

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

Ref.: AL ROU 4/2021

(Please use this reference in your reply)

17 January 2022

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 your attention information I have received concerning the trial of Mr. Popoviciu, a Rumanian businessman, indicating the Judge on his case had a long-standing – and undisclosed – relationship with a key prosecution witness.

According to the information received:

The allegations arose out of the transfer of a plot of land in northern Bucharest, known as Baneasa Farm, from a University to a private company, in which Mr Popoviciu had held the position of Vice Chairman of the Board of Directors from July 2002 until April 2006 and in which his family had interests starting from 2003.

In 2005, a Romanian businessman, George Becali, complained about the Baneasa Farm Joint Venture to the Romanian High Court of Cassation and Justice (the “HCCJ”), Public Prosecutor’s Office, alleging that Mr Popoviciu had conspired with University Rector Ioan-Niculae Alecu to transfer Baneasa Farm to Baneasa Investments unlawfully. In June 2006, Mr Becali made statements against Mr Popoviciu and Mr Alecu (amongst others).

Both the HCCJ Public Prosecutor’s Office and the Romanian National Anticorruption Directorate (the “DNA”) investigated Mr Becali’s complaints. On 14 February 2008, the former declined to prosecute Mr Popoviciu and Mr Alecu, concluding that Mr Becali’s allegations were “not supported in proven reality” and “purely speculative”. In June 2008, however, DNA prosecutors, including Mr Nicolae Marin, asked the HCCJ Public Prosecutor’s Office to annul its refusal and relinquish jurisdiction to the DNA (which it did). DNA judicial officer Ion Motoc was later authorised to participate in the DNA’s investigation.

Mr Popoviciu gave a statement to the DNA in March 2009. Shortly thereafter, the DNA (acting by Mr Marin) initiated criminal proceedings against Mr Popoviciu and others (including Mr Alecu) for, *inter alia*, complicity in abuse of office. The DNA alleged: that Baneasa Farm was public property; that the University (i.e. Mr Alecu) did not have the authority to transfer it (alternatively, that the land was undervalued); and that Mr Popoviciu was complicit in the land’s unlawful disposal (at an unduly low value).

Criminal Case against Mr. Popoviciu

In December 2012, Mr Popoviciu was charged by the Romanian National Anticorruption Directorate (the “DNA”) with accomplice to abuse of office and active bribery. The former related to the transfer of Baneasa Farm to Baneasa Investments; the latter related to allegations by Mr Motoc that Mr Popoviciu, together with two of his other co-defendants, had tried to bribe Mr Motoc to close the DNA’s investigation into the Baneasa Farm Joint Venture.

The criminal trial of Mr Popoviciu, alongside 10 others, commenced before Judge Corneliu-Bogdan Ion-Tudoran, sitting in the Bucharest Court of Appeals (BCoA), in January 2013. Related civil proceedings were also brought before the BCoA, but Judge Tudoran decided that these should be dealt with separately and severed them from the criminal trial.

Judge Tudoran issued his decision in the case on 23 June 2016. Mr Popoviciu was convicted of both offences and sentenced to nine years’ imprisonment. In August 2017, his appeal against conviction was dismissed by the Romanian High Court of Cassation and Justice and his appeal against sentence resulted only in a reduction to seven years’ imprisonment.

A warrant of arrest was issued against Mr Popoviciu, to enforce his sentence, that same day, followed by the issuing of an INTERPOL Red Notice against him, at Romania’s request, on 9 August 2017.

According to the information received, Judge Tudoran had a long-standing relationship with Mr Becali, whose complaints originally prompted the investigation into, and indictment of, Mr Popoviciu and who was then the primary prosecution witness in Mr Popoviciu’s criminal trial. This relationship and the unavoidable impact that it had on the Judge’s subjective and/or objective independence and impartiality, he failed to recuse himself (as he ought to have done) from Mr Popoviciu’s criminal trial. Judge Tudoran did not disclose to Mr Popoviciu (or his co-defendants) that he even knew Mr Becali, let alone reveal the true nature of their relationship

During the trial, the Judge refused to permit Mr Popoviciu (and his co-defendants) to cross-examine the DNA’s ‘specialists’ on their evidence. Judge Tudoran also arbitrarily refused to allow Mr Popoviciu to adduce expert evidence in support of his defence.

