

Mandate of the Special Rapporteur on the independence of judges and lawyers

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 44/8.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **sentencing of Mr Robert Roșu to 5 years of imprisonment, allegedly as a result of the legitimate exercise of his professional functions in a case of property restitution concerning the former royal family of Romania.**

According to the information received:

Robert Mihăiță Roșu is a founding partner of the law firm *Țuca, Zbârcea și Asociații* (TZA).

The criminal case against Mr. Roșu was brought in connection with the professional activities he carried out to support one of his clients, a descendant of the former King of Romania, to recover certain real estates which belonged to the royal family of Romania before 1945.

Based on a 1954 final court decision issued in Portugal recognising him as rightful heir of the Romanian Royal Crown the descendant of the royal family filed various legal actions before national courts to recover some of his properties, including the Snagov Forest and the Băneasa Farm.

In 2007, in partnership with some foreign investors, the descendant of the Romanian royal family hired the law firm TZA to perform a legal audit on his legal claims. Mr. Roșu was tasked to coordinate the due diligence team.

The due diligence team tasked to perform the legal audit concluded that the chances of recovery of at least part of the claimed assets were good, as a number of final court decisions recognised that in his capacity as legitimate heir of the Romanian Royal Crown, Mr. Roșu's client was entitled to the restitution of certain properties.

His Excellency
M. Bogdan Lucian Aurescu,
Ministre des Affaires étrangères

Relying on the findings of the due-diligence report, the descendant of the Romanian royal family concluded a contract with a private company set up by his foreign investors (Reciplia SRL), to assign the rights over the assets that he expected to recover once the judicial and administrative procedures were terminated to Reciplia SRL. The parties negotiated the pecuniary aspects of the contract among themselves, allegedly without the participation of Mr Roşu or any other TZA lawyer. The final text of the contract was drafted by the foreign investors, with minor amendments introduced by national lawyers.

For approximately 3 years, Mr Roşu performed various legal tasks within the limits of the mandate received from his clients. In particular, he was responsible for a number of judicial and administrative procedures to request the State entities in possession of the Snagov Forest and Băneasa Farm properties to comply with final court decisions which recognised the right of his client to obtain the restitution of his properties. Eventually, the respective authorities complied with the court decisions and operated the restitution.

Criminal investigation

In the early hours of 9 December 2015, officers of the National Anti-corruption Directorate (Direcţia Naţională Anticorupţie, hereinafter “DNA”) carried out a search at the premises of the law firm TZA in Bucharest. According to the warrant, the search aimed at finding documents relating to a number of clients that TZA assisted in the previous years in connection with judicial and administrative procedures relating to the property restitution in favour of the descendant of the Romanian royal family.

Reportedly, the search procedure was carried out without the presence of a prosecutor, despite the fact that national legislation requires the presence of a prosecutor during searches carried out at a lawyer’s office. During the search, DNA officers allegedly seized a number of items which did not appear in the search warrant, including professional documents, hard drives, data storage devices, correspondence subject to attorney-client privilege, and personal items belonging to lawyers (watches, jewellery, money etc.).

At the end of the search, the DNA officers requested Mr Roşu to follow them at the DNA headquarters in Braşov, where he was allegedly paraded in handcuffs in front of TV cameras positioned at the entrance. Mr. Roşu was informed of the charges against him, and spent the night of 10 December at the DNA premises, in a cell with other individuals. After his interrogation, which took place during the night between 10 and 11 December 2015, Mr Roşu was released and returned to his home in Bucharest, where he was placed under house arrest.

Mr Roşu was released from house arrest on 11 March 2016 (see the part concerning the proceedings before the HCCJ Judge of Rights and Liberties and award for moral damage).

Proceedings before the HCCJ Judge of Rights and Liberties and award for moral damage

On 11 March 2016, after a prima facie assessment of the merits of the accusations, the Judge of Rights and Liberties of the Criminal Division of the High Court of Cassation and Justice released Mr. Roşu from his house arrest, considering that the evidence collected did not provide any element that incriminated the law firm “and less so the defendant Roşu Robert, as his actions [fell] within the limits of the activities normally carried out by a lawyer” (Court Order No. 338 of 11 March 2016).

