



## **Romanian Judges' Forum Association: Answers - Call for input of the Special Rapporteur on the independence of judges and lawyers for the next thematic report on safeguarding the independence of judicial systems in the face of contemporary challenges to democracy**

### **Judges**

- **Have judges played an active role in safeguarding democracy and upholding fundamental democratic rights in your country?**

#### **Romanian Judges' Forum Association:**

In 2017-2019, in Romania, several amendments were made to the laws governing the justice system, which have been argued by international forums to be harmful to the progress on judicial independence. The harmful amendments were hidden among other welcome amendments modernising certain human resources aspects, which made it difficult for non-experts to understand the cumulative negative effects of the reform.

This is the historical context in which the judges (especially Romanian Judges' Forum Association) and prosecutors staged unprecedented protests. For example, in December 2017, more than one thousand judges and prosecutors silently protested in front of their institutions.<sup>1</sup>

In the absence of a rapid legislative solution, given the resistance of the political power to all criticism from relevant international bodies and the decisions of the Romanian Constitutional Court, the remedy for these deviations from the rule of law was to refer to the Court of Justice of the European Union with successive requests for preliminary ruling.

The Opinion of the Bureau of the Consultative Council of European Judges following a request by the Romanian Judges' Forum Association as regards the situation on the independence of the judiciary in Romania (2019) stated that: *"74. Judges certainly have the right to stand against any other policies or actions affecting their independence resulting from new legislation or amendments to the existing one or in the case of discriminatory or selective approaches during the selection or appointment of judges, or political engineering to provide for a decisive role of the dominant political force, for example, during elections/appointment by Parliament, or interference into the judicial administration through executive bodies, for example by the Ministries of Justice, as well as in other cases."*

Public protests, on the steps of the courts or by means of public memos and letters, dialogue with the relevant international bodies (European Commission, European Parliament, Venice Commission, GRECO, Consultative Council of European Judges, Consultative Council of European Prosecutors, European Network of Judicial Councils, MONEYVAL), requests for preliminary ruling referred to the Court of Justice of the European Union, together with internal proceedings (exceptions of

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<sup>1</sup> Details: „900 Days of Uninterrupted Siege upon the Romanian Magistracy A Survival Guide” - [https://www.kas.de/documents/280457/0/900\\_days\\_EN\\_20201202.pdf/2d07e665-a8e3-b003-55c8-a0bae8b4ff6c?version=1.0&t=1609841294482](https://www.kas.de/documents/280457/0/900_days_EN_20201202.pdf/2d07e665-a8e3-b003-55c8-a0bae8b4ff6c?version=1.0&t=1609841294482)

unconstitutionality pending before the Constitutional Court, initiated legal proceedings, repeated calls to all internal public authorities), are legitimate forms of resistance and of struggle for European values.

In the case of Romanian Judges' Forum Association, all these forms have been gradually followed, in the absence of serious involvement of the European Commission in infringement proceedings or for the suspension of legislative provisions with imminent risk to affect the independence of justice, although Romania has been subject to the Cooperation and Verification Mechanism regarding the progress in addressing certain specific benchmarks in the field of judicial reform and the fight against corruption.

Although the desired institutional support in the fight for the independence of justice failed to appear, the solution of the majority of Romanian judges and prosecutors was not to give in, because this meant complicity in the destruction of the values we believe in, and no such attitude was adopted. A proactive attitude was absolutely necessary in such times.

- *Public protests on the steps of the courts of law*

The initiative of 18 December 2017 did not remain an exception, but was only the first large-scale protest (held on the same day in Bucharest, Bacău, Baia Mare, Botoşani, Braşov, Brăila, Călăraşi, Cluj, Constanţa, Craiova, Galaţi, Iaşi, Miercurea Ciuc, Oradea, Piatra Neamţ, Piteşti, Satu Mare, Slatina, Suceava, Târgovişte, Târgu Mureş, Timişoara, Tulcea and Zalău).

On 19 May 2018, hundreds of Romanian judges and prosecutors protested on the steps of the Palace of Justice in Bucharest, with 1911 judges and prosecutors adopting the "Resolution of Romanian magistrates for the defence of the rule of law", calling on politicians to immediately stop attacks on the rule of law and judges and prosecutors in Romania, to urgently consult the Venice Commission on draft amendments to the Criminal Code, the Code of Criminal Procedure and the Code of Civil Procedure, and to bring the laws in line with the requests of the European Commission and GRECO.<sup>2</sup>

On 16 September 2018, hundreds of judges and prosecutors once again demonstrated on the steps of the Bucharest Court of Appeals in favour of the rule of law, demanding a review of legislative provisions likely to affect the independence of justice.

On 19 February 2019, the Romanian Judges' Forum, the Movement for the Defence of the Status of Prosecutors and the Initiative for Justice expressed their extreme concern regarding the amendments to the justice laws under Government Emergency Ordinance no. 7/2019, encouraging large-scale protests by Romanian judges and prosecutors. Hundreds of courts suspended or stopped their work, thousands of judges and prosecutors once again took to the steps of the courthouses. Protests on the steps took place almost daily in February and March 2019.