Judge Tudoran failed, also, to exclude covert surveillance evidence adduced against Mr Popoviciu from his criminal trial, despite the fact that such evidence had apparently been secured with the help of the Romanian Intelligence Service (SRI). On 16 February 2016, the Romanian Constitutional Court ruled on Article 142(1) of the Romanian Code of Criminal Procedure, holding that it was unconstitutional to rely on covert surveillance evidence obtained with the SRI’s assistance.

#### European Arrest Warrant and Extradition proceedings

Mr Popoviciu was residing in London at the time that his sentence remained to be served in Romania. Following the conclusion of his appeal to the HCCJ, the BCoA issued a European Arrest Warrant seeking his return to Romania (the “EAW”). Less than two weeks later, Mr Popoviciu was arrested in

London after handing himself in. Mr Popoviciu's extradition hearing, before District Judge sitting at Westminster Magistrates' Court, commenced in October 2018.

On 12 July 2019, District Judge ordered Mr Popoviciu's extradition to Romania. On 27 November 2019, however, the English High Court, granted Mr Popoviciu permission to appeal against that extradition order (ultimately on eight grounds) and to adduce fresh evidence for the purposes of his appeal.

In June 2021, the extradition order was quashed on human rights grounds in England, with the Administrative Court of the High Court (the "**Divisional Court**") finding that:

- a. There was "*credible evidence*" that Judge Tudoran had a long-standing – and undisclosed – relationship with a key prosecution witness in Mr Popoviciu's trial, during which Judge Tudoran provided improper and corrupt assistance with legal matters, participated in illegal gambling, and received and solicited bribes;
- b. Romania had "*plainly failed*" to put forward any evidence or information to dispel such concerns about Judge Tudoran; and
- c. There was a "*real risk*", therefore, that Mr Popoviciu suffered an "*extreme example of a lack of judicial impartiality*", such that there could be "*no question*" as to the consequences for the fairness of his trial.

The Divisional Court also stated the evidence provided "*substantial grounds*" for believing that the relationship between Judge Tudoran and Mr Becali also involved improper, corrupt and criminal conduct by a serving judge. It noted that if there was such a relationship, Judge Tudoran clearly should not have presided over a trial in which Mr Becali was the complainant and an important prosecution witness; Judge Tudoran, however, did not recuse himself, and there was no disclosure even of the fact that he and Mr Becali knew one another. In addition, Mr Popoviciu's appeal to the HCCJ was conducted in ignorance of the evidence about this relationship with Mr Becali, such that the HCCJ's conclusions failed to take into account important matters affecting the reliability of the prosecution evidence and the impartiality of Judge Tudoran's assessment of it.

#### Civil proceedings against Mr. Popoviciu

The trial of the Civil Proceedings was held before Judge Tudoran, sitting in the BCoA, in December 2018. On 28 December 2018, he delivered his judgment, finding that damage had been caused.

In relation to his assessment of the damage caused in the Civil Proceedings in December 2018, Judge Tudoran referred the constitutionality of covert surveillance evidence to the Romanian Constitutional Court; and, therefore, Judge Tudoran convicted Mr Popoviciu partly on the basis of evidence the constitutionality of which was, and still is, unclear.

In February 2019, Mr Popoviciu made a criminal complaint about Judge Tudoran to the SIIJ, alleging that he had committed abuse of office via his conduct of the Civil Proceedings.

#### Investigation of allegations against Judge Tudoran

In May 2019, the Romanian Section for the Investigation of Crimes in Justice (SIIJ) began an *in rem* investigation into allegations of abuse of office and influence peddling against Judge Tudoran. On 19 September 2019, after the Judge's resignation, Prosecutor Mihaela Iorga Moraru of the SIIJ ("Ms **Moraru**") commenced an *in personam* criminal investigation into Judge Tudoran for offences of making false declarations, carrying out commercial activities incompatible with his judicial function and influence peddling. This investigation is unrelated to Mr. Popoviciu.