Following the decision of the High Court of Cassation and Justice, Mr. Roşu sued the State and the DNA for abusive treatment.

On 5 February 2018, the Bucharest Tribunal partially granted his claims, directing the DNA to pay 15,000 Romanian Leu (approximately 3,720 USD) as moral damages caused by excessive arrest measures (Sentence No. 300/15.02.2018). All parties appealed this ruling.

On 17 February 2020, the Bucharest Court of Appeals upheld the decision of the first instance tribunal, and increased the awarded damages to 25,000 Romanian Leu, approximately 6,200 USD (Decision No. 149/17.02.2020).

The case is currently pending before the 1st Civil Division of the High Court of Cassation and Justice.

Criminal prosecution

In May 2016, the DNA sent the case to court. The indictment maintained the charges brought against Mr. Roşu during the criminal investigation: establishing an organised criminal group, complicity in abuse of office, influence peddling and money laundering. The criminal activities that he was accused of – as summarised in a DNA ordinance of December 2015 – included drafting the assignment contract and related documents, drafting notifications and memoranda to public institutions, and other activities related to the property restitution procedures that the source contends being lawful day-to-day activities carried out in the exercise of the legal profession.

In June 2019, the Braşov Court of Appeals – acting in its capacity as first instance court – acquitted Mr Roşu of all charges on the legal grounds that the “crime [did] not exist”. In dismissing the evidence gathered during the criminal prosecution phase and brought before it, the court concluded that there were no elements to sustain the accusations brought against Mr Roşu: “the defendant – as the Court noted – [had] only carried out legal assistance activities, in his capacity as lawyer in a law firm” (Criminal Sentence No. 39/29 June 2019).

The DNA appealed the acquittal judgment before the High Court of Cassation and Justice (HCCJ). The appeal was only partial, as the charge of money laundering was not retained. The DNA did not provide any additional evidence, and insisted on the accusations already made during the proceedings before the first instance court.

On 17 December 2020, the HCCJ, as appellate court, overturned the acquittal decision adopted by the Braşov Court of Appeals and found the defendant guilty of organising a criminal group and complicity in abuse of office, convicting him to five years of imprisonment. In reaching this decision, the HCCJ panel of judges allegedly relied on the same evidence considered – and dismissed – by the first instance court. The motivations at the basis of this decision have not yet been made public.

Within hours from the publication of the HCCJ decision, Mr Roşu was taken to prison.

The HCCJ's decision allegedly caused an unprecedented outrage among Romanian lawyers and other members of the legal profession.

On 18 December 2020, the National Union of Romanian Bar Associations (UNBR) and the Bucharest Bar Association publicly expressed their concern on a decision that criminalises a lawyer as a result of the legitimate exercise of his profession. A number of law professors, lawyers, local bar associations, other professional associations and journalists raised similar concerns.

On 20 December 2020, the Council of the Bucharest Bar Association publicly requested the HCCJ to publish the reasoning for its decision within the legal term of one month, and encouraged lawyers to wear white armlet in the performance of their professional duties as a display of solidarity with Mr Robert Roşu.

On 21 December 2020, members of the UNBR and the Bucharest Bar Association organised a protest in front of the Justice Palace.

On 18 January 2021, the HCCJ informed that the publication of its written reasoning on the case of Mr Roşu had to be postponed by 30 days “due to the complexity of the case”.

In the absence of the reasoning of the decision, no extraordinary appeals against the decision can be filed, nor can he be freed from prison. Mr Roşu is currently held in the Rahova Penitentiary in Bucharest, in a “closed” regime of detention, sharing a room with three other inmates.

While I do not want to prejudge the accuracy of these allegations, I would like to express my serious concerns at the sentencing of Mr. Robert Roşu to 5 years of imprisonment, allegedly as a result of the legitimate exercise of his professional functions. The decision of the HCCJ of 17 December 2020, which found the defendant guilty of organising a criminal group and complicity in abuse of office, contradicts the earlier decision of the Judge of Rights and Liberties of the Criminal Division of the HCCJ, which found the conduct of Mr Roşu to be in line with the limits of the activities normally carried out by a lawyer.

