the right of the religious community to make its own organizational arrangements and to operate in accordance with the provisions of the Church's statute.¹⁵³ The Court also noted that the Church's statute provided a means for members of its clergy to form trade unions compatible with the statute and the Church's traditional hierarchical structure and decision-making procedures.¹⁵⁴

3. Amendments

There were no amendments to the relevant legislation in the past three years.

F. Freedom of Religion

1. Scope

The Romanian Constitution states the following with respect to freedom of religion:

- (1) Freedom of thought and opinion, as well as the freedom of religious belief, may not be restricted in any way. No one can be forced to adopt an opinion or to espouse a religious belief contrary to his/her convictions.
- (2) Freedom of conscience is guaranteed; it must be expressed in a spirit of tolerance and mutual respect.
- (3) All religions are free and organized in accordance with their own statutes, under the terms defined by the law.
- (4) All forms, means, acts, or actions of religious enmity are prohibited in the relationship between the cults.
- (5) The religious cults are autonomous in relation to the state and enjoy its support, which includes measures facilitating religious assistance in the Army, in hospitals, penitentiaries, asylums, and orphanages.
- (6) Parents or guardians have the right to ensure, in accordance with their own convictions, the education of minor children for whom they are responsible.¹⁵⁵

Article 9 (1) of the ECHR states that “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”

In 2006, Romania finally replaced an outdated 1948 decree concerning the status of religious denominations¹⁵⁶ with a law that facilitates the recognition of religious denominations and

¹⁵² Id. para. 171.

¹⁵³ Id. para. 168.

¹⁵⁴ Id. para. 170.

¹⁵⁵ Rom. Const. 2003 art. 29.

¹⁵⁶ Decretul nr. 177/1948 pentru regimul general al cultelor religioase, M.Of. no. 204 of Sept. 3, 1948, <https://perma.cc/4DLY-8PLX>.

associations and grants them more rights.¹⁵⁷ According to Law 489/2006, which entered into force on January 11, 2007:

No one shall be prevented from adopting a religious opinion or joining a religious faith; no one shall be coerced into adopting a religious opinion or joining a religious faith, contrary to his/her persuasion, and no one shall be subject to any discrimination, or be harassed or placed in an inferior position on account of their faith, membership or non-membership in a religious group, association or denomination, or for the exercise, within the law, of their freedom of religion.¹⁵⁸

The law provides that “[f]reedom of religion includes the right of every individual to have or embrace a religion, to manifest it individually or collectively, in public or in private, through practices and rituals specific to that denomination, including through religious education, as well as the freedom to preserve or change one’s religion.”¹⁵⁹

It further provides:

(5) The processing of personal data concerning religious beliefs or membership of denominations is hereby forbidden, except for the case of a national census as sanctioned under the law or the situation where the concerned individual has provided explicit agreement to that effect.

(6) It is forbidden to compel an individual to declare their religion, in any relationship with public authorities or private-law legal entities.¹⁶⁰

The law states that “[t]here is no State Religion in Romania; the State is neutral towards any religious persuasion or atheistic ideology.”¹⁶¹ It further provides that all “denominations are equal before the law and public authorities.”¹⁶² However, “[r]ecognized denominations can receive material support from the State, on request, for expenditures related to the operation of denomination units, for repairs and new buildings, based on the number of worshipers as resulting from the latest census and based on their genuine needs.”¹⁶³

Religious defamation and public offending of religious symbols are forbidden in Romania.¹⁶⁴ Interfering with the exercise of religious activity is a criminal offense.¹⁶⁵

¹⁵⁷ Legea nr. 489/2006 privind libertatea religioasă și regimul general al cultelor, M.Of. no. 201 of Mar. 21, 2014, <https://perma.cc/2ZH7-F5RF> .

¹⁵⁸ Id. art. 1 (2).

¹⁵⁹ Id. art. 2 (1).

¹⁶⁰ Id. art 5 (5), (6).

¹⁶¹ Id. art. 9 (1).

¹⁶² Id. art. 9 (2).

¹⁶³ Id. art. 10 (6).

¹⁶⁴ Id. art 13 (2).

¹⁶⁵ Id. art 13 (3).

The law provides that “[r]ecognition by the State as a denomination is acquired through a Government Decree, following a proposal submitted by the Ministry of Culture and Religious Denominations, and goes to religious associations that, through their activities and number of worshipers, provide guarantees of sustainability, stability and public interest.”¹⁶⁶ It states that “[r]ecognition of bylaws and canonic codes is granted insofar as they do not, in their contents, threaten public safety, order, health and morality or the fundamental human rights and liberties.”¹⁶⁷ Currently, 18 religious denominations are recognized in Romania.¹⁶⁸

The Fiscal Code grants profit and income tax exemptions for local denomination units, as long as such income is used for the functioning of the unit, offering of social services or other not-for-profit activities,¹⁶⁹ as well as exemptions from building¹⁷⁰ and land taxes.¹⁷¹

2. *Exceptions and Exemptions*

According to Article 9 (2) of ECHR, the freedom of religion is subject only to those restrictions that are “necessary in a democratic society for the protection of the public, of public order, health or morality, or for the protection of the rights and liberties of others.”

During the early weeks of the COVID-19 pandemic, the government issued bans on several types of public events, including public church services. A military ordinance adopted by the Ministry of Interior on March 17, 2020,¹⁷² banned religious activities in closed spaces. Military Ordinance no. 2,¹⁷³ adopted on March 21, allowed religious groups to perform religious services in places of worship without public attendance; services could be broadcasted online. The ordinance allowed for private religious services such as baptisms, weddings, and burials to be held inside places of worship as long as they were attended by no more than eight participants, and also allowed communion services for hospitalized patients or sick persons at their homes.¹⁷⁴ Following a military ordinance adopted on March 24,¹⁷⁵ individuals were not allowed to travel outside their

¹⁶⁶ Id. art 17 (1).

¹⁶⁷ Id. art. 17 (2).

¹⁶⁸ US Dep’t of State, Off. of Int’l Religious Freedom, *Romania 2020 International Religious Freedom Report 3*, <https://perma.cc/B6DQ-89VR>.

¹⁶⁹ Legea nr. 227/2015 Codul Fiscal, M.Of. pt. I no. 688 of Sept. 10, 2015, arts. 13 (2) (l), 15 (1) (a), <https://perma.cc/D3BB-2QE4>.

¹⁷⁰ Id. art. 456.

¹⁷¹ Id. art. 464.

¹⁷² Ordonanța Militară nr. 1/2020 privind unele măsuri de primă urgență care privesc aglomerările de persoane și circulația transfrontalieră a unor bunuri, M.Of. no. 219 of Mar. 18, 2020, art. 2, <https://perma.cc/5WZN-43YB>.

¹⁷³ Ordonanța Militară nr. 2/2020 privind măsuri de prevenire a răspândirii COVID-19, M.Of. no. 232 of Mar. 21, 2020, art. 9, <https://perma.cc/UV3Q-PERT>.

¹⁷⁴ Id.

¹⁷⁵ Ordonanța Militară nr. 3/2020 privind măsuri de prevenire a răspândirii COVID-19, M.Of. no. 242 of Mar. 24, 2020, art. 1, <https://perma.cc/J9N5-MAZG>.

homes except for a limited number of purposes, such as for work, but not including religious activities, including visiting places of worship or cemeteries.¹⁷⁶

In April 2020, the Patriarch of the Romanian Orthodox Church and the Interior Minister signed an agreement to allow Orthodox believers to go to church on April 17 (Orthodox Good Friday) and 18 to receive communion. Later, following protests, a new agreement was signed, specifying that on the Thursday before Easter, volunteers and clergy would distribute blessed bread and deliver the Holy Light to the homes of parishioners instead of allowing them go to church.¹⁷⁷ On September 30, 2020, the National Council for Combatting Discrimination (“CNCD”) reviewed the April 14 agreement between the Patriarch and the Interior Minister and ruled that the lack of an agreement with all recognized religious denominations on Easter celebrations constituted discrimination.¹⁷⁸ The council recommended the Ministry of Interior be impartial towards all religious denominations and establish nondiscriminatory rules concerning the exercise of freedom of belief.

On May 18, 2020, the government downgraded the state of emergency to a state of alert.¹⁷⁹ Public participation in religious services was allowed to resume in June, subject to certain safety standards.¹⁸⁰

On December 14, the Bucharest Court of Appeal issued a nonfinal ruling¹⁸¹ repealing regulations included in a decision of the National Committee for Emergency Situations¹⁸² that barred attendance of religious celebrations outside a person’s place of residence. The court ruled that only laws passed by Parliament could restrict religious freedom, and that the decision of the National Committee for Emergency Situations was discriminatory in that it imposed additional regulations on religious activities compared with other activities that posed similar health risks.

¹⁷⁶ Id. art. 1.

¹⁷⁷ DCNews Team, *BOR a Publicat Noul Acord cu MAI de Paști 2020* (Apr. 15, 2020), <https://perma.cc/GM5D-MXUZ>.

