

OBJECTIVE CRITERIA COUNTRY REPORT - ROMANIA

TRANSPARENCY

Constitution (1991)

Transparency is regulated in *Constitution* as a provision stating people right to access public information (Art.31). The fundamental right to access any information of public interest cannot be restricted (paragraph 1) and public authorities, according to their competence, are bound to provide correct information of the citizens in public affairs and matters of personal interest. (paragraph 2). According to Constitution public and private media is bound to provide accurate information to the public (paragraph 4). The Parliament's control is possible only for supervising the access of all key social and political groups to the media (paragraph 5). However Romania still lacks the legal norms for enforcing the right to access public information even if in June 1998 it signed the *Aarhus Convention regarding the access to information and the participation of the citizens to the policy-making process* and passed a special bill in this respect (*Law no.86/1999*).

The *Constitution* also entrenches the right to petition (Art. 47): citizens have the right to apply to the public authorities through petitions formulated only in the name of the signatories (paragraph 1); legally established organizations have the right to forward petitions, exclusively on behalf of the collective body they represent (paragraph 2); the public authorities are bound to answer to petitions under the terms and under the conditions established by law (paragraph 3). Together with the provisions regarding the institution of the Ombudsman, an appropriate legal framework was created for securing a fair treatment for the citizens interacting with public servants. However, no decision of Constitutional Court established in practice these provisions and no law applied yet the principle of absolute transparency and openness of the public administration by screening and punishing the civil servants ignoring it.

State Secrets Bill

Moreover, Romanian Parliament is close to pass a forthcoming State Secrets Bill that could be easily seen as violating the European Convention of Human Rights and Article 10 which guarantees the freedom of speech and of the press¹. The various vague categories of restrictions following the right to information or to free speech were by no means put in order by this Act that preserves the Communist culture of secrecy. In the very beginning of the law it is stated that "protecting state secrets is a legal obligation and a civic duty of all Romanian citizens and an expression of their loyalty to the country" (Art.1) and that obligation includes 14 categories of state secrets broadly defined as "scientific, technological or economic activities –investments included- that concern the national security or defence, or which are extremely important for the economic, scientific or technological interests of Romania" (Art 6.). Taking all this into account it is clear that

¹ So often defended in the case law of the European Court of Human Rights. The Romanian legal system still lacks detailed provisions on the basic principle of open access of the citizens to public authorities information or on mechanisms of transforming secret information into public one.

Romania needs a more permissive and more flexible legal framework for creating a transparency culture and transform every information belonging to a public authority into a public good. At this moment the only definition that could be found in the Romanian law on “state secrecy” is the one in the *Criminal Code* (Art. 150): ”documents and data clearly having this feature together with those declared so by an Executive Decision”². The content of this definition is clearly not following the basic principles of clarity and predictability of a law.

Access to former secret services files (law no 187/1999)

Next important regulation regarding the access of citizens to public information is the *Law on the access to former secret services files (no.187/1999)*, passed in December, last year. Even if the majority of the provisions are still on paper - there are at this moment in Romania a lot of illegal published files and this is why the efforts of implementing the law are undermined from the very beginning- we must also notice the fact that some of them are very important for the fight against secrecy culture in Romania.

Article 2 (Paragraph 1) states that in order to guarantee people’s access to public information, every citizen, as well as media, political parties, NGOs and public authorities can submit a request to clarify the relationship of a candidate for a public function with the former secret political police. Article 15 (Paragraphs 1-7) presents the procedure for accessing a file of the former secret service and Article 16 defines clearly the condition for appeal. The National Council for the Study of the Secret Service Files, an independent body reporting to the Romanian Parliament (Art.7, paragraph 1 and 2) is the body in charge with screening the *Securitate’s* files. The Steering Committee of the Council (“*Colegiu*”) is formed out of 11 members appointed by the Parliament and it is the first one to investigate the citizen’s appeals to the Council’s official decisions (Article 16 and 17).

