PERMANENT MISSION OF ROMANIA
to the United Nations Office at Geneva
and the International Organizations in
Switzerland

MISSION PERMANENTE DE LA ROUMANIE
auprès de l'Office des Nations Unies à Genève
et des Organisations Internationales en Suisse

Geneva, 26 March 2021

Dear Mr. Special Rapporteur,

First of all, let me reiterate our full commitment to promoting and protecting human rights and fundamental freedoms in all fields of life and our determination to fully apply in good faith all our obligations and responsibilities under international law. I would also like to underline once more that the Romanian authorities fully acknowledge the role of the United Nation's Special Rapporteurs and experts in monitoring the observance of the human rights and fundamental freedoms enshrined in the United Nations conventions.

Following your letter ROU 1/2021, sent to us on the 25th of January inquiring about the situation of Mr. Robert Mihăiță Roșu, I have the honour to convey to you some clarifications regarding the domestic legal framework, received from the competent national authorities.

We wish to underline that the Romanian authorities do not ignore the intense debates that the sentencing to prison of Lawyer Robert Roșu gave rise to and are fully aware of the crucial role that the lawyer has in defending the fundamental rights and freedoms of the citizen and, more general, the rule of law.

Since the situation of the lawyer concerned is the subject of a **criminal trial which has resulted in a final judgment**, and since the judges are independent (according to Article 124 (3) of the Constitution "*The judges are independent and subject only to the law"*) and the State authorities must respect their independence (according to Article 2(4) of Law No 303/2004 on the status of judges and prosecutors, "*Any person, organization, authority or institution is bound to respect the independence of judges*"), the domestic authorities cannot make any assessment of the situation which led to the conviction of the lawyer. Moreover, since the legal grounds justifying the criminal conviction of the lawyer will be reflected in the reasons for the conviction decision, which is not yet drafted, these grounds cannot be either anticipated or commented on (after being known) by the State authorities, who cannot make any assessment of the compatibility of the conviction with previous judicial decisions rendered.

../..

Mr. Diego García-Sayán

Special Rapporteur on the Independence of Judges and Lawyers

Rue de Vermont 37-39; 1202 - Genève
Phone/Téléphone : +41-22-752 1090 **Fax/Télécopieur**: +41-22-752 2976
E-mail/Courriel: mission.romania@romaniaunog.org **Website**: http://mpgeneva.mae.ro

At the same time, please note that:

- according to Article 417 ("The devolutionary effect of the appeal and its limits") of the Code of Criminal Procedure:

  "(1) The court shall try the appeal only with respect to the person who filed it and with respect to the person referred to in the motion for appeal and only with respect to the standing the appellant has at trial.

  (2) Within the limitations provided under par. (1), the court is bound, besides the grounds relied upon and motions filed by the appellant, to examine the case under all its aspects related to the facts and the law."

- according to Article 421 ("Solutions for the appeal proceedings"),

  "The court, adjudicating the appeal, shall issue one of the following solutions:

  1. dismiss the appeal, maintaining the appealed ruling: (...)

  2. sustain the appeal and:

  a) reverse the ruling of the court of first instance and issue a new ruling according to the rules referring to the settlement of the criminal action and civil action by the court of first instance;

  (...)."

- Article 424 ("The contents of the appellate ruling and its notification") of the same Code,

  "(1) The decision of the appellate court must comprise the mentions provided under Article 402, whereas the narrative description must include the legal and factual grounds, which resulted, as the case may be, in the dismissal or admission of the appeal, as well as the grounds that led to the adoption of any of the solutions provided under Article 421. The operational part shall comprise the solution given by the appellate court, the date when the decision is pronounced and the mention that the issuing we done in a public session.

  (...)

  (5) The ruling of the appellate court shall be notified to the prosecutor, the parties, the victim and the administration of the place of detention."

  In Romania there is a **deontological code of the Romanian lawyer**, which was adopted by Decision no. 268/2017 of the Council of the National Union of Romanian Bars (UNBR) and is available on the UNBR website[1]. However, the Romanian authorities cannot assess the conformity of the professional activities carried out by the lawyer with the provisions of this Code since, on the one hand, the reality and criminal significance of these activities are to be established in the reasoning of the criminal decision and, on the other hand, the assessment of the conformity of these activities with the deontological rules of the legal profession is the competence of the Council of the bar to which he belongs (according to art. 55 para. 2, point d) of Law no. 51 on the organization and exercise of the profession of lawyer, "*the bar Council shall have the following powers: …d) adopts measures for the organization of professional, disciplinary and deontological control, for resolving complaints and grievances, under the conditions provided by law and the statute of the profession*"), the bar being an autonomous professional organization not subordinate to any public authority (according to Article 1,

[1] https://www.unbr ro/publicam-hotararea-consiliului-unbr-nr-26817-iunie-2017-prin-care-se-aproba-codul-deontologic-al-avocatului-roman-prevazut-in-anexa/

paragraph 1 of Law No 51/1995, *'the profession of lawyer is free and independent, with autonomous organization and functioning, under the terms of this law and of the profession'*).