In the absence of any additional element proving the criminal responsibility of Mr Roşu, his sentencing appears to constitute an intimidation and a sanction for the legitimate activities he performed in favour of his client, in breach of recognised

standards that prohibit the identification of lawyers with their clients or their clients' causes.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law**, attached to this letter, which cites international human rights treaties and standards relevant to these allegations.

As it is my responsibility, under the mandates provided to me by the Human Rights Council, to seek and clarify all cases brought to my attention, I would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please explain on which legal grounds Mr. Roşu has been found guilty of organising a criminal group and complicity to in abuse in of office. In which way can this decision be regarded as compatible with previous decisions of the judiciary, which found that the activities carried out by Mr. Roşu were within the limits of the activities normally carried out by a lawyer?
3. Does a code of professional conduct for lawyers exist in Romania? If so, in which way were the activities carried out by Mr. Roşu in favour of his clients in breach of his professional responsibilities and duties as a lawyer?
4. Please provide detailed information on the legislative and other measures adopted by Romania to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16 (a) of the Basic Principles on the Role of Lawyers), and to prevent that lawyers be subject to, or be threatened with, prosecution or administrative, economic or other sanctions as a result of discharging their functions in accordance with recognised professional duties, standards and ethics (Principle 18).

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration..

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw your attention to a number of international and regional human rights treaties to which Romania is a party, including the International Covenant on Civil and Political Rights (ICCPR), ratified on 9 December 1974, and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), ratified on 20 June 1994.

Both instruments provide that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law. Article 14 of the Covenant also provides a list of minimum procedural guarantees applicable to all persons charged of a criminal offence, including the right to have adequate time and facilities for the preparation of one's defence, the right to communicate with counsel of one's own choosing, and the right to defend oneself in person or through legal assistance of one's own choosing (article 14 (3) (b) and (d)).

As a member State of the European Union, Romania is also bound to respect and implement European Union treaties and the values they enshrine, including respect for the rule of law and human rights (art. 2 of the Treaty on the European Union). Article 47 of the European Union Charter of Fundamental Rights, which is binding on Romania, reflects fair trial requirements, inter alia, the right to be advised, defended and represented by a lawyer of one's own choice.

I would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 13 enlists the duties and responsibilities of the lawyers towards to their clients, which include: (a) advising clients as to their legal rights and obligations; (b) assisting clients in every appropriate way, and taking legal action to protect their interests; and (c) assisting clients before courts, tribunals or administrative authorities, where appropriate. In protecting the rights of their clients, lawyers must act freely and diligently in accordance with the law and recognised standards and ethics of the legal profession (principle 14) and loyally respect the interests of their clients (principle 15).

Principle 16 requires States to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. When the security of lawyers is threatened as a result of discharging their functions, they must be adequately safeguarded by the authorities (principle 17).

Principle 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This principle must be read in conjunction with principle 16 (c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to,

or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.

With regard to regional instruments, I would like to refer to your Excellency's Government to the Council of Europe Recommendation No. R(2000)21 on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers on 25 October 2000.

Principle I lists the general principles on the freedom of exercise of the legal profession. Principle I (1) requires States adopt all necessary measures to respect, protect and promote the freedom of lawyers to exercise their professional activities without discrimination and without any improper interference from the public authorities or the public. Principle I (4) points out that lawyers should not suffer, or be threatened with, any sanctions or pressure when acting in accordance with their professional standards.

Principle III (1) recognises that in defending the legitimate rights and interest of their clients, lawyers have a duty to act independently, diligently and fairly, and in accordance with professional standards and codes of conducts drawn up by bar associations or other lawyers' professional associations. Principle III (3) lists the professional duties of lawyers, which include advising their clients on their legal rights and obligations, as well as the likely outcome and consequences for the case, including financial costs; taking legal action to protect, respect and enforce the rights and interests of their clients.