On 10 March 2019, 30 presidents and vice-presidents of tribunals, as well as presidents and vice-presidents of courts of appeals, called on SCM to stop the magistrates' protests<sup>3</sup>. Moreover, the management of Bucharest Court of Appeals and the gendarmerie staff in charge of guarding the building of this court agreed to intervene, on 19 March 2019, on judges and prosecutors who were freely protesting against legislative changes that seriously affect the rule of law.

On 4 April 2019, representatives of the Romanian Judges' Forum, the Movement for the Defence of the Status of Prosecutors Association and the Initiative for Justice

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<sup>2</sup>For details, see <http://www.forumuljudecatorilor.ro/index.php/archives/3240>

<sup>3</sup> See <http://www.ziare.com/stiri/proteste-magistrati/30-de-presedinti-si-vicepresedinti-de-tribunale-cer-csm-sa-opreasca-protestele-magistratilor-1552961>

Association met in Brussels with the First Vice-President of the European Commission, Mr. Frans Timmermans, in a meeting on the state of justice in Romania. On the same occasion, for the first time in history, 30 Romanian judges and prosecutors protested in Brussels, on the steps of the Palace of Justice (Rond-point piétonnier at Place Poelaert), for the rule of law!

- *Petitions, memoranda, public letters*

The memorandum signed in October 2017 by around 4000 Romanian judges and prosecutors, initiated by Romanian Judges' Forum Association, did not remain singular.

In January 2018, 2163 judges, prosecutors and justice auditors dissociated themselves from the positions of some associations of judges and prosecutors with limited representativeness (the National Union of Judges of Romania and the Romanian Magistrates' Association) expressed in Parliament in favour of adopting the harmful amendments to the justice laws.

In February 2018, 1363 judges, prosecutors and judicial auditors signed an open letter to defend the independence of justice.<sup>4</sup>

On 3 June 2018, around 1000 Romanian prosecutors supported the *Declaration of Independence*, backed by many judges and judicial auditors,<sup>5</sup> calling for respect for the rule of law and the independence of the judiciary.

Also, towards the end of June 2018,<sup>6</sup> around 1500 Romanian judges and prosecutors were asking the Superior Council of Magistracy to defend the independence of the judiciary in relation to the statements made by some politicians at the head of the ruling party in which Romanian judges and prosecutors were labelled as "rats", "corrupt", "Stalinists", "Securitate officers", "torturers".

On 24 June 2019, 1150 judges and prosecutors backed the Appeal addressed by the Romanian Judges' Forum, the Movement for the Defence of the Status of Prosecutors and the Initiative for Justice to the executive and legislative powers to immediately amend the justice laws, in line with the opinions of the Venice Commission.

**• Are judges facing any obstacles, risks, or challenges in your country when fulfilling this role? If so, provide examples, and highlight if judges face particular obstacles, risks, or challenges based on their gender, racial identity, or other characteristics protected by human rights law.**

#### **Romanian Judges' Forum Association:**

Since 2018, the Judicial Inspectorate has been the main tool for pressure and intimidation on Romanian judges and prosecutors, the aim being either to remove them from the office or to silence all those who have objected in some form or another to the legislative amendments made since 2018 to the justice laws, which have contributed to destroying the independence of judges and of the system as a whole.<sup>7</sup> By judgment of 11 May 2023 (Case C-817/21, *Inspekția Judiciară*), the Court of Justice of the European Union confirms the political control of the judicial activity in Romania, carried out through the Judicial Inspectorate, with direct reference to the judges and prosecutors who were subject to pressure and harassment during the reference

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<sup>4</sup> See <http://www.forumuljudecatorilor.ro/index.php/archives/3145>

<sup>5</sup> See <https://www.juridice.ro/584185/declaratie-de-independenta-formulata-de-procurori.html>

<sup>6</sup> See <https://www.romaniajournal.ro/judges-forum-urges-csm-to-defend-the-independence-of-magistrates-after-the-attacks-during-the-psd-rally-diicot-to-file-referrals/>

<sup>7</sup> Details: <http://themis-sedziowie.eu/materials-in-english/romania-using-disciplinary-actions-as-a-tool-of-intimidation-pressure-or-repression-against-inconvenient-judges-and-prosecutors/>

period. The historical part of the judgment of CJEU in case C-817/21, *Inspekția Judiciară*, relates to the concrete assessment of the factual and national legal context that must be taken into account, the CJEU noting the consolidation of the Chief Inspector's powers in the more global context of the reforms regarding the organisation of the Romanian judicial system having object or effect the reduction of guarantees of independence and impartiality of Romanian judges, but **especially the concrete practice followed by the chief inspector in exercising their prerogatives, with explicit reference to the examples mentioned by the European Commission, which can show that the prerogatives of the Judicial Inspectorate have been used, on several occasions, for the purpose of political control of the judicial activity**, some of these examples appearing, in fact, in the Commissions reports to the European Parliament and to the Council of 22 October 2019 and of 8 June 2021 regarding the progress made by Romania within the cooperation and verification mechanism (COM(2019) 499 final, p. 7 and 8, as well as COM(2021) 370, p. 18], **of which the Romanian authorities must take due account**, under the principle of loyal cooperation provided for in Article 4(3) TEU, in order to achieve the objectives pursued by Decision 2006/928 (see paragraph 71 of the decision of 11 May 2023).