In view of these investigations, on 30 October 2019, the BCoA held that there was no certainty as to whether, or when, Judge Tudoran would provide reasons for his 28 December 2018 verdict in the Civil Proceedings against Mr. Popoviciu, commenting that that verdict was "*struck by absolute nullity for non-reasoning*".

On 9 June 2020, prosecutor Adina Florea of the SIIJ began an *in rem* criminal investigation into a complaint by Mr Popoviciu of abuse of office by Judge Tudoran in his handling of the Civil Proceedings. Mr Popoviciu subsequently added an allegation of wrongful conviction, based on Judge Tudoran's decision to sever the Civil Proceedings, which Ms Florea extended her *in rem* criminal investigation to include.

On 12 June 2020, the HCCJ annulled Judge Tudoran's verdict in the Civil Proceedings and remitted them to the BCoA for re-hearing. In September 2020, the BCoA refused yet another application by Mr Popoviciu for a judicial review of his conviction (based on issues relating to the ownership of Baneasa Farm and medical evidence concerning Judge Tudoran's fitness to practise).

On 18 December 2020, Ms Florea commenced an *in personam* criminal investigation into Judge Tudoran. On 7 January 2021, she informed him that 'probable cause' existed that he had committed abuse of office and 'unjust repression'. Later that month, however, Mr Marin – by then the SIIJ's deputy chief prosecutor – annulled and closed this *in personam* criminal investigation. Mr Popoviciu contested Mr Marin's decision, but this was dismissed by the General Prosecutor of Romania in February 2021.

Mr Marin was the DNA prosecutor in charge of Mr Popoviciu's case (dealing with both the first instance trial and his appeal); and he was also responsible for the extradition request in respect of Mr Popoviciu. Mr Marin later became the interim head of the Romanian Section for the Investigation of Crimes in Justice, which is responsible for investigating allegations of criminal conduct of judges. The source indicates that two staffers at the HCCJ, testified that they were called into Mr Marin's office and informed that they had been under surveillance in relation to Mr Popoviciu's case.

I am concerned that the information provided related to the Judge on this case and the fact that he had a long-standing – and undisclosed – relationship with a key prosecution witness in Mr Popoviciu’s trial may constitute a violation of the right to fair trial.

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 instruments and standards relevant to these allegations.

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

1. Please provide any information and/or comment on the alleged violations that have prevented or limited the right of Mr. Popoviciu to a fair trial.
2. Please provide information on the investigation that is being carried out into allegations of abuse of office by Judge Tudoran in his handling of the Civil Proceedings in the case against Mr. Popoviciu. In particular, why Mr. Popoviciu’s request to obtain a judicial review of his conviction was denied.
3. Please provide an update on the current status of Mr. Popoviciu’s case.
4. Please provide detailed information on the measures adopted to ensure the independence and impartiality of courts, and to ensure that defendants and their legal counsels are granted all the fair trial guarantees set out in article 14 of the International Covenant on Civil and Political Rights.

I would appreciate receiving a response within 60 days. Past 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 ICCPR establishes the right to fair proceedings before a competent, independent and impartial tribunal established by law. In this regard, General Comment No. 32 (2007) of the United Nations Human Rights Committee notes that the requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial. For instance, a trial substantially affected by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be impartial. (General Comment No. 32, para. 21).

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.

The Basic Principles on the Independence of the Judiciary, (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985) provide that: "(...)judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary" (principle 8).

Furthermore, Principle 2 of the UN Basic Principles on the Independence of the Judiciary states that: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

The Bangalore Principles of Judicial Conduct contain detailed guidance as to when a judge should disqualify him or herself from a case: "A judge shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases" (Principle 2.5). In July 2006, the United Nations Economic and Social Council (ECOSOC) adopted a resolution recognizing the Bangalore Principles as representing a further development of, and as being complementary to, the 1985 United Nations Basic Principles on the Independence of the Judiciary.

The European Charter on the statute for judges (1998), states that “Judges must refrain from any behaviour, action or expression of a kind effectively to affect confidence in their impartiality and their independence” (article 4.3).

The standards referred to above refer to the obligations of governmental and other institutions to protect and promote the independence of the judiciary.