¹⁷⁸ Consiliul Național pentru Combaterea Discriminării, *Hotărârea nr. 684* (Sept. 30, 2020), <https://perma.cc/3JZV-C23B>.

¹⁷⁹ HG nr. 394/2020 privind declararea stării de alertă și măsurile care se aplică pe durata acesteia pentru prevenirea și combaterea efectelor pandemiei de COVID-19, M.Of. no. 410 of May 18, 2020, <https://perma.cc/EK4J-2CRJ>.

¹⁸⁰ Ministerul Sănătății, *Regulile privind accesul în lăcașele de cult, distanța minimă de siguranță și măsuri sanitare specifice pentru desfășurarea activităților religioase*, M.Of. no. 520 of June 17, 2020, <https://perma.cc/YCD7-NRZE>.

¹⁸¹ Curtea de Apel București, *Sentața civilă nr. 1328/2020*, Dosar nr. 6887/2/2020 (Dec. 14, 2020), <https://perma.cc/WU88-W556>.

¹⁸² Comitetul Național Pentru Situații de Urgență, *Hotărârea nr. 47/2020 privind aprobarea listei țărilor/zonelor de risc epidemiologic pentru care se instituie măsura carantinei asupra persoanelor care sosesc în România din acestea și stabilirea unor măsuri în domeniul sănătății publice*, Brochure no. 1 of October 05, 2020, <https://perma.cc/UQT9-T3WG>.

3. Amendments

There were no amendments to the relevant legislation in the last three years.

The National Council for Combatting Discrimination (CNCD) adopted a decision recommending the Faculty of Medical Science and Pharmacy in Iasi to exempt Seventh-day Adventist students from taking exams on Saturday.¹⁸³ The decision was upheld by the High Court of Cassation and Justice.¹⁸⁴ Another decision of NCCD recommended the Body of Expert and Licensed Accountants of Romania to schedule exams on other days than Saturdays in order to ensure Seventh-day Adventist students would be able to take the exams.¹⁸⁵

G. Discrimination

1. Scope

a. General Legal Framework

Article 4 of the Romanian Constitution, captioned “[t]he Unity of the People and Equality Among Citizens, states that “Romania is the common and indivisible homeland of all its citizens regardless of race, ethnic origin, language, religion, sex, opinion, political allegiance, wealth, or social origin.”¹⁸⁶ The general protection against discrimination is stipulated in Article 16, which states that:

1. Citizens are equal before the law and before public authorities, with no privileges and with no discrimination.
2. No one is above the law.¹⁸⁷

In addition, Article 41 (4) of the Constitution states that “[w]omen [shall] receive the same pay as men for equal work.”

Incitement to hatred or discrimination is a criminal act under article 369 of the Penal Code, which states that “[i]nciting the public, by any means, to hatred or discrimination against a class of persons shall be punished with imprisonment from six months to three years or a fine.”¹⁸⁸

¹⁸³ Consiliul Național pentru Combaterea Discriminării, Hotărârea nr. 73 (Feb. 1, 2017), <https://perma.cc/J6MK-NHMM>.

¹⁸⁴ Înalta Curte de Casație și Justiție, Decizia nr. 2870 (June 26, 2020), <https://perma.cc/4Z8A-K7ZM>.

¹⁸⁵ Consiliul Național pentru Combaterea Discriminării, Hotărârea nr. 767 (Oct. 30, 2019), <https://perma.cc/5TAS-Q94P>.

¹⁸⁶ Rom. Const. 2003 art. 4 (2).

¹⁸⁷ Id. art. 16 (1), (2).

¹⁸⁸ Penal Code art. 369.

The Romanian Labor Code¹⁸⁹ promotes the principle of equal treatment¹⁹⁰ and non-discrimination¹⁹¹ and prohibits any direct or indirect discrimination based on gender, sexual orientation, genetic profile, age, nationality, race, ethnicity, religion, political preference, social background, disability, family situation, or membership or activity in a trade union.¹⁹² Gender-based wage discrimination,¹⁹³ as well as any discrimination in relation to how pay is negotiated and set, based on gender, sexual orientation, genetic profile, age, nationality, race, ethnicity, religion, political preference, social background, disability, family situation, or membership or activity in a trade union,¹⁹⁴ are prohibited.

Prohibition of discrimination, as well as measures to prevent discrimination, are further regulated and addressed in several Romanian laws, including Law 202/2002 on Equality of Chances and Treatment Between Women and Men,¹⁹⁵ and Law 504/2002 on audio-visual media services, which provides that commercial communications broadcasted by audio-visual media must not include any form of discrimination.¹⁹⁶

b. Government Ordinance 137/2000

The main act addressing discrimination and establishing a body responsible with monitoring, preventing, and sanctioning acts of discrimination is Government Ordinance 137/2000 (GO 137/2000),¹⁹⁷ which entered into force on November 1, 2000. This ordinance states that “[t]he principle of equality among citizens, the elimination of all privileges and discrimination is guaranteed, in particular with regard to the exercise of all fundamental rights.”¹⁹⁸ The Ordinance defines several forms of direct and indirect discrimination and applies to:

all public and private natural or legal entities as well as to public institutions with competencies in the following fields: a) employment conditions, conditions and criteria of recruitment and selection, criteria for promotion, access to all forms and levels of professional orientation, formation and improvement; b) social protection and social security; c) public services or other services, access to goods and facilities; d) the education system; e) enforcement of public peace and order; g) any other domains of the social life.¹⁹⁹

¹⁸⁹ Codul Muncii din 2003, M.Of. pt. I no. 354 of May 18, 2011, <https://perma.cc/8AWY-Q6EQ>.

¹⁹⁰ Id. arts. 5 (1), 6.

¹⁹¹ Id. art. 6.

¹⁹² Id. art. 5 (2).

¹⁹³ Id. art. 6 (3).

¹⁹⁴ Id. art. 159 (3).

¹⁹⁵ Legea nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați, M.Of. pt. I no. 326 of June 5, 2013, <https://perma.cc/2Z9K-DKS2>.

¹⁹⁶ Legea audiovizualului nr. 504/2002 art. 29 (1) (d).

¹⁹⁷ OG 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare, M.Of. no. 166 of Mar. 07, 2014, <https://perma.cc/2Z9K-DKS2>.

¹⁹⁸ Id. art. 1 (2).

¹⁹⁹ Id. art. 3.

The ordinance establishes the National Council for Combatting Discrimination (“CNCD”) as the autonomous public state authority in matters of discrimination,²⁰⁰ which is tasked with preparing and enforcing public policies in matters of non-discrimination;²⁰¹ preventing all forms of discrimination; mediating in discrimination disputes; investigating, ascertaining and sanctioning acts of discrimination; monitoring cases of discrimination; and providing specialized assistance to victims of discrimination.²⁰² The CNCD exercises its legal authority in response to petitions and complaints from natural or legal persons, or takes action *ex officio*.²⁰³ Persons who under the terms of this law consider themselves to have been discriminated against may file a complaint at the National Council for Combatting Discrimination not later than one year from the commitment of such act or from the date on which the victim takes cognizance of its commission.²⁰⁴

Under Law 106/2017 on Measures Facilitating the Exercise of Rights Conferred on Workers in the Context of Freedom of Movement Within the EU,²⁰⁵ which transposed Directive 2014/54/EU into national legislation, the CNCD has a department that acts to promote, monitor and support equal treatment for EU workers and their family members who exercise their rights in Romania. This department is the national contact point for preventing and combatting discrimination in matters of free movement of EU workers for purposes of cooperation and exchange of information with other national contact points.²⁰⁶

The CNCD submits annual reports to the Parliament.²⁰⁷ Its 2020 report said the CNCD found discrimination in 177 out of 894 petitions.²⁰⁸ The main grounds for discrimination were social category (38), nationality (37), and ethnicity (28).²⁰⁹ The main areas where discrimination was found were “personal dignity” (75) and access to employment (49).²¹⁰

²⁰⁰ Id. art. 16.

²⁰¹ Id. art. 18 (2).

²⁰² Id. art. 19 (1).

²⁰³ Id. art. 19 (2).

²⁰⁴ Id. art. 20.

²⁰⁵ Legea nr. 106/2017 privind unele măsuri pentru îmbunătățirea exercitării pe teritoriul României a drepturilor conferite în contextul liberei circulații a lucrătorilor în cadrul Uniunii Europene, M.Of. pt. I no. 381 of May 22, 2017, <https://perma.cc/C7Z2-5Q5B>.

²⁰⁶ CNCD, Activity Report 2020, at 48, <https://perma.cc/9YSV-CBZ7>.

²⁰⁷ OG 137/2000 art.22 (2).

²⁰⁸ CNCD, Activity Report 2020, at 13.

²⁰⁹ Id.