The examples of the European Commission include the disciplinary procedures with the proposal of preventive suspension from office until the completion of the disciplinary investigation against judges from the associations of judges and prosecutors who rejected the backward changes from the 2017-2019 period and submitted requests for preliminary ruling to the Court of Justice of the European Union (disciplinary investigation into alleged group conversations in a private group created on a social network – judges Dragoș Călin, Anca Codreanu, Alina Gioroceanu, Cristi Danileț, Laurențiu Grecu -, rejected definitively by the High Court of Cassation and Justice two years after its start), the suspension for 6 months of a judge for public criticising the Judicial Inspectorate and the functioning of the Special Section for the Investigation of Judicial Crimes (judge Crina Muntean), respectively disciplinary investigations initiated in relation to public statements criticising the reforms (judge Cristi Danileț, prosecutor Bogdan Pîrllog), including against the heads of judicial institutions that opposed the forced judicial reform (the Chief Prosecutor of the National Anticorruption Directorate – Laura Codruța Kovesi, the President of the High Court of Cassation and Justice, Judge Cristina Tarcea, respectively the General Prosecutor of the Prosecutors Office attached to the High Court of Cassation and Justice Augustin Lazar, all of which were rejected wither by the disciplinary sections of the Superior Council of Magistracy, or by the High Court of Cassation and Justice). The CJEU clearly admits that these elements of the factual and legal national context brought to the attention of the Court **tend to confirm, rather than to refute, a possible finding that the regulation in question in the main litigation is not designed in such a way that it cannot give rise to any legitimate doubt, in the perception of individuals, regarding the use of the prerogatives and functions of the Judicial Inspectorate as an instrument of pressure on, and of political control over the judicial activity**”(paragraph 72 of the judgments of 11 May 2023).

• Is there a specific role played by the judiciary in democratic elections?

#### **Romanian Judges' Forum Association:**

Romania's electoral laws and frameworks generally provide for fair and competitive elections. This is supported by the Central Election Bureau, which includes judges and

political representatives, as well as the Permanent Electoral Authority, which manages voter registration, campaign finance and logistics.

The Constitutional Court of Romania shall supervise the observance of the procedure for the election of the President of Romania, and it shall confirm the ballot returns. The result of the elections to the office of President of Romania shall be validated by the Constitutional Court. Objections as to the registration or non-registration of a candidacy to the office of President of Romania, as well as to hindrance of a political party or formation, or of a candidate, to carry out electoral campaigning under the conditions of the law shall be resolved by the Constitutional Court, by a majority vote of the Judges, within the deadlines stipulated by the Law for the Election of the President of Romania.

• Are there any policies or institutional arrangements in place to limit the role of judges in safeguarding democracy?

**Romanian Judges' Forum Association:**

See *supra*.

• Are there any additional issues you wish to raise with the Special Rapporteur in this context?

**Romanian Judges' Forum Association:**

No.

• What are the approaches taken to protect judges in this role?

**Romanian Judges' Forum Association:**

Through the Laws of Justice entered into force on December 16, 2022, no real reform of the Judicial Inspectorate was carried out, and the issues considered problematic for the independence of magistrates were not resolved.

Thus, the lack of accountability of the Chief Inspector of Judicial Inspectorate continues to persist. At the same time, the Judicial Inspectorate has, according to the new laws of Justice, the power to challenge before High Court of Justice the decision of the Superior Council of Magistracy-Disciplinary Chambers even when the disciplinary actions brought against judges and prosecutors are rejected.

Similarly, although one of the fundamental rules for the functioning of judicial inspectors must be their operational independence not only from the other powers of the State, but also from the management of the institution, in the sense that no one should interfere with the inspectors' work and in the solutions they adopt, it appears that Law No 305/2022 and the Regulation on the rules for the conduct of inspection work by the Judicial Inspectorate (adopted in 2022) contradict that principle.

• Are there any additional issues you wish to raise with the Special Rapporteur in this context?

**Romanian Judges' Forum Association:**

No.

Please send your submission via email to [hrc-sr-independenceijl@un.org](mailto:hrc-sr-independenceijl@un.org) by 31 January 2024 at the latest, with the subject: Submission to report for HRC 56. Respondents are requested to limit their contributions, in English, French, or Spanish, to a maximum of 2,500 words.

Please accept, your Excellency, the assurance of our highest consideration,

**The Romanian Judges' Forum Association**

judge Dragoș Călin, co-president

judge Lucia Zaharia, co-president