With regard to legislative or other measures aimed at protecting the lawyer from intimidation in the exercise of professional activities, we indicate the following texts of Law No 51/1995 on the organization and exercise of the profession of lawyer:

- Article 4 - *In the exercise of the profession and in connection with it, the lawyer is protected by law.*
- Article 34 (1) - *In order to ensure professional secrecy, the professional documents and works on the lawyer or in his office are inviolable. The search of the lawyer, of his domicile or of his office or the collection of documents and goods can only be done by the prosecutor, based on a warrant issued under the law.*

  (2) The following shall be exempt from the measure of seizure of documents and from the measure of confiscation:

  a) documents containing communications between the lawyer and his client;

  b) the documents containing records made by the lawyer regarding the aspects related to the defence of a client.

  (3) The telephone conversations of the lawyer may not be listened to and recorded, by any technical means, nor may his professional correspondence be intercepted and recorded, except under the conditions and with the procedure provided by law.

  (4) The relationship between the lawyer and the person he assists or represents cannot be the object of technical supervision unless there are data that the lawyer commits or prepares to commit an offense among those provided in art. 139 para. (2) of the Code of Criminal Procedure. If during or after the execution of the measure it results that the technical supervision activities also concerned the relations between the lawyer and the suspect or defendant he is defending, the evidence obtained may not be used in any criminal proceedings, and shall be destroyed immediately by to the prosecutor. The judge who ordered the measure is immediately informed by the prosecutor. The judge orders for the lawyer to be informed.
- Article 35 - *(1) The contact between the lawyer and his client may not be hindered or controlled, directly or indirectly, by any state body. (...)*
- Article 45 – *(...)*

  (3) - *The lawyer may not be heard as a witness and may not provide reports to any authority or person regarding the case entrusted to him, unless he has the prior, express and written release from all his concerned clients.*

  (...)

  (8) It is not an offense for a lawyer not to report offenses of which he is aware in the exercise of his profession, with the exception of the following offenses:

  1. murder, culpable homicide or other crime which has resulted in the death of a person;

  2. genocide, crimes against humanity or war crimes against persons;

  3. those provided by art. 32-38 of Law no. 535/2004 on preventing and combating terrorism, as subsequently amended and supplemented.

  In all cases, the lawyer who prevents the commission of the crime or its consequences in a way other than the denunciation of the perpetrator is exonerated from liability.

Regarding the **legislative or other measures meant to protect the lawyer from sanctions for the professional activities** he exercises in compliance with the law and the ethical standards of the profession, we indicate the following texts from Law no. 51/1995:

- Article 2 - *(1) In the exercise of the profession the lawyer is independent and is subject only to the law, the statute of the profession and the deontological code. (...)*
- Article 38 *(1) In exercising their professions, lawyers are indispensable partners of justice, protected by law, cannot be assimilated to civil servants, except when they certify the identity of the parties, of the content or the date of an act.*

  (2) The lawyer is obliged to respect the solemnity of the court hearing, not to use words or expressions likely to infringe the dignity of the judge, prosecutor, other lawyers, parties in the process or their representatives.

  (3) The lawyer is not criminally liable neither for the claims made orally or in writing, in an adequate form and in compliance with the provisions of paragraph (2), before the courts, before criminal prosecution bodies or other administrative bodies of jurisdiction, nor if they are related to consultations offered to parties, nor with the formulation of the defence in that case, nor for the claims made during the verbal or written consultations offered to the clients, if they are made in compliance with the rules of professional ethics.

  (4) The non-observance by the lawyer of the provisions of paragraphs (2) and (3) constitutes a serious disciplinary violation. Disciplinary liability does not exclude criminal or civil liability.

  (5) It does not constitute a disciplinary violation and there cannot be any other form of liability of lawyers for their legal opinions, the exercise of their rights, the fulfilment of the obligations provided by law and the use of legal means for the preparation and effective realization of the defence of freedoms, rights and legitimate interests of their clients.

  At the same time, it is worth mentioning that **the Romanian law forbids the lawyers to grant legal assistance for conducting crimes** and allows them to cease granting legal assistance when they realise that the actions of their client is a crime, and in this regard the legal framework is in the following paragraphs of Law 51/1995:

- Article 39 – (…)

  (3) The lawyer is obliged to refrain from assisting and advising a client in the performance by the latter of acts or deeds that could constitute crimes.

  (4) The lawyer is entitled to immediately withdraw and to waive the assistance and representation of the client if his actions and purposes, apparently legal at the beginning of the assistance and / or representation, prove, during it, to be criminal.

Please accept, Mr. Special Rapporteur, the assurance of my highest consideration.

[redacted]

Rue de Vermont 37-39; 1202 - Genève
Phone/Téléphone : +41-22-752 1090 **Fax/Télécopieur**: +41-22-752 2976
E-mail/Courriel: mission.romania@romaniaunog.org **Website**: http://mpgeneva.mae.ro