²¹⁰ Id. at 15.

c. ECHR Case Law Concerning the Main Discrimination Issues in Romania

(1) Ethnic Discrimination

In the case of *Moldovan and others v Romania*,²¹¹ the ECtHR ruled that Romania violated multiple provisions of the ECHR for failing to provide justice in connection with a 1993 riot and its aftermath. The case involved the killing by a mob of three Romani men and the subsequent destruction of fourteen Romani houses in the village of Hădăreni in Mures County, in northwestern Romania, as well as the degrading circumstances in which the victims were forced to live after the event. The Court noted that the attacks were directed against the applicants because of their Roma origin and the applicants' Roma ethnicity appeared to have been decisive for the length and the result of the domestic proceedings. Among other things, the Court took note of the repeated discriminatory remarks made by the authorities throughout the case. The Court concluded accordingly that there had been a violation of article 14 taken in conjunction with articles 6 and 8.

*Stoica v. Romania*²¹² concerned the racially motivated beating of Constantin Stoica, a Romani youth aged 14 at the time of the incident, by police officers, and the ensuing official investigation. The Court held that Romania breached the prohibition of inhuman and degrading treatment (article 3) in conjunction with the prohibition of discrimination (article 14).

In other cases, such as *Lingurar v Romania*,²¹³ ECtHR found that decisions to organize police raids and to use force against the applicants were made on considerations based on the applicants' ethnic origin. The authorities automatically connected ethnicity to criminal behavior, which ethnic profiling of the applicants the Court determined was discriminatory in violation of article 14.

(2) LGBTQ Discrimination

In *M.C. and C.A. v Romania*,²¹⁴ concerning an assault on two participants in the annual gay march in Bucharest, the ECtHR held that there had been a violation of article 3 read together with article 14 of the Convention, finding that the investigations into the applicants' allegations of ill-treatment had been ineffective as they had lasted too long, had been marred by serious shortcomings, and had failed to take into account possible discriminatory motives.

In *Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*,²¹⁵ the European Court of Justice affirmed residency rights to same-sex couples in EU countries that do

²¹¹ *Moldovan and others v Romania*, App. Nos. 41138/98 and 64320/01 (Eur. Ct. H.R. July 12, 2005), <https://perma.cc/W3RX-Z9XK>.

²¹² *Stoica v. Romania*, App. No. 42722/02 (Eur. Ct. H.R. Mar. 4, 2008), <https://perma.cc/UPX8-4N2H>.

²¹³ *Lingurar v Romania*, App. No. 48474/14 (Eur. Ct. H.R. Apr. 16, 2019), <https://perma.cc/2VQ8-VXEY>.

²¹⁴ *M.C. and C.A. v Romania*, App. No. 12060/12 (Eur. Ct. H.R. Apr. 12, 2016), <https://perma.cc/A74U-CXCQ>.

²¹⁵ *Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, Case C-673/16 (E.C.J. June 5, 2018), <https://perma.cc/S5Q5-79GW>.

not recognize same-sex unions, if at least one partner is an EU citizen and if the marriage was legally performed in an EU member state. The Civil Code of Romania prohibits same-sex marriage and does not provide for recognition of same-sex marriages performed abroad. The Court ruled that a Member State's refusal to recognize the same-sex marriage of an EU citizen celebrated in another Member State would constitute an unjustified restriction on the right to free movement in violation of article 21(1) of the Treaty on the Functioning of the EU.

Recently, in *Association ACCEPT and Others v. Romania*,²¹⁶ which concerned the interruption of an LGBT rights film screening by a group shouting homophobic abuse, the ECtHR found a violation of ECHR article 14 taken in conjunction with article 8. It found the authorities failed to offer adequate protection in respect of the applicants' dignity and private life, and failed to effectively investigate the real nature of the homophobic abuse directed against them. The ECtHR established that the individual applicants suffered discrimination on the grounds of their sexual orientation and that the Government did not provide any justification indicating that the authorities' attitude was compatible with the standards of the Convention.

Currently, the case of *Florin Buhuceanu and Victor Ciobotaru v. Romania*²¹⁷ and 12 other cases are pending before ECtHR that concern the absence of a legal framework in Romania for the recognition of stable same-sex relationships.

(3) Gender Discrimination

In *Bălșan v. Romania*,²¹⁸ concerning a victim of domestic violence, the ECtHR held, unanimously, that there had been a violation of article 3 because of the authorities' failure to adequately protect the applicant against her husband's violence, and a violation article 14 read in conjunction with Article 3 because the violence had been gender-based. It found that the authorities' passivity in the case had reflected a discriminatory attitude towards the applicant as a woman and had shown a lack of commitment to address domestic violence in general in Romania.

(4) Discrimination Against People With Disabilities

În *Cînța v. Romania*,²¹⁹ the applicant complained that he had been discriminated against on the grounds of his health, notably his mental illness, when the Romanian authorities limited his rights to contact his daughter following a divorce. The Court held that there had been a violation of article 8 (right to respect for private and family life) and article 14 (prohibition of discrimination) in conjunction with Article 8. The Court said that the fact that he suffered from a mental illness could not in itself justify treating him differently from other parents seeking contact with their children without relevant and sufficient reasons to restrict such contact.

²¹⁶ *Association ACCEPT and Others v. Romania*, App. No. 19237/16 (Eur. Ct. H.R. June 1 2021), <https://perma.cc/KE8J-JB8F>.

²¹⁷ *Florin Buhuceanu and Victor Ciobotaru v. Romania*, App. No. 20081/19.

²¹⁸ *Bălșan v. Romania*, App. No. 49645/09 (Eur. Ct. H.R. May 23, 2017), <https://perma.cc/C79X-NABF>.

²¹⁹ *Cînța v. Romania*, App. No. 3891/19 (Eur. Ct. H.R. Feb. 18, 2020), <https://perma.cc/WA5H-E8BD>.

(5) Religious Discrimination

In a series of applications to the ECtHR in which members of Jehovah's Witnesses complained about delays in the denomination's recognition, discrimination, and refusal to exempt ordained ministers from military service, the Romanian Government agreed to settle the claims of the applicants amicably, resulting in the dismissal of the applications.²²⁰

In cases concerning the restitution of church assets and property confiscated from the Greek Catholic Church by the Communist State, such as *Sâmbăta Bihor Greek Catholic Parish v Romania*,²²¹ the ECtHR noted the widespread discrimination against the Greek Catholic Church. The restitution of religious buildings and other property that had belonged to the denomination prior to its dissolution had been addressed by various national courts. They interpreted the relevant law in a contradictory manner, sometimes accepting and sometimes declining jurisdiction to deal with cases brought before them by Greek Catholic parishes. The applicant parish had been treated differently from other parishes involved in similar disputes. The ECtHR determined the difference in treatment to which the applicant parish had been subjected had no objective and reasonable justification, and thus violated article 14 in conjunction with article 6(1).

2. Exceptions and Exemptions

Access to public, civil, or military offices and honors is granted, in accordance with the law, only to persons of Romanian citizenship domiciled in the country.²²²

Any provisions, criteria and practices that disadvantage certain persons, on grounds detailed by GO 137/2000, are considered to be discriminatory, except when they are objectively justified by a legitimate aim and the means employed to reach that aim are appropriate and necessary.²²³

3. Amendments

An April 2020 Government Ordinance²²⁴ amended GO 137/2000 in April 2020, extending the mandates of certain current officials, since due to the restrictions brought by the COVID-19 pandemic, parliamentary commissions could not meet to confirm new members.

²²⁰ Decizia privind cererile nr. 63.108/00, 62.595/00, 63.117/00, 63.118/00, 63.119/00, 63.121/00, 63.122/00, 63.816/00, 63.827/00, 63.829/00, 63.830/00, 63.837/00, 63.854/00, 63.857/00 și 70.551/01, formulate de organizația religioasă "Martorii lui Iehova - România" și alții împotriva României din 11.07.2006, M.Of. pt. I no. 101 of Feb. 09, 2007.

²²¹ *Sâmbăta Bihor Greek Catholic Parish v Romania*, App. No. 48107/99 (Eur. Ct. H.R. Dec. 1, 2010), summarized in ECtHR, Information Note No. 126, at 13-14 (Jan. 2010), <https://perma.cc/TJ6X-NZA4>.

²²² Rom. Const. 2003 art. 4 (3).

²²³ OG 137/2000 art. 2 (3).

²²⁴ OUG nr. 45/2020 pentru completarea ordonanței guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare, M.Of. pt. I no. 309 of Apr. 13, 2020, <https://perma.cc/E4UT-TDD6>.

An August 2020 law amending GO 137/2000²²⁵ details forms of harassment in the workplace, introducing the concept of “moral harassment”—acts that aim or result in deterioration of working conditions, consisting in hostile or unwanted behaviors, verbal comments, acts or gestures.²²⁶ Inducing stress and physical exhaustion qualifies as moral harassment in the workplace.²²⁷

H. Right to Privacy and Data Protection

1. Right to Privacy

The Constitution of Romania states that the confidentiality of letters and other mail, telegrams, telephone conversations, and other means of communication is inviolable.²²⁸ Public authorities have the duty to respect and protect private and family life.²²⁹ In addition, as mentioned above, Romania is bound by the ECHR, which guarantees the right to privacy in article 8.

