

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

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(Please use this reference in your reply)

28 June 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 the attention of your Excellency's Government information I have received concerning Ms. **Elena Ojog**, a woman of Moldovan, American and Italian nationality, currently residing in Italy, and former tutor, that also worked in the tourism industry.

Ms. Ojog's former partner has relatives in the Venice Tribunal which has reportedly impeded her access to an impartial tribunal in separation, custody and criminal cases.

According to the information received:

On 10 March 2016, Ms. Ojog filed for separation and custody of two small children at the Venice Tribunal in Italy. Her marriage was not registered with her partner at the time (an Italian citizen), but in four years they had two children. After a long period of continuances, the tribunal of Venice decided to split Ms. Ojog's complaint into two separate cases. In addition, Ms. Ojog is facing a criminal complaint.

According to the source, Ms Ojog's former partner has relatives in the judicial system of the Venice Tribunal - Judge [REDACTED], President of the 2nd Civil Section of the Tribunal. Her former partner and his father thus utilize the Tribunal in their favour, and the source alleges Ms. Ojog cannot have a fair trial due to these circumstances. Reportedly, Ms Ojog states that she no longer has confidence in either the Italian lawyers or judges of the Venice Tribunal. According to the source, they constantly intimidate, blackmail her, extract or ignore her proof of evidence from the court documents.

CASE I - EVICTION:

In November 2016, the father of Ms. Ojog's former partner submitted an expedited complaint to the Tribunal that asked for her to be evicted from the apartment and claimed that she illegally inhabited his property. During the court proceedings, the financial police report concluded that her former partner was

purposefully attempting to obscure his true financial situation to reduce the amount of alimony he would have to pay Ms. Ojog.

Ms. Ojog claimed the right to continue living in the apartment with her children, providing the required documentation that she had the legal right to inhabit that apartment.

On 21 April, 2017, the Tribunal decided to evict Ms. Ojog, effective within six months. However, the presence of small children that were sick at the time did not allow the eviction to take place.

During January 2018, several attempts were made to evict Ms Ojog. However, her lawyer requested and was granted a postponement of the eviction until March. On 16 March 2018, the Tribunal of Venice made the Final decision to evict Ms. Ojog.

On 10 April 2018, since her lawyers allegedly refused to appeal the decision, and Ms. Ojog herself went to the Prosecutor's office and submitted a formal complaint to stop the eviction of her and her children, because she had acquired a new document proving that she had not abusively moved into the apartment, and that she lived in the apartment legally for four years and with the voluntary consent of the owner. She also provided evidence of abuse by her former partner.

On 16 April 2018, Ms. Ojog registered an identical complaint to the one sent to the Prosecutor's office with the Tribunal of Venice. However when her custody case was tried on 8 May 2018, Judge ██████████ removed this complaint and proof from the case, claiming them to be irrelevant (case below). According to the source, judge ██████████ is a friend of the family of Ms. Ojog's former partner and attended family dinners at the family house.

CASE 2 - CUSTODY OF CHILDREN:

Ms. Ojog requested custody of the children and child support. In June 2017, the first court decision was to award her 1,200 euro per month for child support, with joint shared 50-50 custody rights to both parents, with primary residence of the children being with the mother, in light of the young age of the children.

Between June 2017 and September 2017, Ms. Ojog's former partner appealed the decision of the Tribunal of Venice, at the Court of Appeals, requesting 100% custody of the children. On 18 October 2017, the Court of Appeals supported the decision of the Tribunal of Venice. Between November 2017 and February 2018, the father of the children applied to the Court of Cassation, requesting 100% custody of the children. This Court rejected his request.

On 12 March 2018, Ms. Ojog's former partner again applied to the Tribunal of Venice (the lower court, subordinate to the Court of Appeals) requesting 100% custody of the children. Despite the unsuccessful first appeal, Judge ██████████ at the tribunal of Venice, accepted the case.

On 8 May 2018, according to the source, Judge ██████ tried the custody case and removed Ms Ojog's proof of legal residency in the apartment from the case documents, claiming the proof to be irrelevant to the custody case. With the rightful proof of residency discarded from the argument, Judge ██████ preliminary decision was to give 100% custody of the children to the father of Ms Ojog's former partner, even though he was too senior to be able to obtain such custody.

On 7 May 2018 the Tribunal of Venice issued the order to confiscate all of Ms. Ojog's money from her only bank account, which was the account receiving the alimony money.

On 9 May 2018, the source alleges that Social Services educators tried to take away Ms. Ojog's children, without presenting a professional license as proof of their authority to take away her children, and even though the Judge's decision did not have an effective date and did not contain the mandatory signatures of the Mayor. These individuals assaulted Ms Ojog and her child, they threatened her and pressured her to sign documents, which she refused to do.

In June 2018, these same Social Service educators made a false report to Judge ██████ that Ms. Ojog forgot her children in the park and, based on this false report Judge ██████ ordered that she can only see her children in the presence of these social services workers. Ms. Ojog did not have right to see or appeal the report of the social services.

