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## Submission for the 4th UPR cycle

*Transparency International Romania (TI-Ro) is the Romanian chapter of the Transparency International movement. Transparency International Romania has two major priorities: improving the reporting and sanctioning of corruption in Romania and changing attitudes among citizens in organisations, so that corruption becomes unacceptable in Romania. In its over 20 years of activity, TI-Ro has contributed to the establishment / consolidation of public institutions such as National Integrity Agency, General Anticorruption Directorate, National Anticorruption Department of the Romanian Prosecution Office. TI-Ro has developed more than 40 public policies, including the one on the protection of whistleblowers. At the same time, it has developed and implemented standards on ethics and integrity for the public sector and the business environment. We are consistent with the principles that guide us in our work: integrity, impartiality, accountability, professionalism.*

From the perspective of human rights in Romania, Transparency International Romania would like to draw attention to the violation of the rights to freedom of opinion and expression of whistleblowers.

Romania has a specific law on whistleblowing protection since 2004 – Law no. 571/2004 on the protection of personnel within public authorities and institutions disclosing violations of the law, shortly referred to as “Romanian Whistleblower’s Law”, and was the first country in the continental legislative system to have a comprehensive whistleblower protection act. Law no. 571/2004 was conceived out of the necessity to regulate the integrity system of the public sector and to have instruments in place that can protect public sector employees from retaliation when faced with the repercussions of reporting an act of corruption to the proper authorities.

According to the Romanian Whistleblower’s Law, a whistleblower is the person making a notice in good faith concerning any fact involving a violation of the law, professional ethics or of principles of good administration, efficiency, effectiveness, economic efficiency and transparency. To qualify as a whistleblower, those reporting wrongdoing must be employed in one of the public authorities and institutions within the central public administration, local public administration, in the apparatus of Parliament, the apparatus of Presidential Administration, the apparatus of Government, autonomous administrative authorities, cultural public institutions, education, health and social assistance fields as well as in state-owned companies.

The purpose of the Romanian Whistleblower’s Law is to protect the public personnel who claims or notifies violations of the law within public institutions and other public units from the ones mentioned above, committed by persons within public institutions and within other budgetary units.

If a disclosure is made, the whistleblower is protected, meaning that he is presumed to have acted in good-faith, until proven otherwise. Also, in case the person denounced by the warning in public interest is a hierarchical direct or indirect superior, or has duties of control, inspection and assessment of the whistleblower, the discipline committee or other similar body shall ensure the protection of the whistleblower, by keeping his/her identity secret.

The law doesn't provide:

- comprehensive requirements for organisations to have internal disclosure procedures (for example, including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers subsequent to disclosure).
- criminal, and/or disciplinary sanctions against those responsible for retaliation. However, the victim of such retaliation can use general legal provisions on damages in order to apply civil sanctions to the initiator of the retaliation.

Private sector employees are thus much less likely to disclose acts of corruption compared to the public sector employees that have the law on their side. Private companies can regulate their own rules regarding whistleblowing, through internal regulations, but this is not mandatory yet (until the transposition of the European Directive on whistleblowing). Therefore, according to each company integrity (or anti-corruption) programme, the definition and channels for whistleblowers can differ.

Whistleblowing disclosure can be made confidentially, but not anonymously (the whistleblower needs to disclose their name, but can request confidentiality). In practices, studies show Romanian whistleblowers do not trust that any person receiving their reports will protect their identity.<sup>i</sup>

Romania's Whistleblower Protection Act is strong in theory, covering a broad range of disclosure types and providing protection for whistleblowers in the public sector, but suffers in practice, as many public servants have little to no knowledge of it and public institutions prove reluctant to apply its provisions. It is a law that benefits from a special statute, giving it priority over general laws, which in theory further increases its effectiveness.

There is no transparent and accountable enforcement, as institutions do not make public reports on whistleblowing, and applied measures and reporting channels for employees to report sensitive information to auditors or regulators without fear of being exposed are rarely available. Moreover, there is no independent agency to investigate whistleblowers' disclosures and complaints and to oversee their protection. As a result, most of the public institutions in Romania report having no whistleblowing cases.

A research based on interviews with whistleblowers, conducted by the Association for the Defence of Human Rights in Romania – the Helsinki Committee and Active Watch (two leading Romanian NGOs on the protection of human rights) underlines that<sup>ii</sup>:

- whistleblowers are not recognised at such and are not enjoying the protection provided by the law;
- the institutions where interviewed whistleblowers worked have a series of reactions to the activity of the whistleblowers, which indicates a pattern in such situations: the triggering of controls of the departments/institutions that the whistleblowers coordinate, the triggering of disciplinary commissions against the whistleblowers by which a series of progressive sanctions are instituted, up to dismissal from office, detachment against the will for the maximum period allowed by the Labor Code, reorganization of the department of which the whistleblower is a part and the abolition of his position;
- in many cases, prosecutors and judges are not aware of the rights to protection of whistleblowers and they can be sanctioned for damaging the image/authority of public authorities (administrative sanctions) or for disclosure of confidential information (administrative or criminal sanction);
- all interviewed whistleblowers (22) have suffered retaliation in one form or another, despite the legal provisions on their protection. The most common were salary reduction, secondment without consent, reduction of the job description to the limit where they had nothing to do, and termination of the employment contract;
- whistleblowers often cited the unequal power balance between them and the institutions within which they made the complaints. They gave the example of institutions contracting large law firms, a tactic they considered intended to intimidate them and their lawyers.

A bill under Parliamentary debate in October 2022 will transpose the EU Directive on Whistleblowing (the EU Directive 2019/1937 on the protection of persons reporting breaches of Union law) and extend the definition of a whistleblower to employees and contractors of private companies or other legal persons. However, the bill raises serious concerns related to the future protection of whistleblower, as they will lose the protection if reporting violations of the law directly to the media or NGOs. Moreover, whistleblower that submit anonymous reports concerning violations of the law and are afterwards identified are losing their protection. In this context, the protection of the rights to freedom of opinion and expression of whistleblowers is not protected and the bill under debate in the Parliament is not improving the existing situation.

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<sup>i</sup> The Association for the Defence of Human Rights in Romania – the Helsinki Committee (APADOR-CH) and Active Watch study on the statute of the whistleblowers in Romania, 11 October 2021, available at:

<https://apador.org/en/statutul-avertizorului-de-integritate-in-romania/>

<sup>ii</sup> Ibid.