The Civil Code stipulates that every person has the right to have his/her dignity, image and private life respected.²³⁰ Nobody may be subjected to interference with his/her private life, domicile, residence or correspondence without consent.²³¹ The use of any correspondence, manuscripts, personal documents or information pertaining to the private life of a person without consent is also prohibited.²³² This includes intercepting private conversations, recording or using the image or voice of a person in private surroundings without consent, disclosing personal data concerning a medical condition or treatment, and disclosing personal data such as residence or phone numbers without the person’s consent.²³³ A person may petition the civil court to prevent privacy violations and to request compensation for damages.²³⁴

The Romanian Penal Code states that unlawful violations of privacy by recording images or recording private conversations in a house or room is punishable by imprisonment from one to six months or fine.²³⁵ The unlawful disclosure, dissemination, presentation or transmission of

²²⁵ Legea nr. 167/2020 pentru modificarea și completarea ordonanței guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare, precum și pentru completarea Art. 6 din Legea Nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați, M.Of. pt. I no. 713 of Aug. 7, 2020, <https://perma.cc/3SB9-H7LH>.

²²⁶ Id. art. 1.

²²⁷ Id.

²²⁸ Rom. Const. 2003 art. 28.

²²⁹ Id. art. 26 (1).

²³⁰ Codul civil art. 58 (1).

²³¹ Id. art. 71 (2).

²³² Id. art. 71 (3).

²³³ Id. art. 74.

²³⁴ Id. art. 253.

²³⁵ Penal Code art. 226 (1).

such conversations or images shall be punished with imprisonment from three months to two years or a fine.²³⁶

The unlawful interception of private electronic data intended for or obtained from an electronic communications system is punishable by imprisonment from one to five years.²³⁷

The High Court of Cassation and Justice has ruled that the publication on a court's portal of personal data such as the domicile and the personal numeric code of a party is a violation of legal provisions concerning the protection of personal data.²³⁸

In *Bărbulescu v Romania*,²³⁹ the ECtHR held Romania responsible for failing to protect an individual's right to privacy when it didn't strike a fair balance between the applicant employee's rights and the rights of his employer. The applicant had been dismissed from his job for using the internet at the workplace for non-work matters after the employer had monitored, recorded and read his instant messaging communications sent for personal purposes. The ECtHR found that the Romanian authorities failed to determine whether the applicant had received prior notice that his communications might be monitored and whether the employer could have used measures less intrusive of the applicant's privacy.

2. Data Protection

a. Scope

(1) Romanian Legislation Prior to 2016

In 2001, Romania adopted its first law on the protection of personal data,²⁴⁰ transposing EU Directive 95/46/CE.²⁴¹ The law entered into force in December 2001 and applied to all processing of personal data by operators situated in Romania and those situated outside Romania if the means for processing the information were situated on Romanian territory.²⁴² The act defined personal data and data processing, regulated consent rules, data transfers, the obligations of data controllers, and the rights and remedies of data subjects. The law set specific rules for processing of personal data concerning race, ethnicity, religious and political beliefs, health and sex life,²⁴³

²³⁶ Id. art. 226 (2).

²³⁷ Id. art. 361.

²³⁸ Înalta Curte de Casație și Justiție, Secția I Civilă, Decizia nr. 1880 din 1 octombrie 2020, <https://perma.cc/65GC-3AWG>.

²³⁹ *Bărbulescu v Romania*, App. No. 61496/08 (Eur. Ct. H.R. Sept. 5, 2017), <https://perma.cc/X9SS-8YPU>.

²⁴⁰ Legea 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date, M.Of. no. 790 of December 12, 2001, <https://perma.cc/TCN9-987U>.

²⁴¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data, <https://perma.cc/42ZA-P3YN>.

²⁴² Legea 677/2001 art. 2.

²⁴³ Id. art. 7.

the identity of a person,²⁴⁴ health,²⁴⁵ and criminal records.²⁴⁶ All necessary technical measures had to be taken in order to protect personal data against unauthorized access, alteration, transfer or disclosure, and accidental or unlawful destruction and loss.²⁴⁷

Romania also ratified the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data²⁴⁸ in 2001.²⁴⁹ The convention covers the automatic storage of data, carrying out operations on data, and the alteration, erasure, retrieval or dissemination of such data.²⁵⁰ It sets safeguards against abusive processing of personal data²⁵¹ and states that personal data revealing racial origin, political opinions or religious or other beliefs, criminal convictions, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards.²⁵² Appropriate security measures must be taken against accidental or unauthorized destruction or accidental loss as well as against unauthorized access, alteration or dissemination.²⁵³ Romania made reservations to the convention concerning data processing related to national defense and national security, processing of data from documents accessible to the general public, and processing by private persons for their sole personal use.²⁵⁴

In 2004, Romania passed Law no. 506 on the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector.²⁵⁵ The law states that the confidentiality of communications and related traffic data by means of public electronic communication networks and services shall be guaranteed.²⁵⁶ Service providers must take all necessary measures to ensure safety and protection of personal data.²⁵⁷ This law applies to all processing of personal data in connection with public electronic communication services through a public network.²⁵⁸ It does

²⁴⁴ Id. art. 8.

²⁴⁵ Id. art. 9.

²⁴⁶ Id. art. 10.

²⁴⁷ Id. art. 20.

²⁴⁸ Council of Europe, Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Data Protection Convention), Jan. 28, 1981, E.T.S. No. 108, <https://perma.cc/4RN3-6LDC>.

²⁴⁹ Legea nr. 682/2001 privind ratificarea Convenției pentru protejarea persoanelor față de prelucrarea automatizată a datelor cu caracter personal, adoptată la Strasbourg la 28 Ianuarie 1981, M.Of. no. 830 of Dec. 21, 2001, <https://perma.cc/5DVR-9DC6>.

²⁵⁰ Data Protection Convention art. 2.

²⁵¹ Id. art. 5.

²⁵² Id. art. 6.

²⁵³ Id. art. 7.

²⁵⁴ Legea 682/2001 art. 2.

²⁵⁵ Lege nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice, M.Of. pt. I no. 1101 of Nov. 25, 2004, <https://perma.cc/22NF-EM8S>.

²⁵⁶ Id. art. 4.

²⁵⁷ Id. art. 3 (1).

²⁵⁸ Id. art. 1.

not apply to activities related to national defense and security carried out within the limits of the law, or in connection with criminal law.²⁵⁹

In decisions in 2009²⁶⁰ and 2012,²⁶¹ the Romanian Constitutional Court decided that laws²⁶² that allowed electronic communication providers to store data about the location, date, time, and duration of a conversation to enable disclosure of such data to competent authorities which may investigate serious crimes infringes upon the right to privacy in a manner incompatible with the Romanian Constitution. In 2015, the same court decided that the Romanian law on cyber security was unconstitutional, since, among others, it did not provide sufficient safeguards for the protection of personal data.²⁶³

(2) GDPR

On April 26, 2016, the EU issued Regulation (EU) 2016/679, the General Data Protection Regulation (GDPR).²⁶⁴ On April 27, 2016, the EU issued Directive 2016/680, the Data Protection Law Enforcement Directive.²⁶⁵

The GDPR defines personal data as “any information relating to an identified or identifiable natural person (or ‘data subject’).”²⁶⁶ An identifiable natural person is “one who can be identified, directly or indirectly, in particular, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical,

²⁵⁹ Id. art. 1 (4).

²⁶⁰ Decizia nr. 1258 din 8 octombrie 2009, , M.Of. pt. I no. 798 of Nov. 23, 2009, <https://perma.cc/9W2S-VCTM>.

²⁶¹ Decizia nr. 440 din 8 iulie 2014, , M.Of. pt. I no. 653 of Sept. 4, 2014, <https://perma.cc/E6ZU-METG>.

²⁶² Legea nr. 298/2008 privind reținerea datelor generate sau prelucrate de furnizorii de servicii de comunicații electronice destinate publicului sau de rețele publice de comunicații, precum și pentru modificarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice, M.Of. no. 780 of Nov. 21, 2008, <https://perma.cc/BZ9R-56KN>; Legea nr. 82/2012 privind reținerea datelor generate sau prelucrate de furnizorii de rețele publice de comunicații electronice și de furnizorii de servicii de comunicații electronice destinate publicului, precum și pentru modificarea și completarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice, M.Of. no. 211 of Mar. 25, 2014, <https://perma.cc/R8W9-S4CV>.

²⁶³ Decizia nr. 17 din 5 octombrie 2015, M.Of. pt. I no. 79 of Jan. 30, 2015, <https://perma.cc/EUD9-XBQN>.

²⁶⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1, <https://perma.cc/4HPB-DXKW>.

²⁶⁵ Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal penalties, and on the Free Movement of Such Data, and Repealing Council Framework Decision 2008/977/JHA (Criminal Law Enforcement Data Protection Directive), 2016 O.J. (L 119) 89, <https://perma.cc/7SZF-EQKX>.

