

## STATEMENT

Paris, February 18, 2021

### **Robert Roşu Continues to be Persecuted for Simply Exercising His Profession**

**The UIA-IROL is expressing its grave concern on the case of Robert Roşu.**

In 2016, we previously protested the circumstances surrounding the search at the head offices of the law firm of Tuca Zbarcea & Asociatii on December 8, 2015 by officers of the National Anticorruption Directorate (NAD.) That search was followed by the arrest on December 10, 2015 of Mr. Robert Roşu, a partner at Tuca Zbarcea & Asociatii.

In our previous statement, we recalled the core principles around protection of confidentiality and the conditions under which searches of lawyers' offices may be carried out<sup>1</sup>.

Today we note that our colleague Mr. Roşu, as well as the legal profession continues to find itself under attack in Romania.

It is our understanding that Robert Roşu has just recently been sentenced to 5 years imprisonment, being found guilty simply for having exercised his profession. He is currently in prison based on a court decision which has been denounced by the representatives of the legal profession and a significant number of colleagues as wrong and abusive.

Previously, Mr. Roşu, having been charged in 2015 with alleged crimes of corruption and placed under house arrest for three months, was finally released by a judge of the High Court of Cassation and Justice, the highest court in Romania. All of the acts and deeds the prosecution considered "criminal" in his case were determined by the judges of the High Court of Cassation and Justice as activities typical of the exercise of the legal profession, falling within the limits of the activities normally carried out by a lawyer. By a decision dated March 11, 2016, the house arrest was therefore invalidated.

However, the NAD, which demonstrated a very specific relentlessness in this case, decided that the criminal prosecution against Robert Roşu should nevertheless continue. It sent the case to court. The Indictment maintained the charges of creating an organized crime group; influence peddling; complicity in money laundering; complicity in abuse of public office resulting in an undue benefit for another person, for the same "criminal acts" as listed in the 2015 Ordinance, i.e., professional activities.

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<sup>1</sup> We referred to the CCBE Code of Conduct for European Lawyers:

*"Confidentiality is [...] a primary and fundamental right and duty of the lawyer.*

*The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.*

*The confidentiality of lawyer-client communications and lawyers' files is protected in international human rights law as part of the right to a fair trial, as well as the prohibition of arbitrary interference with correspondence, privacy and (in this case) home" (Article 2.3).*

We also recalled Recommendation R. No. (2000) 21 of the Committee of Ministers of the Council of Europe to Member States on the freedom of exercise of the profession of lawyers states on *the respect of the confidentiality of the lawyer-client relationship and the fact that exceptions to this principle should be allowed only if compatible with the rule of law*" (Principle I, 6).

After an almost 4-year long criminal investigation and trial, Robert Roşu was cleared of all charges brought by NAD. In a decision dated June 29, 2019, the Braşov Court of Appeals held that the evidence administered during the criminal prosecution phase as well as that presented to the court contains no indication that Robert Roşu committed any of the crimes of which he was accused of.

The Court found that: *“All the evidence marshalled during the criminal investigation and during the trial phase reveals that the defendant Roşu Robert Mihaiţa 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. [...]”*

Notwithstanding that Mr. Roşu had now been cleared of criminal activity on two separate occasions by two separate courts, the Prosecution would not relent. Instead, the Prosecution appealed the sentence, arguing, in essence, that Robert Roşu organized a criminal group because he organized meetings with the clients at the law firm’s offices, and that he was an accomplice to his clients’ alleged crimes by his “mere presence” alongside them in front of an administrative commission, where he used “an important volume of information referring to legal terminology” and provided excessively “persuasive” pleadings.

Based on these arguments, the High Court of Cassation and Justice, on December 17, 2020, found 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.