Since September 2000 the institution finally got the necessary space for proper functioning; 150 people were hired and are currently screening the files of would-be MPs.

National State Archive (law no 16/1996)

The **Law on the National State Archive**, passed in 1996, regulates the organization and activity of the National State Archive Fund in the collection, registration, processing, preservation, and use of archive documents. Art. 1 and 2 states the documents forming the Fund to which Romanian State is granting a special protection. National Archives, a special appointed unit under the authority of the Ministry of Internal Affairs, do the selection of documents to be included in the State Archive Fund (Art. 3). The structure of the National Archives includes an,

The competent bodies managing the State Archive Fund are the Chief Director of National Archives, the Scientific Council of the national Archives (supervising the norms and the methodologies -Art 6) and the Selection Committee (organized also in the local units, Art. 10). The cited bodies preserve and use the State Archive Fund following the procedures established by the law.

The procedures for the use of these documents are laid down in Chapter 4, Art 20-22. All Romanian or foreign citizens can access the documents of the Fund, on request, thirty years

² The logic of passing the rule before the exception was ignored in absence of a law on free access to public information. However, two bills on this issue were set on Parliament’s agenda but are still under special Commission discussions.

after their creation (Art. 20). It is needed a special approval from the head of the unit if the requested document is younger. The documents that can not be accessed (Art. 22) are those that can affect the national interest, can threat national security or can harm the rights and liberties of other citizens.

Due to this brief provisions and the lack of implementation rules of the law, the public is unable to get easy access even to its own pre-Communist property documents, a situation that complicates the already painful and numerous (more than a million) law suits related to real estate property.

Access to Government Information

Channels of information from Government to the public have increased lately and most of the agencies and departments now have web sites, print newsletters and special compartments in charge with PR and dissemination of information.

The Government is functioning on the basis of the *Law no. 37/1990*, a regulatory act passed in 1990. The law has no provision regarding the communication of public interest information to the citizens. It is completed with special rulings for each Department that brings more specification concerning the access to information relevant for the public but, generally, no enforcement mechanism is included. In the current practice it is still up to every civil servant to decide which information can be disclosed for public and which not.

Among the publications issued lately by the Department of Public Information of the Executive are weekly bulletins, an updated directory of Romania's public institutions, fliers for information campaigns etc. The Government does not have yet its own server and the web site does not present in detail the ministries and the agencies that it co-ordinates. Our direct experience with the PR department proved that it is slow and ineffective in disseminating information (especially after a significant reduction in personnel). Information sharing with other central public institutions is also rather poor. A good indicator of the performance of these departments is presented in the third part of the report on responsiveness.

Accountable ministers (law 115/1999)

Law no. 115/1999 on accountable ministers clearly states the conditions (Art.5-18) and the institutions in charge (Art 28) with controlling illegal activities of the members of Government. The Parliament and the President of Romania have the right to initiate all necessary investigations to clarify alleged accusations but there is no article stating how will be the citizens informed in detail about the process.

Access to Senate information

The Senate's regulations (Law 16/1993) establish in principle the access of the public to the information. Even if a special approval of a Committee is necessary to access documents, all the consultations, analyses and proposals of this institution are usually open to citizens. All drafts are public: once the drafts start being debated in Committees they cease to be so. The practice is far from respecting these provisions, however. The newsletters or official bulletins are lacking, the web site is under construction for more than two years and it is not ready yet. Even for finding out Senate's agenda for the next week the only source is the information office situated in front of the institution's building. The

access to Senate's PR Office is easy but the information provided is rather general and not up dated.

Access to Chamber of Deputies information

The Chamber of Deputies seems more open in the access to its own information. The regulations are as liberal as in the Senate but, here the web site is very good and the department in charge with the relation with the citizens (Bureau of Public Information) is much more active than its Senate's correspondent. However, even if the search for a specific provision or bill is assisted by a group of experts, the access to the plenary sessions is quite difficult, despite the official regulations. The participation to the Committee's activities (according to the law it is up to the members to invite civil society representatives) is in almost all cases - due to MPs reluctance- impossible to be accomplished.