²⁶⁶ GDPR art. 4(1).

physiological, genetic, mental, economic, cultural, or social identity of that natural person.”²⁶⁷ Processing is defined as “any operation or set of operations which is performed on personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction.”²⁶⁸

The GDPR has broad territorial scope, applying not only to the processing of personal data by controllers or processors within the EU, but also to those not established in the EU where the processing activities are related to the offering of goods or services to data subjects within the EU or to the monitoring of behavior of data subjects that takes place within the EU.²⁶⁹

The Regulation does not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law; by the Member States when carrying out activities which fall within the scope of the common foreign and security policy of the EU; by a natural person in the course of a purely personal or household activity; or by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.²⁷⁰

As Romania is a EU Member State, the GDPR is directly applicable. The Romanian Government has enacted or amended numerous laws and regulations that may involve processing of personal data to make them consistent with the GDPR and make clear that that compliance with the regulation is mandatory.²⁷¹

One of the main acts Romania passed to implement the GDPR is Law no. 190/2018,²⁷² which entered into force on July 31, 2018. The law sets the measures necessary for the implementation at the national level of articles 6 (2), 9 (4), 37-39, 42, 43, 83 (7), 85 and 87-89 of the regulation. It designates the National Supervisory Authority for the Processing of Personal Data (hereinafter NSA)²⁷³ as the national regulator tasked with monitoring compliance with the regulation and applying sanctions and corrective measures to public authorities or private data operators that

²⁶⁷ Id.

²⁶⁸ Id. art 4 (2).

²⁶⁹ Id. art. 3 (1), (2).

²⁷⁰ Id. recitals (16)-(19).

²⁷¹ Laws enacted or amended to conform to the the GDPR include Law no. 209/2019 concerning payment services, Law no. 95/2006 concerning health reform, Law no. 127/2019 concerning public pensions, and Law no. 211/2004 concerning crime victims.

²⁷² Legea nr. 190/2018 din 18 iulie 2018 privind măsuri de punere în aplicare a Regulamentului (UE) 2016/679 al Parlamentului European și al Consiliului din 27 aprilie 2016 privind protecția persoanelor fizice în ceea ce privește prelucrarea datelor cu caracter personal și privind libera circulație a acestor date și de abrogare a Directivei 95/46/CE (Regulamentul general privind protecția datelor), M.Of. pt. I no. 651 of July 26, 2018, <https://perma.cc/JT5W-R553>.

²⁷³ The NSA is a public autonomous authority that was established in 2005.

violate the provisions of the regulation.²⁷⁴ It details the conditions for processing certain data (genetic data, biometric data, health data, national identification numbers, and personal data in the context of employment), and provides that violations of the provisions of the regulation,²⁷⁵ will be sanctioned by reprimands and fines.²⁷⁶

Law no. 129/2018²⁷⁷ creates the institutional framework necessary to apply in Romania the provisions of articles 51-55, 57-59, 62, 68, 77, 79, 80, and 82-84 of the GDPR. It came into force on June 24, 2018.²⁷⁸ The law integrates into the competences of the National Supervisory Authority (NSA) those created by the GDPR for the national regulator,²⁷⁹ details the procedure for monitoring compliance, processing complaints, and sanctioning violations, and provides for judicial remedies.²⁸⁰ It repealed Law no. 677/2001 for the protection of individuals regarding the processing of personal data and the free movement of such data²⁸¹ and provided that all references in prior law to Law no. 677/2001, as subsequently amended and supplemented, shall be construed as references to the GDPR and its implementing laws.²⁸²

b. Exceptions and Exemptions

Under Article 8 (2) of ECHR concerning the right to respect for private and family life:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Romanian Constitution allows the exercise of certain rights or freedoms to be restricted only by law and only if necessary to defend national security, public order, health, or public morals, or the rights and freedoms of citizens; to investigate a crime; or to prevent the consequences of a natural calamity, a disaster or a particularly severe catastrophe.²⁸³

²⁷⁴ Law no.190/2018 arts. 13, 14.

²⁷⁵ Id. art. 12.

²⁷⁶ Id. art. 15.

²⁷⁷ Legea nr. 129/2018 din 15 iunie 2018 pentru modificarea și completarea Legii nr. 102/2005 privind înființarea, organizarea și funcționarea Autorității Naționale de Supraveghere a Prelucrării Datelor cu Caracter Personal, precum și pentru abrogarea Legii nr. 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date, M.Of. no. 503 of June 19, 2018, <https://perma.cc/99GB-WGYF>.

²⁷⁸ Id. art. VIII (2).

²⁷⁹ Id. art. I.

²⁸⁰ Id. art. I.11.

²⁸¹ Lege nr. 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date, M.Of. no. 790 of Dec. 12, 2001, <https://perma.cc/LR8A-DRZ3>.

²⁸² Law 129/2018 art. V.

²⁸³ Rom. Const. 2003 art. 53 (1).

Such restrictions can be imposed only if they are necessary in a democratic society. Any such measure must be proportionate to the situation which caused it, must be applied in a non-discriminatory manner, and may not eliminate the right or freedom in question.²⁸⁴

The Penal Procedure Code²⁸⁵ details the conditions in which individuals may be subjected to surveillance or the interception of communications.

Listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data are prohibited, except for the following cases: a) when such operations are carried out by participants in the communication; b) when the participants in the communication previously gave their written consent; or c) when the operations are carried out by the competent authorities under the conditions set out by the legal provisions in force.²⁸⁶ Electronic service providers must submit to courts, or to the competent judicial or national security authorities upon court order, specified traffic data, equipment identification data, and location data.²⁸⁷

c. Amendments

Legislation adopted during the three years prior to the report is detailed in Part H.2.a.(2) above.

I. Open Internet

1. Scope

The open internet is not specifically addressed by the Romanian Constitution.

In 2003, Romania adopted the first law addressing user's rights in the context of electronic services and networks.²⁸⁸ It aimed to implement the provisions of Directive 2002/22/EC on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services;²⁸⁹ however, it mainly addressed phone service providers.

²⁸⁴ Id. art. 53 (2).

²⁸⁵ Legea nr. 135/2010 Codul de Procedură Penală al României, M.Of. no. 486 of July 15, 2010, <https://perma.cc/B4KF-U3ZS>.

²⁸⁶ Law no. 506/2004 art. 4 (2).

²⁸⁷ Id. art. 12[^]1.

²⁸⁸ Legea nr. 304/2003 pentru serviciul universal și drepturile utilizatorilor cu privire la rețelele și serviciile de comunicații electronice, republished in M.Of. pt. I no. 343 of May 5, 2008, <https://perma.cc/CST6-MLJQ>.

²⁸⁹ Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communication networks and services, 2002 O.J. (L 108) 51, <https://perma.cc/7S3P-S9SW>.

In 2011, Romania adopted a more comprehensive Government Ordinance on electronic services,²⁹⁰ which transposes the main EU provisions in the field of electronic communications.²⁹¹ Ordinance 111/2011 establishes the general framework for regulation of electronic communications networks and services and promotes competition in the market. It does not apply to the provision of electronic services and networks by public authorities and institutions within the national defense, public order and safety, or Romanian diplomatic missions.²⁹² The ordinance establishes the principle of "universal service," that is, the right of all end users on Romania's territory to benefit from specific services at a certain quality, regardless of geographic location, at accessible cost.²⁹³

Internet service provider (ISP) contracts must contain information presented in a clear, accessible and easy to understand manner concerning the services offered, the option to include or exclude personal information in the subscribers' database, pricing (including how prices are calculated and what services are included), duration of the contract, renewal, charges and penalties, and other relevant information.²⁹⁴

The National Authority for Management and Regulation in Communications ("ANCOM") sets out the conditions and procedure it will use to designate one or several providers as universal service providers, balancing the public interest with possible effects on free competition.²⁹⁵ ANCOM must take all necessary measures in order to ensure that reasonable requests for access and connection to public electronic communication networks or phone networks will be addressed by at least one provider.²⁹⁶ It must also take measures to ensure users with disabilities can access electronic communication services like other end users.²⁹⁷ ANCOM can order universal service providers to offer prices that differ from general commercial prices, especially in order to ensure that low income or special needs users have access to services, and can set price limits or price-control regulations.²⁹⁸ Universal service providers must offer detailed bills (free upon user request), restrict calls or messaging to selected numbers (upon user request), installments and

²⁹⁰ Ordonanța de urgență nr. 111/2011 privind comunicațiile electronice, M.Of. pt. I no. 925 of Dec. 27, 2011, <http://legislatie.just.ro/Public/DetaliiDocument/134098>

²⁹¹ Directive 2002/19/EC on access to, and interconnection of electronic communication networks and associated facilities; Directive 2002/20/EC on the authorization of electronic communication networks and services; Directive 2002/21/EC on common regulatory framework for electronic communication networks and services; Directive 2002/22/EC on universal service and users' rights relating to electronic communication networks and services; Directive 2009/136/EC amending Directive 2002/22/EC, Directive 2002/58/EC, and Regulation (EC) No 2006/2004; Directive 2009/140/EC amending Directive 2002/21/EC, Directive 2002/19/EC and Directive 2002/20/EC; Directive 97/7/EC on the protection of consumers in respect of distance contracts.

