

NATIONS UNIES
HAUT COMMISSARIAT AUX DROITS DE L'HOMME



UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES ASSUMÉES PAR LE
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES ASSUMED BY THE HUMAN
RIGHTS COUNCIL

Mandates of the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders assumed by the Human Rights Council



REFERENCE: UA G/SO 214 (107-5) G/SO 214 (3-3-12) G/SO 214 (53-20)
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19 July 2006

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders pursuant to Commission on Human Rights resolutions 2005/33, 2005/39, and 2003/64, to General Assembly resolution 60/251 and to Human Rights Council decision 2006/102.

In this connection, we would like to draw the attention of your Government to information we have received regarding Ms **Ana Ursachi** and Mr **Roman Zadoinov**, lawyers. According to the information received:

Ms Ana Ursachi and Mr Roman Zadoinov are respectively the lawyers of Mr Kolibaba and Mr. Gurgurov, two persons who allege having been tortured by the police during detention. The latter two were the subject of communications sent by the Special Rapporteur on Torture, the Working Group on Arbitrary Detention, the Special Rapporteur on the Right to Food and the Special Rapporteur on the independence of judges and lawyers on 10 May 2006, respectively by the Special Rapporteur on Torture and the Working Group on Arbitrary Detention on 23 November 2005. The two lawyers have worked closely with human-rights organizations on torture cases.

On 26 June 2006, the General Prosecutor wrote a letter to the National Bar Association accusing Ms Ursachi, and Mr Zadoinov of misuse of position, which means that they could face a maximum prison sentence of five years or a fine. He referred to the urgent appeals issued in cases of Mr. Kolibaba and Mr Gurgurov and claimed that there was no evidence of torture in either case. He blamed the irresponsible and unfounded oppositional behavior of the lawyers and asked the Bar Association to ensure that they use all possible means at their disposal to prevent further damage to the interests of the state. On 28 June 2006, both lawyers were informed that they faced criminal prosecutions for spreading false information about human rights violations in Moldova.

Regarding Ms Ursachi, her client was released after an urgent appeal launched by an NGO. However, the publicity embarrassed the General Prosecutor, who, in a letter to the NGO on 9 March 2006, stated that the version of events given in the urgent appeal did not correspond to the reality, and gave a bad image of the State. No action was taken against the alleged perpetrators of torture. In the case of Roman Zadoinov, his client was also released on bail after an urgent appeal. At the end of May 2006, the General Prosecutor's Office informed that no criminal case would be started against the police officers accused of torture.

Concerns are expressed that the letter to the Bar Association of Moldova is a deliberate attempt to intimidate Ana Ursachi and Roman Zadoinov and to prevent them and other lawyers in Moldova from carrying out their lawful professional activities for the protection of human rights and in particular against grave human rights violations such as torture.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring your Excellency's attention to the following provisions, and in particular:

- article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Furthermore,, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990. In particular:

- principle 16. 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.

We would also like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, 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, and in particular:

- principle 11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

- principle 15 which states that: "Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences".

We would like to draw your Excellency's attention to the Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (UN General Assembly resolution 55/89 of 4 December 2000, Doc. A/55/89, Annex), also known as the Istanbul Protocol, which states that "alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any form of intimidation that may arise pursuant to the investigation." (Para. 3 (b)).

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Ana Ursachi and Roman Zadoinov?

3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive please explain why.

4. Please provide us with a copy of the letter by the General Prosecutor to the National Bar Association of 26 June 2006.

5. Please indicate on what legal basis Ana Ursachi and Roman Zadoinov have been charged with criminal prosecutions for spreading false information about human rights violations in Moldova, and how this is compatible with international norms and standards and the Declaration on the Human Rights Defenders. Please kindly provide us with a copy of these charges.

We undertake to ensure that your Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Leandro Despouy
Special Rapporteur on the independence of judges and lawyers

Manfred Nowak
Special Rapporteur on the question of torture

Hina Jilani
Special Representative of the Secretary-General on the situation of human rights
defenders