ACCOUNTABILITY

Constitution (1991)

The Constitution's provisions regarding the direct parliamentary control comprise: the President's yearly message to the nation (Art. 88); the hearing and approval of the Executive's program (Art. 102), hearing of the yearly report of the Account Court (Art. 139) and the reports of the Ombudsman (Art. 57). The control executed through special parliamentary committees is stated in Art.61: "each Chamber shall set up Standing Committees and may institute inquiry or other special committees", for instance joint committees.

The Government and other agencies of public administration are, within the Parliamentary control over their activity, bound to present any information and documents requested by the Chamber of Deputies, the Senate, or the Parliament Committees, through their respective Presidents. In case a legislative initiative involves amendment of provisions of the State Budget or of the State social security budget, the Government is compelled to send the necessary documentation to the Parliament. Members of the Government are entitled to attend the proceedings of Parliament. If they are requested to be present, participation is compulsory (Art.110). The Government and each of its members are bound to answer questions or interpellations raised by an MP. In answer to Government's reply the MPs can come back with follow-up questions or request for more information. These debates are open to the public (Art. 111).

The right of a person aggrieved by a public authority is guaranteed in the Constitution (Art. 48): "any person aggrieved in his/her legitimate right by an administrative act or failure of a public authority to solve his/her application within the legal term is entitled to the acknowledgement of his/her right, annulment of the act and remedies for the damage" (paragraph 1). Unfortunately, even if paragraph 4 states that the public authorities are bound to answer petitions under conditions established by law, neither the special law of public servant nor other legal provisions regulates this issue in detail.

Law of Accountable Ministers (115/1999)

The Constitution and the Law of Accountable Ministers (115/1999) establish the conditions regarding the control of Executive's activity. The Parliament or the President of Romania, through an Investigation Commission has the power by these regulations to address

questions, to demand documents or to prosecute the members of Government for their illegal activities (Art 3, 4 and 9). Even if the passing of the Law 115 was the object of many scandals and delays, it is now possible in Romania to ensure a strict accountability of the minister's activities. Two secretaries of state were already dismissed on its base and it looks like this practice is under improvement. However, according to Art. 46 (paragraph 2) the public cannot have access to this information, excepting the cases when an official investigation was initiated by the state's empowered institutions (i.e. Audit Court).

Law of civil servants (188/1999)

The special law of civil servants (188/1999), despite expectations, adds little to citizen's control over public authorities. It states civil servants obligation to present a wealth declaration when hired or on leave, but this only to the director of the institution, so it can not accede to the public (Article 46, Paragraph 2). Other provisions (Art. 43-public servant's responsibility; art. 45- confidentiality of public information) are not very clearly defined and no enforcement exists. Delays, mistreatment and corruption appear quite often on these grounds and the fundamental principles guiding public officials in the exercise of their duties (legality, loyalty, liability, political neutrality or hierarchical subordination) does not include provision of prompt and reliable information on citizen's request. This is why, even if the law contains detailed provisions on the manner and procedure of appointing and dismissing public officials no obligation (or liability) is stated regarding the provision of information for the public.

Ombudsman (law 35/1997)

The Ombudsman law provisions (Law 35/1997) were passed more than five years after the '91 Constitution, the first official act where this institution is presented. More than a year was needed afterwards to build a team of experts and to start the activities; 1999 was the first year when the Ombudsman reached its first results. The most important provisions of the law are Art.13-26 regarding the role of this institution to help citizens that were mistreated by state institutions or by public servants to change or cancel the decision and to offer them compensations. In the case when the institution responsible for the mistreatment refuses to do this the Ombudsman can assist in the court the citizen as plaintiff. However, there are no means for the Ombudsman to compel a public institution to reply to its demand for information, even if this must be done, according to the law, in less than a month. The procedure in Court is at this moment very slow. Moreover, even if in 1999 4 709 complaints were sent and almost 40% were accepted as relevant, this institution is still very little known to the large public in Romania. This is why for the moment Ombudsman is incapable of exploiting its possibilities. It took almost a year for the Parliament to hear the Ombudsman 1999 report, which shows a clear lack of interest.