²⁹² Ordinance 111/2011 art. 3.

²⁹³ Id. art. 76.

²⁹⁴ Id. art. 51.

²⁹⁵ Id. art. 77.

²⁹⁶ Id. art. 79.

²⁹⁷ Id. art. 63.

²⁹⁸ Id. art. 83.

special measures in case of default, as well as cost control options.²⁹⁹ The law also sets mandatory information that an ISP must offer users before they sign a contract.³⁰⁰

ANCOM can compensate the difference in costs incurred by universal service providers if the agency determines that providing services would create an unfair burden on the provider.³⁰¹

The Ministry of Communication adopted a national strategy for the implementation of universal service in electronic communications,³⁰² which aimed to set all the necessary conditions for universal service by December 31, 2012.

As an EU member, Romania is bound by Regulation (EU) 2015/2120,³⁰³ which establishes common rules to safeguard equal and non-discriminatory treatment in the provision of internet access services.³⁰⁴ The EU regulation determines that internet service end-users must have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of their or the provider's location or the location, origin or destination of the information, content, application, or service.³⁰⁵ Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, must not limit the exercise of the rights of end-users.³⁰⁶

In line with the provisions of this regulation, ANCOM adopted a decision to set quality indicators for internet access³⁰⁷ under which ISPs must set, communicate to the consumer, and make public the quality indicators for the service they provide.³⁰⁸ ANCOM will monitor and make public information concerning the technical quality measurements and indicators for ISPs.³⁰⁹

²⁹⁹ Id. art. 84.

³⁰⁰ Id. art. 53.

³⁰¹ Id. art. 88.

³⁰² Ministerul Comunicatiilor si Societății Informaționale, Ordinul nr. 461/2009 pentru aprobarea Strategiei naționale privind implementarea serviciului universal în sectorul comunicațiilor electronice, M.Of. pt. I no. 411 of June 16, 2009, <https://perma.cc/CD7Z-VK59>.

³⁰³ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 Laying Down Measures Concerning Open Internet Access and Amending Directive 2002/22/EC on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services and Regulation (EU) No 531/2012 on Roaming on Public Mobile Communications Networks Within the Union, 2015 O.J. (L 310) 1, <https://perma.cc/8YUW-W8C9>.

³⁰⁴ Id. art. 1 (1).

³⁰⁵ Id. art. 3 (1).

³⁰⁶ Id. art. 3 (2).

³⁰⁷ ANCOM, Decizia nr. 1112/2017 privind stabilirea indicatorilor de calitate pentru furnizarea serviciului de acces la internet și publicarea parametrilor aferenți, M.Of. no. 41 of Jan. 17, 2018, <https://perma.cc/JDM9-NLT9>.

³⁰⁸ Id. art. 2.

³⁰⁹ Id. art. 6.

2. Amendments

In 2018, the Romanian Government adopted Emergency Ordinance 112/2018 on the accessibility of websites and mobile applications of public bodies,³¹⁰ effectively transposing the EU Web Accessibility Directive.³¹¹ The ordinance applies to all public authorities and institutions, public interest bodies, and any association of such bodies established with the purpose of answering to a general interest.³¹² These entities must ensure the accessibility of their websites and mobile applications, unless meeting such accessibility requirements imposes a disproportionate burden.³¹³ Public bodies are not allowed to claim low priority, timelines, lack of know-how, or absence of software in order to argue disproportionate burden.³¹⁴

There were no other amendments to the relevant legislation in the last three years.

J. Citizen Participation in Public Governance

1. Scope

a. Right to Vote

Citizens who are 18 years of age or older on the day of an election have the right to vote.³¹⁵ Romanian citizens have the right to vote and be elected regardless of gender, nationality, ethnicity, language, religion, political opinion, income, or social background.³¹⁶ Following Romania's accession to the European Union, Romanian citizens also have the right to vote and to stand as candidates in elections to the European Parliament.³¹⁷

Obstructing by any means the free exercise of the right to vote or to be elected is a criminal offense, punished with imprisonment from six months to three years.³¹⁸ Offering or giving money, goods or other benefits in order to influence a voter to vote or not to vote for a certain list of candidates or a candidate is an offense punished with imprisonment from six months to three years and

³¹⁰ Ordonanța de urgență nr. 112/2018 privind accesibilitatea site-urilor web și a aplicațiilor mobile ale organismelor din sectorul public, M.Of. pt. I no. 1105 of Dec. 27, 2018, <https://perma.cc/WZ5E-UATC>.

³¹¹ Directive (EU) 2016/212 of the European Parliament and of the Council of 26 October 2016 on the Accessibility of the Websites and Mobile Applications of Public Sector Bodies, 2016 O.J. (L 327) 1, <https://perma.cc/JCM8-KVAW>.

³¹² Ordinance 112/2018 art. 2 (a).

³¹³ Id. art. 4.

³¹⁴ Id. art. 4 (5).

³¹⁵ Rom. Const. 2003 art. 36 (1).

³¹⁶ Legea nr. 208/2015 privind alegerea Senatului și a Camerei Deputaților, precum și pentru organizarea și funcționarea Autorității Electorale Permanente, M.Of. pt. I no. 553 of July 24, 2015, art. 2 (2), <https://perma.cc/23CM-ZSDN>.

³¹⁷ Rom. Const. 2003 art. 38.

³¹⁸ Codul Penal art. 385 (1).

deprivation of rights.³¹⁹ Any person who votes without having the right to vote, who votes two or more times, or who casts more ballots than the voter is entitled to can be punished with imprisonment from six months to three years or a fine and deprivation of rights.³²⁰ The use of a false voter card, identification card, or ballot is subject to the same punishment.³²¹

b. Right to be Elected and Hold Office

Under the Constitution, access to public, civil, or military offices and honors is granted to persons of Romanian citizenship with a domicile in the country; the Romanian State shall guarantee equal opportunities for men and women to occupy such offices and honors.³²² After Romania's accession to the European Union, the Union's citizens who comply with the requirements of the relevant organic law have the right to vote and to stand as candidates in the elections for local public administration bodies.³²³ They can be elected as local or county councilor, mayor, or president of the county council.³²⁴

Citizens who have the right to vote, are Romanian citizens, and are domiciled in Romania have the right to be elected, unless they are prohibited from forming political parties.³²⁵ Candidates must be at least 23 years of age on election day to be elected to the Chamber of Deputies or to the local public administration bodies, at least 33 years of age to be elected to the Senate, and at least 35 years to be elected President of Romania.³²⁶

Romanian citizens who have the right to vote and are at least 23 years of age can be elected for the European Parliament,³²⁷ even if they are domiciled abroad. Citizens of other EU member states who are domiciled or reside on Romanian territory have the same right to vote and be elected as representatives for Romania to the European Parliament as Romanian citizens.³²⁸

Election procedures are regulated in detail by Law no. 208/2015 for electing the Senate and Chamber of Deputies and for the organization and functioning of the Permanent Electoral

³¹⁹ Id. art. 386 (1).

³²⁰ Id. art. 387 (1).

³²¹ Id. art. 387 (2).

³²² Rom. Const. 2003 art. 16 (3).

³²³ Id. art. 16 (4).

³²⁴ Legea nr. 115/2015 pentru alegerea autorităților administrației publice locale, pentru modificarea Legii administrației publice locale nr. 215/2001, precum și pentru modificarea și completarea Legii nr. 393/2004 privind Statutul aleșilor locali, M.Of. pt. I no. 349 of May 20, 2015, <https://perma.cc/KDY8-W2C2>.

³²⁵ Id. art. 37 (1).

³²⁶ Id. art. 37 (2).

³²⁷ Legea nr. 33/2007 privind organizarea și desfășurarea alegerilor pentru Parlamentul European, republished in M.Of. pt. I no. 627 of Aug. 31, 2012, art. 5 (7), <https://perma.cc/AJP5-S9X4>.

³²⁸ Id. art. 5 (9).

Authority; Law no. 370/2004 for electing the President of Romania;³²⁹ Law no. 288/2015 on voting by mail;³³⁰ Law no. 115/2015 for electing local public authorities;³³¹ and Law no. 33/2007 on elections for the European Parliament.

c. Legislative Initiative

Under the Romanian Constitution,³³² a legislative initiative may be brought by at least 100,000 citizens with the right to vote. They must represent at least one-quarter of the counties of the country, and at least 5,000 signatures in support in each of those counties and in the Municipality of Bucharest must be submitted.