UIA-IROL is shocked by this most recent reversal of the High Court of Cassation and Justice, and we find the decision questionable on a number of grounds:

- The NAD order of December 10, 2015 makes clear that Mr. Roşu was being prosecuted simply for legitimately practising his work as a lawyer. According to the NAD, their prosecution relied on the argument that Mr. Roşu’s role was essential to the activity of the group and the achievement of the objective; he used his profession and his image in his role as a partner in one of the renowned law firms in Romania; he engaged in the notification procedures of various public institutions; and he concluded the necessary acts and powers of attorney to achieve the objective of the group. In essence, the prosecution’s argument is that because Mr. Roşu - a competent and successful advocate for his clients – was convincing, persuasive and advocated zealously for the interests of his client, he was somehow aligned with and complicit in the alleged charges against them.

In the NAD appeal brief, it becomes even more obvious that Robert Roşu is actually prosecuted for being a convincing lawyer. According to the information received, the appeals brief contains statements such as:

- the fact that complicity can take any form, including the mere presence of a person alongside the perpetrator, so as to give him the guarantee or the confidence that his acts are doomed to succeed.
- by appearing alongside the defendant from Romania before the administrative commission of the ICDPP, by presenting a large volume of information referring to a legal terminology difficult to understand for those without legal training, the defendant largely influenced the decision taken by the members present.

In sum, the Prosecution based its charges on a distorted interpretation of the normal support and representation services a lawyer usually provides to his client. Besides, in identifying Mr. Roşu with the causes of the clients for whom he was acting as counsel, the Prosecution is blatantly violating one of the core principles of the legal profession, that prohibits a lawyer from being identified with his client.

- The NAD summoned as witnesses two judges who had rendered final decisions confirming the legality of the restitution of property. It questioned the judges on their reasoning in making these decisions and on the legality of the decisions they had rendered. They were pressed to repudiate their own final and irrevocable decisions. This constitutes a serious violation of the principles of judicial independence and freedom of judgment which guarantee the independence of the judiciary.
- The discrepancy between the most recent decision of the High Court of Cassation and Justice and its earlier decision in favor of Mr. Roșu, as well as the decision of the Brașov Court of Appeals (also in favor of Mr. Roșu) is inexplicable in view of the reasoning of the latter and the absence of new elements presented by the Prosecution.

No new evidence was brought before the High Court in support of Mr Roșu’s alleged guilt. The appeal brief brought nothing new to the case. The High Court therefore convicted him under conditions that appear to be *prima facie* improper in view of the ECHR jurisprudence which is critical of appeals decisions reversing a lower court decision without carefully weighing all relevant evidence, hearing relevant witnesses, including the defendant and/or the applicant.<sup>2</sup>

Because of the complexity of the case, the decision, which was supposed to be issued on January 18, 2021, was delayed for 30 days. This delay, then, necessarily, delayed Mr. Roșu’s opportunity to gain his freedom, as he remains in prison pending the decision. As correctly stated by the Romanian bar, how can one accuse a lawyer of abuse of office based on the argument that “complicity activities can take any form, including the mere presence of a person with the perpetrator, so as to give the perpetrator the security or confidence that his actions are to be a success”, or find an argument in the fact that the lawyer used legal terms and convincingly presented the situation and handed over documents in support of his statements?

The decision convicting Mr. Roșu should be overturned as the prosecution is wholly without merit. At a minimum, the defense should be immediately informed of the decision, so that Mr. Roșu may appeal the conviction, to an international tribunal, if necessary.

UIA-IROL fully supports the National Association of the Romanian Bars (UNBR) and Romanian lawyers in denouncing the case of Robert Roșu. We also stand with our Romanian colleagues in defense of the rule of law, the right to due process, the freedom of lawyers to practice law independently and the independence of the judiciary, all of which are threatened in Romania.

#### More about the UIA-IROL

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*The Institute for the Rule of Law of the International Association of Lawyers (UIA-IROL) promotes the Rule of Law and supports and defends, in particular, (1) lawyers, judges and human rights defenders who are harassed, threatened and/or persecuted in the exercise of their professions, (2) the independence of the legal and judicial professions, and (3) the UN Basic Principles on the Role of Lawyers, especially in defense of human rights.*

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<sup>2</sup> See for exemple [Arrêt Paixão Moreira Sá Fernandes c. Portugal, requête n°78108/14](#)