Audit Court (law no 94/1992)

The Audit Court is one of the oldest accountability agencies in Romania. According to the law 94/1992, this institution is the supreme control body, subordinated to the Romanian Parliament. It has a representative in all major public institutions and through a yearly report it provides public information on their financial activities. However, the Attorney's Office is not following the Court's reports on a regular basis and many of the frauds reported by the Court are allegedly difficult to prosecute. This is due to the Court's staffing in the early years of the post-Communist regime with Communist times judges with clear political opinions against privatization and economic liberalization, opinions that often taint the judgment they pass on managers.

Prime Minister Audit Office (G.D. 132/2000)

The Government's Internal Audit Unit, a department under the authority of the Prime Minister also plays a doubtful role. The regulations regarding the organization and activity of this official body were recently changed (Government Decision no 132/2000), and the Unit's range of activities and staff severely reduced (22 persons out of 40 were severed). The main target became the economic fraud of big state and private enterprises. The head of the department is entitled to initiate investigations, but the outcome is only a written report and a range of recommendations for the Prime Minister. The Unit's partial reports were frequently used by government coalition partners against each other in their internal squabbles, which crippled its ability to gain credibility and investigate effectively.

Fighting against corruption and organized crime (law no 78/2000)

The law on *Fighting against corruption and organized crime (78/2000)* was recently adopted and is supposed to bring some coherence in the legislative acts regulating this issue. It is also aimed at strengthening judicial control over a wide range of public positions, by creating a Special Department for Fighting Corruption reporting to the Supreme Court of Justice. For the first time local units were created within county courts and special judges were appointed together with experts from various fields (i.e. public finance, banking system, custom) to deal with important cases of corruption. Two months after the passage of the bill local units are still not organized and the judges complain the lack of notifications "from reliable sources" on such cases. Therefore, no major investigation was yet initiated.

RESPONSIVENESS

We tested responsiveness through a simulation and a "response analyses" to a request for data sharing addressed to the following central institutions: i) Parliament (Senate and Chamber of Deputies); ii) Government, Ministries and state's Agencies (19 institutions); iii) Constitutional Court; iv) Ombudsman; v) National Audit Court; vi) State Ownership Fund; vii) Consumer's Protection Office and viii) General Customs Department. In order to speed up the process, we addressed the request directly to the institution's department in charge with the PR and with the relationship with civil society.

The grading system is from 0 to 5, and the maximum score is acquired by an institution that sent in due time (less than a month) a report on the previous year activity or any equivalent material. The intermediate scores take into account the information provided as follows: 4 points for a brief presentation of the 1999 activity and a presentation of the department in charge with public relations activities, 3 points for provision of information only on the department in charge with the public relations activities, 2 points for indicating only sources of information or for requesting additional data on the project with no follow up in due time. We scored 1 point the loose information provided in more than 30 days and 0 points the poorest performance, when there is no reply at all.

We shall present below the main outcomes of our test and a brief comment for each institution.