Law no. 189/1999 on citizen legislative initiatives³³³ details the procedure and conditions for initiating and submitting a draft bill by citizens. The Constitutional Court will verify whether all the legal conditions are met,³³⁴ and if such is the case, will send it to the Parliament to initiate debate.³³⁵

Under Law no. 52/2003 on decisional transparency,³³⁶ the public administration authorities have the duty to inform the public about draft laws and regulations and allow for public consultation on such documents.

d. Referendum

Referenda may be held on proposals to revise the Constitution, removing the President from office, and matters of national or local interest.³³⁷ Law no. 3/2000 details the procedure for initiating and organizing a referendum.

³²⁹ Legea nr. 370/2004 pentru alegerea Președintelui României, republished in M.Of. pt. I no. 650 of Sept. 12, 2011, <https://perma.cc/47N5-A3NR>.

³³⁰ Legea nr. 288/2015 privind votul prin corespondență, precum și modificarea și completarea Legii nr. 208/2015 privind alegerea Senatului și a Camerei Deputaților, precum și pentru organizarea și funcționarea Autorității Electorale Permanente, M.Of. pt. I no. 866 of Nov. 19, 2015, <https://perma.cc/Q4ND-FQUK>.

³³¹ Legea nr. 115/2015 pentru alegerea autorităților administrației publice locale, pentru modificarea Legii administrației publice locale nr. 215/2001, precum și pentru modificarea și completarea Legii nr. 393/2004 privind Statutul aleșilor locali, M.Of. pt. I no. 349 of May 20, 2015, <https://perma.cc/W3Y8-CGW3>.

³³² Rom. Const. 2003 art. 74 (1).

³³³ Legea nr. 189/1999 privind exercitarea inițiativei legislative de către cetățeni, M.Of. no. 516 of June 8, 2004, <https://perma.cc/AKJ9-J8UF>.

³³⁴ Id. art. 7 (1).

³³⁵ Id. art. 7 (5).

³³⁶ Legea nr. 52/2003 privind transparența decizională în administrația publică, M.Of. pt. I no. 749 of Dec. 3, 2013, art. 2, <https://perma.cc/XS9E-728X>.

³³⁷ Legea nr. 3/2000 privind organizarea și desfășurarea referendumului, M.Of. pt. I no. 84 of Feb. 24, 2000, art. 2 (1), <https://perma.cc/437K-98K5>.

2. *Exceptions and Exemptions*

Persons with mental health or intellectual disabilities who have been deprived of their right to vote, and persons deprived by their voting rights by a final judicial decision, may not vote,³³⁸ and are also deprived of the right to be elected.³³⁹

Judges of the Constitutional Court, the ombudsman, judges and prosecutors, active members of the Armed Forces, policemen, and other categories of civil servants determined by an organic law are prohibited from running for election.³⁴⁰

Fiscal matters, international issues, amnesty, or pardon cannot be the object of a legislative initiative brought by citizens.³⁴¹

3. *Amendments*

In 2019, Government Emergency Ordinance no. 40/2019³⁴² amended Law 115/2015 to allow citizens of other EU member states to be elected as president of a county council. The initial version only allowed such citizens to be elected as local or county councilors or mayor.

The electoral laws have been amended during the last three years³⁴³ in order to better organize the electoral process and to address issues that prevented citizens from exercising their right to vote or that allowed fraud.

³³⁸ Rom. Const. 2003 art. 36 (2).

³³⁹ Id. art. 37 (1).

³⁴⁰ Id. arts. 37 (1), 40 (3).

³⁴¹ Id. art. 74 (2).

³⁴² Ordonanța de urgență nr. 40/2019 privind modificarea și completarea Legii nr. 115/2015 pentru alegerea autorităților administrației publice locale, pentru modificarea Legii administrației publice locale nr. 215/2001, precum și pentru modificarea și completarea Legii nr. 393/2004 privind Statutul aleșilor locali, pentru modificarea și completarea Legii administrației publice locale nr. 215/2001, precum și pentru modificarea Legii nr. 393/2004 privind Statutul aleșilor locali, M.Of. pt. I no. 446 of June 4, 2019, <https://perma.cc/8HZ8-U648>.

³⁴³ OG 40/2019; Legea nr. 91/2020 privind modificarea Legii nr. 115/2015 pentru alegerea autorităților administrației publice locale, pentru modificarea Legii administrației publice locale nr. 215/2001, precum și pentru modificarea și completarea Legii nr. 393/2004 privind Statutul aleșilor locali, precum și pentru modificarea Legii nr. 208/2015 privind alegerea Senatului și a Camerei Deputaților, precum și pentru organizarea și funcționarea Autorității Electorale Permanente, M.Of. pt. I no. 551 of June 25, 2020, <https://perma.cc/7BR3-DA9X>; Legea nr. 148/2019 pentru modificarea și completarea unor acte normative în materie electorală, M.Of. pt. I no. 617 of July 25, 2019, <https://perma.cc/5WUG-RDSA>; Legea nr. 202/2020 pentru modificarea și completarea unor acte normative în materie electorală, M.Of. pt. I no. 849 of Sept. 16, 2020, <https://perma.cc/VB53-FR8T>.

Government decisions adopted in September 2020³⁴⁴ and November 2020³⁴⁵ established rules for the electoral campaign and the ensuing local and parliamentary elections, scheduled for the last months of 2020, in the context of the COVID 19 pandemic. The rules aimed to ensure public safety and prevent spreading the disease while allowing the citizens to exercise their right to vote.

K. Civil Society Organizations

Under the Romanian Constitution, citizens may freely establish and adhere to political parties, trade unions, employers' associations, and other forms of association.³⁴⁶

The establishment and functioning of civil society organizations are currently regulated by Government Ordinance no. 26/2000 on associations and foundations,³⁴⁷ which was substantially amended by Law no. 246/2005.³⁴⁸ The law recognizes two types of organizations, associations and foundations, as legal not-for-profit entities.³⁴⁹ Two or more associations or foundations may join together to form a federation.

1. Associations

An association can be established by three or more persons “who, on the basis of an agreement, share, without being entitled to restitution, their material contribution, their knowledge and their lucrative activity, in order to accomplish activities of general interest, or on the interest of a group, or, as the case may be, their personal, non-patrimonial interest.”³⁵⁰ The law also provides for a special type of association, established by citizens belonging to national ethnic minorities, the purpose of which is to defend, preserve and promote a national ethnic minority or the public representation of citizens belonging to a national ethnic minority with the purpose of fulfilling a public constitutional mission.³⁵¹ An association must have initial assets (in cash or in kind) of 200 Romanian Leu (around 40 euros). The founding members of an association must produce bylaws

³⁴⁴ Hotărârea nr. 782/2020 privind prelungirea stării de alertă pe teritoriul României începând cu data de 15 septembrie 2020, precum și stabilirea măsurilor care se aplică pe durata acesteia pentru prevenirea și combaterea efectelor pandemiei de COVID-19, M.Of. pt. I no. 842 of Sept. 14, 2020, <https://perma.cc/C6UM-XLPL>.

³⁴⁵ Hotărârea nr. 967/2020 privind prelungirea stării de alertă pe teritoriul României începând cu data de 14 noiembrie 2020, precum și stabilirea măsurilor care se aplică pe durata acesteia pentru prevenirea și combaterea efectelor pandemiei de COVID-19, M.Of. pt. I no. 1078 of Nov. 13, 2020, <https://perma.cc/3GLA-W4MJ>.

³⁴⁶ Rom. Const. 2003 art. 40 (1).

³⁴⁷ Ordonanța nr. 26/2000 cu privire la asociații și fundații, M.Of. pt. I no. 39 of Jan. 31, 2000, <https://perma.cc/9U88-FJSA>.

³⁴⁸ Legea nr. 246/2005 pentru aprobarea Ordonanței Guvernului nr. 26/2000 cu privire la asociații și fundații, M.Of. pt. I no. 656 of July 25, 2005, <https://perma.cc/42VW-9XGF>.

³⁴⁹ Ordinance no. 26/2000 art. 1 (1).

³⁵⁰ Id. art. 4.

³⁵¹ Id. art. 4 (2).

and constitutive articles that govern the association.³⁵² An association acquires the status of a legal entity upon registering in the Associations and Foundations Register kept by the court where the organization has its headquarters.³⁵³

A foundation may be established by “one or more persons who, on the basis of an act of will *inter vivos* or for cause of death, establish a patrimony designed permanently and irrevocably for achieving an objective of general interest or, as the case may be, of collective interest.”³⁵⁴ The value of the initial assets (in cash or in kind) for a foundation must be at least 10 times the minimum gross salary in Romania.³⁵⁵ Like an association, a foundation acquires the status of a legal entity upon registering in the Associations and Foundations Register kept by the court where the organization has its headquarters.³⁵⁶

Not-for-profit entities of foreign nationality can be recognized in Romania, under the condition of reciprocity, upon prior approval by the Government, by registration in the Registry of Associations and Foundations kept by the Bucharest Tribunal, if they are legally established in their home country and their purposes do not violate public order of Romania.³⁵⁷

The court may refuse to register any association whose purpose is to act against political pluralism, the principle of rule of law, or the sovereignty, integrity, or independence of Romania.³⁵⁸ An association may also be dissolved if its purpose or activity have become unlawful or against public order, if its means of achieving its purpose are unlawful or against public order, or when it pursues a different purpose than the one it was created for.³⁵⁹

Any limitation public authorities place on the right to establish an association would be examined from the perspective of art. 11 of the ECHR. For instance, *Association of Victims of Romanian Judges v Romania*³⁶⁰ concerned an application to establish an association one of the purposes of which was to evaluate domestic judgments. The Romanian Government refused to register it on the ground that this purpose would interfere with the proper functioning of the judicial system, and thus be in breach of the Romanian Constitution. ECtHR held that while this interference with the right to assembly pursued legitimate aims, such as the preservation of public order and of the rights and freedoms of others, the government’s arguments did not meet a “pressing social need,” and the refusal to register before the association began operating appeared disproportionate to

³⁵² Id. art. 6.

