



# General Assembly

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## Human Rights Council

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Agenda item 4

### Human rights situations that require the Council's attention

## Written statement\* submitted by Romanian Independent Society of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 January 2019]

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\* Issued as received, in the language(s) of submission only.



## **The interference of the Romanian Intelligence Service (SRI) in the decisions of Justice and national authorities on asylum and migration**

1. Romania is devastated by the multitude of secret protocols concluded many years ago between the Romanian Intelligence Service (SRI) and the Supreme Court, as well as the higher-level prosecutor's offices. Recently, these protocols have been declassified, and the Constitutional Court has certified the existence of a constitutional legal conflict and denounced the illegality of these agreements, which replaced the legal provisions. This measure will lead to the elaboration of a normative act for re-judging all the cases in which court decisions based on the interference of the secret services, through fictitious denunciations and interceptions have been issued in the act of justice. Having a pretext to fight corruption, the National Anticorruption Directorate from the General Prosecutor's Office was part of the police's political activities alongside secret services, forcing criminal convictions by administering unlawful evidence, using fictional denizens or prison detainees forced by blackmail and threats. The filing of this evidence in the files led to the violation of the right to defence, given that lawyers had no access to the information notes. The real figure of payments in police files is not yet established, but the cases in which payment was ordered are relevant: an audio-video intercepted politician for seven years in public and private life; judge at the Constitutional Court of Romania intercepted audio-video for three years in public and private life; businessman investigated and prosecuted for six years, arrested, imprisoned, cancer patient with rudimentary treatment in detention etc. Following the interceptions and surveillance made by SRI (with costs of 3000 Euro / day, and the Senate chairman has been under surveillance of secret services for 7 years) that have proven to be illegal, falsely based on the undermining of national security, and actions of National Anticorruption Directorate as a political police, there is a refugee status (one businessman in Serbia), with three other asylum applications (one businessman in the United Kingdom of Great Britain and Northern Ireland and two senior dignitaries in Costa Rica) being in pending of the solution from the competent institutions. The Constitutional Court of Romania (CCR) ruled that - by the decisions of the High Court's College of High Court, through which it was established that the composition of the five judges should automatically be the heads of the Supreme Court - the right to a fair trial of the judiciary was affected, but also the impartiality of the judges: *"By imposing some members of the law in the composition of the 5 Judges' Supplements, by means of some administrative acts, latent pressure can be created on the members of the unit, consisting in submitting the judges to their judicial superiors or, at least, a hesitation / lack of desire for judges to contradict them"*. In the statement of reasons for Decision no. 685 of 7 November 2018, the judges of the CCR decided unequivocally that the sanctioning of the "unlawful" completions of five judges - that is, as they existed from 2014 until now - draws the unconditional and absolute nullity of the acts accomplished by these complements. Public statements of people judged by such "illegal" plots of five judges confirm public suspicions about the interference of secret services in the act of justice.

### **In view of the issues presented above, SIRDO requests:**

- Parliamentary scrutiny of secret intelligence services and reforming the legislative framework governing national security and the functioning of secret institutions (Law 51/1991 on national security of Romania and Law 14/1992 on the organization and functioning of the Romanian Intelligence Service);
- Involvement of the Council of Ministers of the Council of Europe, which, on the basis of its prerogatives, will determine the implementation of European Court of Human Rights (ECHR) judgments in their entire applicability, aiming at reforming the secret services in a national unitary framework, an institution with several specialized departments to strengthen the trust of the ordinary citizens; adequate legal framework to define strictly the functions of the services, not a place to interpret abuses; real and effective constitutional

guarantees that this framework does not violate in any way the rights and freedoms guaranteed by international instruments. In this regard, we point the cases *Rotaru vs. Romania*, Application no. 28341/95, Judgment of 29 March 2000, respectively *Bucur and Toma vs. Romania*, Application no. 40238/02, Decision of 8 January 2013, according to which the right to privacy and the right to a fair trial have been violated. The ECHR notes in its decisions the interference of secret services: deficiencies incompatible with the minimum degree of protection desired by the rule of law in a democratic country, the absence of guarantees that information obtained as a result of secret surveillance is destroyed immediately after the original purpose has been reached.