	<i>INSTITUTION</i>	Time of reply (no.	Document received	Score
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		of days)		
1.	Senate	28	Report (Public Information Bureau)	4
2.	Chamber of Deputies	6	Report (PR Dept.)	4
3.	Government of Romania	30	Letter (Department of Communication)	2
4.	Ministry of Foreign Affairs	-	-	0
5.	Ministry of Agriculture	-	-	0
6.	Ministry of National Defense	15	Report	5
7.	Ministry of Culture	-	-	0
8.	Ministry of Internal Affairs	-	-	0
9.	Ministry of National Education	-	-	0
10.	Ministry of Finance	10	Letter	1
11.	Ministry of Industry and Commerce	-	-	0
12.	Ministry of Justice	13	Report	4
13.	Ministry of Public Works	-	-	0
14.	Ministry of Public Function	-	-	0
15.	Ministry of Labor and Social Protection	-	-	0
16.	Ministry of Transport	-	-	0
17.	Ministry of Environment	30	Report (PR Dept.)	3
18.	Ministry of Health	20	Letter	1
19.	National Agency for Communication	-	-	0
20.	National Agency for Tourism	9	Report	5
21.	National Agency for Regional Development	7	Report	5
22.	National Agency for Science & Technology	-	-	0
23.	Constitutional Court	7	Report + Newsletter	5
24.	Ombudsman	5	Report	5
25.	National Audit Court	-	-	0
26.	State Ownership Fund	27	Report	5
27.	Consumer's Protection Office	-	-	0
28.	General Customs Department	-	-	0

The Parliament's chambers scored differently. The Chamber of Deputies contacted us for further information after two days since we have sent the request and submitted their information a week later, while the Senate took 30 days. Concerning the quality of the information provided, the Chamber of Deputies sent the report required together with additional information on the relevant projects co-ordinated by the Public Information Bureau, the department in charge with our demand. Is true that the materials were not all updated for the year 2000 and that not all areas of interest were covered (i.e. the future developments, data on the co-operation with the private partners etc.), but all in all the information provided followed the lines of our request. The material received from the Senate consists in a briefing (replacing the report) on the activity of the bureau *Press and Public Relation* for the year 1999. It presents the number of meetings with the citizens, the number of complaints considered to be of Senate's competence, the way of investigating and the most covered topics of the citizen's requests and complains. Unfortunately it is not

presented the structure and the people working within this bureau, their expertise, nor examples of the bureau's initiatives or future projects.

The Executive's reply was a simple fax of two pages in which we were informed by the Communication Department of the Romanian Government that, due to structural changes last year (the Prime Minister took office in December 1999 only), there is no report of activity from that time. Instead, we were kindly asked to access the web site address of the institution where there are "updated information on the Executive's activity" and in particular Prime-Minister speech on Romania's Development Plan or on the Romanian/English version of *Romania's Strategy for Economic Development for Medium Term*. We received the reply 27 days after the request and the Prime Minister Spokesman and Secretary of State signed it.

From all the ministries contacted only a third (5 out of 15) replied in due time. Two of the four National Agencies contacted accepted to send the requested information. *IT, Protocol, PR and Administrative* Department of the Ministry of Health, sent a letter three days after the request, asking for additional information on our institution concerning the field of activity, the goals of the organization and complete data on the project. Even if it was not stated, the letter signed by the director of this department was clear showing that without a second request (this time completed with the above mentioned details) there is not possible at all to access this information. Unfortunately, even after providing requested data on project and on SAR, there was no second reply from this institution.

On the contrary, the Ministry of Justice has sent quite comprehensive documents. Submitted in less than two weeks, the information covered the number of meeting hours (by name/position), number of files investigated, numbers of replies to the citizens, number of information provided by telephone, correspondence of the department for the due year and a brief comparative analysis with the previous year. In this way the main difficulties for the institution as well as some possible solutions for the future were presented.

The Ministry of Finance replied by fax thirteen days after the request. The material was submitted by the General Department of Communication and stated only the support for the idea of the project and a few words about the Department's activity. We learned so that through "extended press releases" and with the invaluable help of the written and spoken media, the Ministry can present the solutions identified to the citizens complaints and requirements (presented by phone, letters or direct meetings with officials). No additional or follow up information was provided afterwards.

