



document de poziție

## Talking points

Mechanism for Cooperation and Verification monitoring visit

February 10, 2020

### Funky Citizens' Projects

*Justice and fight against corruption remains one of our pillars, hence, we are continuously involving ourselves in projects related to these subjects.*

- **RECORD** (*Reducing Corruption Risks with Data*) - Public Procurement remains one of the most vulnerable areas when it comes to corruption in Romania and one of the most widespread problems across Europe. Together with other leading transparency and anti-corruption organisations<sup>1</sup> across Europe we want to develop a free, open-source, IT Tool<sup>2</sup> that will detect structural weaknesses and behavioural patterns likely to facilitate corruption, thus allowing local governments, civil society and journalists to effectively monitor procurement processes. At this moment, we are conducting an in-depth research about the Romanian public procurement system, legislation and procedures, and their vulnerabilities.
- **Combating Corruption in Maternity Care** - together with K-Monitor from Hungary we are mapping corruption in maternity care with the aim to create awareness about this widespread practice. Informative materials, advocacy and policy recommendations will be our main outcomes.
- **Building trust in Justice** - together with a magistrates' association we will create a recurrent series of short-movies about the most important subjects related to juridical system which are publicly debated at the moment. With all these juridical changes, citizens' trust in the system continues to diminish, hence, we want magistrates, through these videos, to be a reliable source of information.

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<sup>1</sup> Access Info Europe (Spain), Civio (Spain), ePaństwo Foundation (Poland), Funky Citizens (Romania), and K-Monitor (Hungary)

<sup>2</sup> <https://www.access-info.org/blog/2020/01/16/record-project-public-procurement-glossary/>

## Advocacy

Our continuous monitorization of the changes that appeared in the juridical system took the form of policies papers and thorough analysis. Even though the laws of justice have entered into force, soon after it, the Government started to modify them again, with the pretext of putting them in accord with the Venice Commission recommendations. We took a stand and explained why the changes were just a pretext<sup>3</sup> and they didn't actually comply with all these recommendations. We also expressed our position about the Criminal Codes changes<sup>4</sup> and showed their big impact on the system.

## Further challenges for the juridical system

- **Romania's permanent state of emergency** - although the Government was many times criticized for the abusive use of emergency ordinances, we didn't make much progress, on contrary, we reached a new record: 25 emergency ordinances were adopted at once, one night before the Governments' dismissal. Even though some of them might contain good measures (such as provisions to combat coronavirus or measures to facilitate students' transportation), it is worrying that they were added between emergency ordinances which bring important changes in the medical system or electoral system.

We saw that not even strong European and national criticism can stop the Government from following its political game. For these reasons, emergency ordinances remain an instrument of discretionary power and a big concern for our society.

- **Election campaigns** - with 2 rounds of elections coming this year, we are expecting many challenges. Since we are going to have a new Parliament by the end of the year, another risk is that many legislative initiatives will pass in a rush, without proper debates.

We are still demanding and hoping for legislative stability, system predictability, transparency and open consultations.

- **Prosecutors' appointment** - a long period of instability characterized the high-ranking prosecutors offices in the last year. With interim prosecutors or with no high-ranking prosecutors at all to take the management of the National Anticorruption Directorate, Directorate of Investigating Organized Crime and Terrorism and The Prosecutor's office attached to the High Court of Cassation and Justice, we are still waiting for the procedures to be finished. At this

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<sup>3</sup> <https://funky.org/analiza-policy-paper-pe-oug-92-vs-recomandarile-comisiei-de-la-venetia/>

<sup>4</sup> <https://funky.org/cele-mai-daunatoare-modificari-la-codurile-penale/>

moment, the Ministry of Justice has made its nominations, nominations which are currently in the process of being vetted by the Romanian President.

- **Laws of justice** - even though the laws of justice have entered into force in 2018, the discussions about them didn't stop there. As mentioned above, the package was modified through emergency ordinances<sup>5</sup> and now, the Ministry of Justice, is proposing other changes. In this draft, the Ministry proposed a long-awaited and recommended change: to dissolve the Section for the Investigation of Offenses within the Judiciary.

In addition to the provisions regarding the dissolution of this Section, the draft law also contains a series of provisions, which intend that the charging of a judge or a prosecutor should be authorised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, and that reference of a case concerning a judge or a prosecutor to a court of law should be approved by the Section for Judges or, as the case may be, by the Section for Prosecutors of the Superior Council of Magistracy.

Some magistrates criticized this proposal, claiming that it will create a filter in front of criminal liability judges and prosecutors and will put magistrates above the ordinary citizens. It is also important to note that, both sections of the SCM would become a kind of hierarchical superiors of the case prosecutors<sup>6</sup> and the involvement of a purely administrative body is not justified.

Being a draft proposal, we are hoping that the Ministry of Justice will take into consideration all these critics.

Also, since the laws of justice entered into force in a very flawed form, we are hoping that, starting with the proposal about Section for Judges dissolution, new discussion will be stirred up about the role of Ministry of Justice in prosecutors' nomination, role of the Romanian President in the appointment of high-ranking prosecutors and about the prosecutors' status.

- **Criminal Codes** - Even though discussions about Laws of Justice have begun to appear again, on the opposite side, the discussion about the Criminal Codes disappeared completely from the political debates. Last updates we have are from the Constitutional Court which has declared that, both the laws that change the Criminal Code<sup>7</sup> and the Criminal Procedure Code<sup>8</sup> are unconstitutional in their entirety. We are hoping that, in the next months, before the election of a new Parliament, the legislative power will take all the legal measures to comply with the Constitutional Court and European Commission recommendations.

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<sup>5</sup> <https://funky.org/wp-content/uploads/2019/01/analiza-legile-justitiei-la-inceput-de-2019.pdf>

<sup>6</sup> <http://www.forumuljudicatorilor.ro/index.php/archives/4025>

<sup>7</sup> [http://www.cdep.ro/pls/proiecte/upl\\_pck2015.proiect?cam=2&idp=17241](http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=17241)

<sup>8</sup> [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?idp=17179](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=17179)