



UNIUNEA NAȚIONALĂ A BAROURILOR DIN ROMÂNIA

THE NATIONAL ASSOCIATION OF THE ROMANIAN BARS

L'UNION NATIONALE DES BARREAUX DE ROUMANIE

Dear President Wolff,

Dear guests,

Dear colleagues

My name is Traian Briciu, I am a lawyer, and I am the President of the National Associations of the Romanian Bars.

In all democratic countries, the independence of the legal profession should be an absolute guarantee and a prerequisite for the rule of law and democracy.

Unfortunately, during the last decade, the lawyer profession in Romania faced multiple attacks in terms of interferences both on the independence of the legal profession, and against lawyers individually. Lawyers have been threatened, intimidated, and harassed.

Lawyers are exposed to arbitrary sanctions, including arrest.

In December 2020, the Romanian lawyers protested for the defence of the legal profession, to draw attention to the serious issues affecting the justice and raising serious doubts for the professional future, including the future of justice.

The case of the lawyer Robert-Mihăiță Roșu, convicted in the “Băneasa case”, on December 17, 2020 for having practiced his profession was just the last straw. Since December 17, 2020, our colleague awaits, in prison, for the publication of the motivation of the court order, still unpublished two months (already) since his condemnation.

The Romanian lawyers reaffirm the decision to fight to defend the principle according to which the lawyer cannot be the object of a criminal repression for the affirmations and consultations given based on the interpretation of the law and of the factual situation, regardless of the correct or incorrect nature of the thesis being developed. In the absence of such a guarantee, the right to defence is intimidated and voided of any substance by subjecting the lawyer to the threat of criminal prosecution when associating him with the facts imputed to the person he represents.

The entire profession protested because things happened that went beyond the power of understanding. Our colleague's case was just the spark that ignited the lawyers' protest, against situations that lead to the disregard of the defence. Everybody thought that any of us could have been in the same position. How can one qualify that a lawyer is accused of complicity in abuse of office under the argument that “*complicity activities can take any form, including the mere presence of a person (in this case the lawyer) with the perpetrator, so as to give the perpetrator the security or confidence that his actions are to be a success*”? Or that the lawyer used legal terms and convincingly presented the situation, that he handed over documents in support of his statements, influencing the members of a restitution commission?

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More specifically we protest against the following practices that became systemic in our country:

- Identification of the lawyers with their clients and, by extension, with the political affiliations of their clients or the crimes they are accused of.
- Accusing the lawyers for “crimes of opinion”, for the legal reasoning they considered in support of their client's interests and for actions performed within the normal exercise of the profession.
- Violation of the professional secrecy by summoning the lawyers to hearings as witnesses, in cases against their clients and by abusive searches of their professional premises, from where documents are taken whether those documents are related or not to the investigation.
- The violation of the principle of equality of arms using the practice that became systemic of transmitting the case-file to the prosecution office, in order for it to assess the possibility of formulating and motivating the appeal, in the context in which this right is not equally recognized for the defence; also, there are no guarantees regarding the preservation of the integrity of the evidence in the case-file.
- Accusation of lawyers who have used in the practice of their profession, in front of the authorities, final and irrevocable judgments that have been considered erroneous by the prosecutors.
- The delayed motivation of court decisions, so that the convicted person cannot exercise the remedies provided by law within a reasonable time and is prevented from appealing in front of the international courts.

The Romanian lawyers have protested for a common cause, for the defence of which we now ask for your support. We ask for your help in safeguarding the lawyer's right to practice his profession according to the law, without threats, intimidation, or restrictions.

Our draft resolution is aiming at raising the awareness on the fact that in all the countries that are moving towards populist authoritarianism the first signs of suppression of the rule of law appear when there is repression of lawyers.

We emphasise that the problems identified in the resolution date from many years already, that the Romanian local bars have initiated protests, that could easily lead to the total interruption of the activity, given the threat each of our colleague perceives in terms of the daily practice of the profession.

The principles no. 18 and 20 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 state that

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

(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.”



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We call for your assistance to help us convince the Romanian authorities to ensure that the principle of the independence of the legal profession and the corresponding principles of non-identification of lawyers with their clients and/or causes (Principle 18) and lawyers' civil and penal immunity for relevant statements made in good faith in written or oral pleadings (Principle 20), should never be derogated from as absolute guarantees.

It is for the second time in thirty (30) years that we are seeking for the President's Conference help, given the efficiency of the first endeavour, when thanks to the supportive actions of the Presidents' Conference, a special parliamentary session was convened in Romania, and the Law for the organisation and practice of the lawyer's profession was (finally) adopted.

We strongly believe that a message initiated from the Presidents' Conference, as unique voice of the European profession, could help us to substantially deflate a national conflict that could easily end in a total cease of the professional activity of all lawyers, thus leading to serious blockage of the judicial system.

I thank you for your attention and for the willingness to help your fellow Romanian colleagues.

Traian Briciu

President