The Ministry of Defense submitted after 21 days a letter, enclosing a report of the Public Relations Department on *Transparency of the Ministry of Defense Activities*. A broad description of the values guiding the Ministry's activities was provided together with information on the institutional arrangement of the information sharing within the Ministry's regional and local offices. A brief history of the department, and detailed information on the activities in 1999/2000 (including channels of communication, info printed materials and details on the usual procedure concerning people's requests or complaints addressed to the Ministry of Defense) was provided also.

As detailed and prompt information was received from two state's national agencies (in the field of tourism and regional development), especially taken into account their size and importance (recently the Ministry of Tourism changed into an Agency)). The National Agency for Regional Development submitted a report on the activities concerning the development areas and offered their help for getting the National Development Plan, the most important document of the Agency in 1999/2000 (but difficult to be sent by regular

mail due its size). However, there was no data provided on the institution's activities regarding communication with the citizens. The National Authority for Tourism included in the materials also some data on this subject, together with the Yearly Report for 1999 of the Office for Tourism Promotion. They enclosed also press releases concerning the last projects and activities of the institution.

Unfortunately, 12 institutions (10 Ministries and 2 Agencies) did not answer in due time to our request. Our letter/fax was either lost either considered to be unimportant.

The Constitutional Court was the quickest institution that answered to our request; a package with materials was sent in only three days from the input. The cover letter was signed by the general secretary of the Constitutional Court and all the information provided was on the institution as a whole and not only on the PR department activities, following the demand. Even if it was not a comprehensive activity report, the printed materials contained a lot of detailed information on Court's activities, mostly concerning its role for the citizens and the relations with the civil society. Also a trilingual bulletin was sent containing up dated information on the Court's decisions and debated issues within Romanian society.

The Ombudsman was also an institution with a very quick reply (6 days from the request) and with high quality materials. Ranging from abstracts of the yearly activity report or printed materials to statistical data concerning the relation with the citizens and the number of investigated cases, all the information provided successfully introduced the institution to citizens.

The Consumer's Protection Office, a key institution for the degree of responsiveness that must be displayed in the relation with the citizens, did not answer in due time.

State's Ownership Fund replied 27 days after they have received our request, close to the deadline. The quality of the information provided was very good: statistical data on the privatization process, on bidding procedures, on media coverage. However there were not mentioned at all the "sensitive" cases or any information on appeals or complaints from the citizens.

ANNEX 1

Legal regulation	Language	Web address
Constitution (1991)	English/ French	www.presidency.ro ; http://domino.kappa.ro/guvern
Law on people's access to their own political police file (no.187/1999)	Romanian	www.cdep.ro/legis/owa/legis_pck.htp_act_text?id=6322&idl=2
Law for Public Servant (no.188/1999)	Romanian	www.cdep.ro/legis/owa/legis_pck.htp_act_text?id=6321
Ombudsman Law (no. 35/1997)	English	www.cdep.ro/legis/owa/legis_pck.htp_act_text?id=6410
Audit Court Law (no.94/1992)	Romanian	www.cdep.ro/legis/owa/legis_pck.htp_act_text?id=2194
Chamber of Deputies- Regulation	English/French	www.cdep.ro/dic/cd.show?cpage=regcd
Senate- Regulation	Romanian	Web page under construction (www.senat.ro)
Government- Regulation	English	http://domino.kappa.ro/guvern/home.nsf www.cdep.ro/legis/owa/legis_pck.htp_act?ida=441
Accountable Ministries Law (no 115/1999)	Romanian	www.cdep.ro/legis/owa/legis_pck.htp_act_text?id=6267
Law on Corruption Prevention (no 78/2000)	Romanian	www.cdep.ro/legis/owa/legis_pck.htp_act_text?ida=24566
Prime Minister Audit Office – Regulation (G.D. 132/2000)	Romanian	www.cdep.ro/legis/owa/legis_pck.htp_act_text?ida=23979