2. Force institutions have exceeded their legal attributions and competencies, interfering with migration, asylum and refugees, using leveraged controls through the Protocol concluded between the Romanian Intelligence Service (SRI) and the General Inspectorate for Immigration (IGI). In order to restore the principles of the rule of law and harmonize national legislation and practice on asylum and refugees to international norms, SIRDO requests the following:
  - Establishment of parliamentary control over the institution of migration and refugees for declassification of the Protocol concluded between the Romanian Intelligence Service and the General Inspectorate for Immigration, as well as the notification of the Constitutional Court of Romania for the unlawful declaration of the activity of the secret services in the field of asylum;
  - The "secret prison" dismantled with approx. 15 years ago, on a full cell and grate floor in the Accommodation and Procedures Center for Asylum Seekers in Str. Tudor Gociu nr.24A, where they are periodically incarcerated and questioned as asylum seekers as undesirable persons;
  - Revision of the Law no. 350 / 2005 on the regime of non-reimbursable financing from public funds allocated for non-profit activities of general interest, amended by the Order of the Minister of Internal Affairs (MAI) no. 10/2017 regarding the modification and completion of the Regulation for organization and functioning of the General Inspectorate for Immigration (IGI), by which IGI, is the sole expert and final beneficiary of European Union funds through the National Program - Asylum, Migration and Integration (FAMI) through a committee whose members are listed on the public list only by their first name and surname, and there is suspicion of interference by secret agents as a factor of influence. IGI participates in the selection of projects with its own experts. The financial existence of NGOs is conditioned by IGI that recommends, among other things, the inclusion in the project staff of IGI retirement reserve cadres that influence, block and control within civil society the assistance activity of asylum seekers / refugees, as well as migrants in public custody.
  - Involvement of the European Union (EU) - through its subsidiary bodies - for:
    - i) breaking the monopoly of a limited number of NGOs, to which asylum seekers express dissatisfaction, especially with regard to medical treatment inappropriate for their special needs; the same 3 NGOs for more than 15 years who operate throughout Romania, without having branches, being mandated by persons with modest training in the field of asylum, to whom are constantly provided funding, and there is suspicion of the protection of these NGOs in the secret services side;
    - ii) support for the decryption of the funding offer "with dedication" and the opening of a fair competition for information and participation of the civil society at the tender for projects;
  - Specialized assistance of EU and UNHCR through transfer of expertise to organize the specialization "Immigration" within the "Alexandru Ioan Cuza"

Police Academy, which will lead to the superior training of the personnel involved in the migration and refugee policy.

3. The General Inspectorate of the Border Police - based on Urgent Governmental Ordinance no. 104 / 2001 on the organization and functioning of the Romanian Border Police - ensures the interests of the Romanian State regarding the observance of the order and the public peace through supervision and control in areas of competence at the land and water borders. The Border Police oversees and controls the crossing of the state border and has its own capabilities to find and investigate criminal deeds through its own judicial bodies, conducts research through its own laboratories and accredited experts, technical-scientific findings and forensic expertise disposed according to the legal norms in force. Given the need to establish safe measures for people in need who need international protection, SIRDO calls for the following:
    - Establishment of parliamentary control over the General Inspectorate of the Border Police for the declassification of the Protocol concluded by this institution and the Romanian Intelligence Service (SRI), as well as the notification of the Constitutional Court of Romania to declare the illegal activity of the secret services in the field of migration. The involvement of SRI in border procedures by interviewing all migrants generates major trauma as migrants are treated as suspects;
    - Transfer of EU and UNHCR expertise to migrants' safety and to prevent abuses at the EU's external borders through the adoption of correct procedures in the context of the migration flow across Romania;
    - Including Romania in a continuous training program for Border Police and Immigration General Inspectorate, in the context of migration and refugee issues being one of the 10 priorities of the European Commission's political program, the 2014-2019 Priority Objective.
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