

BY (PRIORITY) AIRMAIL

H.E. Klaus Iohannis

President of Romania

Cotroceni Palace 1-3, Geniului Blvd

6th District, 060116, Bucharest

Romania

Email: procetatean@presidency.ro

Amsterdam, 14 June 2021

Re: Conviction and Imprisonment of Lawyer Robert Roşu

Your Excellency,

Lawyers for Lawyers (“L4L”) is an independent and non-political Dutch foundation that seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. Lawyers for Lawyers was granted Special Consultative status with the UN Economic and Social Council in July 2013.

The Law Society of England and Wales (the “Law Society”) is the professional body representing more than 180,000 solicitors in England and Wales. Its concerns include upholding the independence of the legal profession, the rule of law and human rights throughout the world. The Law Society holds special consultative status with the Economic and Social Council of the United Nations since 2014.

On 17 December 2020, the High Court of Justice and Cassation of Romania found lawyer Robert Roşu guilty of participating in the formation of an organized criminal group and of complicity to abuse of office, and sentenced him to 5 years in prison. Lawyers for Lawyers and the Law Society of England and Wales are concerned that his conviction is related to his professional activities as a lawyer.

Mr. Roşu is a partner at the law firm Tuca Zbarcea & Asociatii in Bucharest. According to the information received, the criminal case against Mr. Roşu is most likely related to his professional activities in the ‘Băneasa Farm Case’ regarding the restitution of large plots of land in northern Bucharest to the heir of King Carol II of Romania.

Mr. Roşu, as the latter’s legal representative, secured the restitution, as well as the restitution of other property to different clients through administrative procedures. In December 2015, Mr. Roşu was charged with the formation of an organized criminal group, complicity to abuse of office, influence peddling, and money laundering and placed under house arrest for three months. We believe that Mr. Roşu’s conviction is related to his work as a lawyer, specifically his work on the above-mentioned restitution cases. In March 2016, a judge of the Criminal Division of the High Court of Cassation and Justice found that Mr. Roşu’s actions “*fall within the limits of the activities normally carried out by a lawyer*”. On 11 March 2016, Mr. Roşu was released from house arrest.

However, the National Anticorruption Directorate (NAD) decided that the criminal prosecution against Mr. Roșu should continue and indicted him in May 2016. In June 2019, the Brașov Court of Appeals acquitted Mr. Roșu of all charges, establishing that there was no indication that Mr. Roșu committed any of the crimes with which he had been charged.¹ The NAD decided to appeal the sentence issued by the Brasov Court of Appeals before the High Court of Cassation and Justice. In the view of the NAD's prosecutors, Mr. Roșu was criminally guilty for his "*mere presence*" alongside his client in proceedings before a restitution commission, for using "*an important volume of information referring to legal terminology*", and for excessively "*persuasive*" pleadings.²

On 17 December 2020, the High Court of Justice and Cassation found Mr. Roșu guilty on charges of creating an organized criminal group and complicity to abuse in public office, and sentenced him to five years in prison. Mr Roșu is currently serving his sentence in Rahova prison. On 7 April 2021, four months after the decision was rendered by the High Court Cassation and Justice, the judgment was finally published and served upon Mr Roșu.

We are concerned that Mr. Roșu was found guilty and sentenced to five years imprisonment as a result of being identified with his client³ and are also alarmed by alleged procedural irregularities such as lawyers being asked to testify as witnesses in the case⁴.

We draw your attention to the United Nations Basic Principles on the Role of Lawyers⁵, specifically Articles 16, 18, and 20 which read:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (...) and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

¹ The Court found that "*All the evidence marshalled during the criminal investigation and during the trial phase reveals that the defendant Roșu Robert Mihăiță carried out a normal activity as lawyer of the company Reciplia SRL, without having perpetrated any act of asking or receiving benefits in exchange for a promise to intervene to the competent public officers to dispose the restitution of the assets claimed by the defendant Al României Paul Philippe (...)*", Case no.345/64/2016.

² Ibid.

³ See: Criminal Law Decision No. 382/A/17 December 2020 by the High Court of Cassation and Justice, pp. 352-358. Retrieved from: https://www.clujjust.ro/wp-content/uploads/2021/04/Motivare_ICCJ.pdf.

⁴ See: Criminal Law Decision No. 382/A/17 December 2020 by the High Court of Cassation and Justice, pp. 352-358. Retrieved from: https://www.clujjust.ro/wp-content/uploads/2021/04/Motivare_ICCJ.pdf.

⁵ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly "welcomed" the Basic Principles in their 'Human rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

In view of the above, Lawyers for Lawyers and the Law Society respectfully urge the relevant authorities in Romania to:

- review Mr. Roșu's case and vacate the charges against him unless credible evidence is presented in proceedings that respect international fair trial guarantees;
- release Mr. Roșu pending such review; and
- guarantee that all lawyers in Romania, including Mr. Roșu, are able to practice law without threat, intimidation, hindrance harassment, improper interference or reprisals.

We will continue to monitor the situation in Romania, as well as the situation of other members of the legal profession there.

Yours sincerely,
Lawyers for Lawyers
The Law Society of England and Wales

CC:

H.E. Florin-Vasile Cițu,
Prime Minister
Palatul Victoria Nr. 1
Sector 1, 011791, Bucharest, Romania
Email: pm@gov.ro

H.E. Stelian-Cristian Ion
Minister of Justice
Apolodor Street Nr.17
Sector 5, 030167, Bucharest, Romania
Email: cabinet.ministru@just.ro

H.E. Mihai-Bogdan Mateescu
President of Romania's Superior Council of Magistracy
Calea Plevnei Nr. 141B
Sector 6, 060011, Bucharest, Romania
Email: secretar_general@csm1909.ro

Mr. Diego García-Sayán
Special Rapporteur on the Independence of Judges and Lawyers
OHCHR-UNOG, 8-14, Avenue de la Paix
1211 Geneve 10, Switzerland
Email: SRIndependenceJL@ohchr.org