

Judge Mihai Bogdan Mateescu
President of the Superior Council of
Magistracy
secretar_general@csm1909.ro

Stelian Cristian Ion
Minister of Justice
cabinet.ministru@just.ro

Gabriela Scutea
General Prosecutor
sesizare@mpublic.ro

Brussels, 12 February 2021

Re: Respect for the rule of law and the independence of the legal profession in Romania

Dear President of the Superior Council of Magistracy,
Dear Minister,
Dear General Prosecutor,

I am writing as President of the Council of Bars and Law Societies of Europe (CCBE) which represents the Bars and Law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers.

As part of its activities, the CCBE monitors the defence of the rule of law, the protection of fundamental and human rights and freedoms, including the right of access to justice and protection of the client, and the protection of the democratic values inextricably associated with such rights. The CCBE is also a permanent dialogue partner for the European Union in all matters regarding the legal profession and the rule of law.

The CCBE had been informed of developments in Romania regarding issues which may impact on the free exercise of the legal profession and the principles of the rule of law. In this regard the Union Nationale des Barreaux de Roumanie (UNBR) has raised serious concerns with respect to a number of issues, including the right to a fair trial, professional secrecy and the issue of identification of lawyers with their clients or the crimes of which they are accused.

With regard to certain developments that might violate the right to a fair trial, I would like to underline that the European Court of Human Rights has consistently recognised the fundamental importance of the right to a fair trial. The State is under a positive obligation to take all necessary steps to ensure that the right to a fair trial is guaranteed and that the principle of equality of arms is observed in the course of criminal proceedings. The State is obliged to ensure that everyone who is a party to proceedings must have a reasonable opportunity to present their case to the court under conditions which do not place him/her at a substantial disadvantage vis-à-vis his/her opponent. A fair balance must be struck

between the parties. In light of the aforesaid, the CCBE stresses the importance of the principle of equality of arms in efforts to guarantee the right to a fair trial.

Regarding professional secrecy, in all EU Member States, the law protects from disclosure information communicated in confidence between lawyer and client. Without such protection, the very operation of the rule of law is undermined. Notably, access to justice, the right to a fair trial, and the right to privacy may all be impacted. These rights are protected in numerous domestic and international legal instruments, including the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights. Undermining the confidentiality of lawyer-client communication – whether that confidentiality is founded upon the concept of professional secrecy or (as it is in some jurisdictions) legal professional privilege – means violating international obligations, denying the rights of the accused, and an overall compromising of the democratic nature of the State.

I also wish to refer to the United Nations Basic Principles on the Role of Lawyers which has explicit provisions regarding *“Guarantees for the functioning of lawyers”*. Paragraph 16 of the Basic Principles provides that *“Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; 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.”* In addition, paragraph 18 provides that *“Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”*

The above Principles are essential to facilitate the role and function of a lawyer. Regretfully, the CCBE understands that events in Romania risk violating these Basic Rules. In this regard, the CCBE expects that judges, legislators, governments and international organisations will strive, along with bar associations, to uphold and defend these principles.

In conclusion, the CCBE supports the UNBR in its efforts to uphold the rule of law and the independence of the profession and expresses its solidarity with lawyers in their legitimate demands and expectations for justice, transparency and democratic principles.

The CCBE is happy to cooperate on any aspect of the above or related issues.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. von Galen', with a long horizontal flourish extending to the right.

Margarete von Galen
CCBE President