Judge ██████ requested multiple continuances, postponing taking a final decision on the custody case until 30 July 2019.

In 30 July 2019, with no explanation or elaboration, Judge ██████ issued a permanent decision to grant 100% custody of the children to the father of Ms. Ojog's former partner. Ms. Ojog was to be denied visitation rights for 9 months, reportedly due to COVID-19.

At the same time, she could not leave Italy for the USA, since the judge did not allow her to take the children with her.

To this day, Ms. Ojog can only see her children in the presence of social workers and for only 90 minutes per week.

CRIMINAL COMPLAINT

Ms. Ojog's former partner and his father opened two criminal cases against her, claiming that she assaulted her partner in 2017 and 2018. Although she did not commit such offenses, the statute of prosecution is two years, and the window of time to investigate has passed. Despite this, the criminal case court hearing date was set for January 12, 2022 at 11 a.m. Ms. Ojog's arguments are not

accepted at the Venice Tribunal, and her lawyers are reportedly passive in her defense.

Ms Ojog did not have access to the case and cannot collect the documents herself without a lawyer. Her new lawyer reportedly does not collect necessary documents or comply with the minimal standards of protection.

Ms. Ojog was not informed but unexpectedly found out that the previous Penal Case N 10459/2017 R on the assault she suffered from her ex partner disappeared with all her witnesses' testimonies, proof of the beatings she suffered and arguments. Ms Ojog had reported that after the birth of their second son in July 2015, her partner, who suffered from documented alcohol and addiction problems, started to abuse her physically, psychologically, and financially.

The penal case against her is N 2018/000494, has the same numbers of the preliminary investigations: 3264/2017 R.G.N.R. and 3315/2018 R.G; but has changed the articles of Penal Code it was originally filed under. The source indicates that this was done deliberately so that she could not inform Moldovan Consul, did not have time to collect new evidence.

Ms. Ojog's criminal lawyer reportedly intimidates her constantly, saying that the judge will take her children away, and she will be sentenced under a criminal offense if she does not conclude an amicable agreement.

Despite the official proof of the modest income in 2020-2021, Judge Sonia Bello at the Venice Tribunal, allegedly does not allow Ms. Ojog to have a public lawyer and translator on 12 January 2022.

The source alleges that throughout 2016-2021, Ms. Ojog has not been able to defend her rights at the Venice Tribunal. Due to the collusion of lawyers, she cannot go through the higher courts in Italy and exhaust all domestic remedies. The judges of the Tribunal removed her children, seized all her money, personal belongings, her computer with evidence for the court, kicked her out from the only home. They do not want to see her documents on the table during the trial. They took her documents out of the case as the irrelevant ones.

Without prejudging the accuracy of this information, I am concerned at the information received that Judge [REDACTED] a friend of the family of Ms. Ojog's former partner, ignored the decision of the court of Appeals and Cassation and took a case outside of his jurisdiction. If these allegations prove to be correct, this judge, by any reasonable standard, cannot be an impartial judge on matters directly affecting the well-being of his friends and supporters.

I am also concerned at the information received regarding the lack of legal support faced by Ms. Ojog, including from the assigned public lawyer; as well as the information received that her request for a translator was rejected.

If proven correct, these are instances which would demonstrate that Ms. Ojog's right to a fair trial has been affected.

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 Ms. Ojog to a fair trial.
2. Please provide an update on the current status of Ms. Ojog's case. In addition, please provide information on the availability of public defenders for this case.
3. 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 the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular we wish to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy on 15 September 1978.

I recall that Article 14 of the Covenant provides that everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, and that in the determination of any criminal charge against him or her, everyone is entitled to a number of minimum guarantees, including the right to be informed promptly and in detail a language which s/he understands of the nature and cause of the charge against him/her, the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of his/her own choosing and the right to be assisted by a lawyer of one's own choice. The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of nonderogable rights.

I would like to also recall that the Human Rights Committee has noted that "the right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status, whether asylum seekers, refugees, migrant workers, unaccompanied children or other persons, who may find themselves in the territory or subject to the jurisdiction of the State party" (CCPR/C/GC/32, para. 9). The Committee also notes that "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" (CCPR/C/GC/32, para. 21).

The Charter of Fundamental Rights of the European Union also provides for the right to an effective remedy before a tribunal. In its article 47, it notes: "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

The Basic Principles on 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, note 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". (Principle 2)

I further recall that the Human Rights Committee has stated that the right to counsel entails that lawyers should be carry out their functions in private and to communicate in conditions that fully respect the confidentiality of their communications and generally “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34). I further note that article 8 of the European Convention on Human Rights, which protects the confidentiality of all correspondence between individuals, affords strengthened protections when these communications relate to the legal profession. We reiterate that these heightened protections under international human rights law are justified by the fact that lawyers are assigned a fundamental role in a democratic society and that lawyers cannot carry out this essential task if they are unable to guarantee to those that they are defending that their exchanges will remain confidential. Accordingly, indirectly but necessarily dependent upon this essential guarantee is the right of everyone to a fair trial.