³⁵³ Id. arts. 7, 8.

³⁵⁴ Id. art. 15 (1).

³⁵⁵ Id. art. 15 (2).

³⁵⁶ Id. art. 17.

³⁵⁷ Id. art. 76 (1).

³⁵⁸ Id. art. 9 (2); Rom. Const. 2003 art. 40 (2).

³⁵⁹ Ordinance no. 26/2000 art. 56.

³⁶⁰ *Association of Victims of Romanian Judges v Romania*, App. no. 47732/06 (Eur. Ct. H.R. Jan. 14, 2014), <https://perma.cc/QW2K-NG5X>.

the aim pursued; therefore the infringement could not be deemed necessary in a democratic society.

In *Bozgan v Romania*,³⁶¹ the applicant had filed an application to register an association called the “Anti-Mafia National Guard” in the Associations and Foundations Register. Among the stated purposes of the association were to provide guidance for citizens concerning legal forms of self-defense to counter the threat of organized crime, and to identify, through the mass media, persons involved in organized crime. The domestic court rejected the application, finding that the activities of the association would interfere with the activity of the state authorities and even set up parallel structures. ECHR found that such intention did not follow from the association’s articles, which stated it would act within the law; that there was no indication the association had an unconstitutional purpose, since it had not have any activity before its application was denied; and that the court did not give the applicant the opportunity to rectify any irregularities. It thus found the interference with the applicant’s right to association was disproportionate and not necessary in a democratic society.

2. Social Economy

The social economy sector is regulated by Law no. 219/2015 on the social economy.³⁶² The sector consists of cooperatives, credit cooperatives, mutual associations, associations and foundations, farming societies, and any other entities that abide by the social economy principles set by this law.³⁶³ All these types of entities have their own legal requirements as well. Law No. 219/2015 defines social economy as the set of activities, organized independently of the public sector, whose purpose is to serve the general interest, the interests of a group, or non-patrimonial interests, by increasing the employment level of persons belonging to a vulnerable group and/or production and supply of goods and services and/or works.³⁶⁴

3. Organizations with “Of Public Utility” Status

An organization can qualify for “of public utility” status (similar to charitable or public benefit status) if it meets all the following conditions:

- The activity of the organization meets a general interest or the interest of a group
- It has been operating for at least three years and achieved part of its proposed goals with proof of continuous activity through significant actions
- It has presented an activity report showing the development of significant prior activities through programs or projects specific to its purpose, together with balance sheets and budgets for the last three years
- It has its own patrimony, membership, and employees necessary to achieve its proposed purpose

³⁶¹ *Bozgan v Romania*, App. no. 35097/02 (Eur. Ct. H.R. Oct. 11, 2007), <https://perma.cc/QQJ2-UZRN>.

³⁶² Legea nr. 219/2015 privind economia socială, M.Of. pt. I, no. 561 of July 28, 2015, <https://perma.cc/G7Q6-9KBS>.

³⁶³ Id. art. 3.

³⁶⁴ Id. art. 2 (1).

- The value of its patrimonial assets for the last three years has been at least equal to the value of the initial patrimony or three times the value of the guaranteed gross national income
- It can submit proof of cooperation and partnership contracts with public institutions or associations and foundations from Romania or abroad
- It can submit proof of significant results in line with its proposed aims or present letters of recommendations from competent authorities at the national or international level which recommend that the organization continues its activity³⁶⁵

A federation may gain “of public utility” status if at least two-thirds of its constituent organizations hold that status.³⁶⁶

In order to obtain such status, applications, accompanied by the relevant documentation, must be submitted to the General Secretariat of the Romanian Government, which will forward them to the relevant ministries or central authorities for review.³⁶⁷ Upon approval, the Government will award the status by a decision that will be published in the Official Monitor.³⁶⁸

Having “of public utility” status confers upon the organization the right to obtain the free use of public goods and the right to advertise such status in all official documents. However, it also imposes the obligation not to let its level of activity and performance fall below that set forth in its application; to report regularly to the competent administrative authority on its activities, finances, and any modifications to its constitutive act or statute (which reports are available to the public); and to publish excerpts of its activity reports and annual balance sheets in the Official Gazette of Romania and in the national registry of not-for-profit entities.³⁶⁹

4. Funding

a. General Sources

The law provides that associations and foundations may receive income from:

- a) Membership fees;
- b) Interests and dividends from financial investments of available funds;
- c) Dividends from companies they establish;
- d) Income from direct economic activities;
- e) Donations, sponsorships or wills;
- f) Funds from the state or local budget;
- g) Any other income allowed by the law.³⁷⁰

³⁶⁵ Ordinance no. 26/2000 art. 38.

³⁶⁶ Id. art. 45 (2).

³⁶⁷ Id. art. 39.

³⁶⁸ Id. art. 39 (1).

³⁶⁹ Id. art. 41.

³⁷⁰ Id. art. 46.

b. Economic Activities

An association or foundation may directly carry out economic activities that have an “accessory character” and are closely connected to the main purpose of the organization.³⁷¹ Income from these related economic activities is exempt from corporate tax if the income falls below 15,000 Euros or 10 percent of the entity's total not-for-profit income, whichever is less. ³⁷² The Fiscal Code also extends a profit tax exemption to income generated by non-profit organizations from "occasional [economic] activities."³⁷³

An association, foundation, or federation can establish a commercial company, provided that all dividends from the company are used to advance the purpose of the organization or are reinvested in the company.³⁷⁴ Under Law 346/2004 on small and medium enterprises,³⁷⁵ as amended by Law 62/2014,³⁷⁶ associations and foundations are considered Small and Medium Enterprises (SMEs) with respect to their economic activities.

c. Sponsorship

Civil society organizations may receive donations and sponsorships. Under Romanian Law no. 32/1994,³⁷⁷ “sponsorship” occurs where two parties agree on the transfer of ownership of goods or financial means to support the not-for-profit activities of the beneficiary.³⁷⁸ The deductibility of contributions (whether individual or corporate) is regulated by the Law 32/1994, which lists the types of "sponsorship" that qualify as deductible, as well as the Fiscal Code, which imposes limits on the amount that a donor can deduct.

The following entities are eligible to be beneficiaries of sponsorship:

- (a) Any not-for-profit organization that undertakes activities in Romania intended to promote sports; religion; culture; art; the environment; scientific research; charity; human rights protection; economic, health, and social services or assistance; social and community development; professional interest representation; and maintenance, renovation, preservation, and valorizing of historical monuments;
- (b) Any public authorities or institutions that engage in the activities listed above;
- (c) Radio or TV broadcasts or books or other publications relating to the activities listed above; and

³⁷¹ Id. art. 48.

³⁷² Codul Fiscal art. 15 (3).

³⁷³ Id. art. 15 (2) j).

³⁷⁴ Ordinance no. 26/2000, art. 47.

³⁷⁵ Legea nr. 346/2004 privind stimularea înființării și dezvoltării întreprinderilor mici și mijlocii, M.Of. no. 681 of July 29, 2004, <https://perma.cc/D887-K8JU>.

³⁷⁶ Legea nr. 62/2014 pentru modificarea și completarea Legii nr. 346/2004 privind stimularea înființării și dezvoltării întreprinderilor mici și mijlocii, M.Of. pt. I no. 328 of May 6, 2014, <https://perma.cc/N2Q5-BAQA>.

³⁷⁷ Legea nr. 32/1994 privind sponsorizarea, M.Of. no. 129 of May 25, 1994, <https://perma.cc/RSD6-R2CU>.

³⁷⁸ Id. art. 1.

- (d) Any individual living in Romania who develops activities in the areas listed above, provided that this activity is recognized by a not-for-profit organization or by a public institution engaged in the domain for which sponsorship is sought.³⁷⁹

Additionally, individuals are able to allocate up to 3.5 percent of their annual income tax to provide sponsorship to not-for-profit organizations or religious institutions.³⁸⁰

³⁷⁹ Id, art. 4.

³⁸⁰ Codul Fiscal art. 68[^]1 (7).