

INTERVIEW MIT  
**STEFANIE RICARDA ROOS**  
 LEITERIN DES RECHTSTAATEN-  
 PROGRAMM SOE

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## Dialogue for the consolidation of an independent judiciary

**During 2006, the Konrad Adenauer Foundation, through its Rule of Law Programme South East Europe and in association with the Romanian NGO, Society for Justice (SoJust), conducted seminars for judges in seven Romanian cities (Tg. Mures, Cluj-Napoca, Oradea, Suceava, Focsani, Timisoara and Slatina). The outcome of those seminars was a published guidebook on pressure factors and conflicts of interest in the judiciary. The guidebook, and the debates that generated it, are the topic we now discuss with Dr. Stefanie Ricarda Roos, Director of the Rule of Law Programme South East Europe run by the Konrad Adenauer Foundation.**

*How and when was the idea of developing and publishing this guidebook for judges conceived?*

**Roos:** The inspiration for this project and, hence, for this guidebook, emerged a year ago. SoJust approached the Konrad Adenauer Foundation with an offer of assistance in developing and implementing a year long project seeking to address the various influences and pressure factors in the Romanian justice system. We decided to give support to that project for a number of reasons. One of the priorities of the Rule of Law Programme South East Europe is the promotion of judicial independence and impartiality, recognising that an independent justice system is a constitutive element of the rule of law ("Rechtsstaat"), as well as a fundamental right. Romania is party to the European Convention on Human Rights that, in its Article 6, construes that everyone is entitled to a fair and public hearing by an independent and impartial court of law.

*How can an independent judiciary be promoted through a programme such as the Rule of Law Programme South East Europe?*

**Roos:** There are various tools, institutions, and opportunities that help safeguard the independence of the judiciary. Among those are institutional measures (we are mainly speaking here about the Superior Council of Magistracy and, of course, the laws themselves) as well as measures that make the participants in the justice system aware of the need to maintain their independence. We are confident that the independence of the judiciary can only be safeguarded if all such aspects are promoted and upheld to an equal degree. The Rule of Law Programme South East Europe has been designed as a dialogue-programme, and one of the reasons we decided to support this SoJust project was that it is based on a dialogue with the judges.

*What were the stages of the programme?*

**Roos:** Representatives from both SoJust and the Rule of Law Programme South East Europe travelled to courthouses in seven Romanian cities: Tg. Mures, Oradea, Cluj-Napoca, Suceava, Focsani, Timisoara and Slatina. There, in co-operation with the courthouses, we organised one-day seminars with 15 to 20 attending judges. The first half of every such seminar was dedicated to introductions and general debates, and the second half to addressing specific case studies. The mass-media was not present at the seminars.

*Why were journalists not invited to such meetings?*

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**Roos:** We decided not to allow the mass-media at the meetings because the intention was to create a forum for a candid, open, and uninfluenced dialogue. All judges who attended were of the opinion that the mass-media is a factor of pressure and influence, therefore we thought that, for that first phase of our project, the absence of the mass-media would foster a smoother dialogue. In addition to the participating judges and members of SoJust, one representative from the CSM and one from the Ministry of Justice were also invited.

#### **Mediators of the inter-institutional dialogue**

*How did those seminars go?*

**Roos:** If we think about the fact that there are some 4,000 active judges in Romania at present, you might believe that our seminars involved only a small part of the profession. We focused our efforts on those areas for specific reasons. First, we chose those cities because judges in those geographic areas had not received an opportunity to discuss these issues in the past. The majority of the judges who attended the seminars told us that it was the first time that they were given the opportunity to talk to their colleagues about the pressure and influence factors that affect the work of a judge and the independence of the judiciary. This was also the first opportunity they had received to study case examples which would help them to handle such pressure and influence factors.

*What was the general atmosphere of those debates?*

**Roos:** At every seminar, we watched the reservations and tensions that appeared to exist at the beginning decline during the day. That boosted the dialogue and removed some participants' initial reluctance to talk to their peers. The judges not only raised technical matters – whether or not they had a computer at their office, what their wage is, how many judges sit in their courthouse, what the daily caseload is – but they also approached principles and topics going to the very core of the act of justice.

The second aim that we fulfilled originated with the idea that an independent justice system could be successfully guaranteed only if all of its actors co-operate. One of my observations last year was that the various institutions and organizations, both governmental or societal, appeared to be rather reserved as to their co-operation with other institutions that have as part of their responsibility the safeguarding of an independent judiciary. Through our project we have sought to establish a forum which gathers representatives of all institutions at the same table to have an open, critical, and objective dialogue, jointly addressing the challenges to the guarantee of independent justice and the opportunities to improve that particular aspect. Apart from judges, we invited a member of the Superior Council of Magistracy (CSM) and an official from the Ministry of Justice to each of our seminars, as well as a number of people representing the civil society – by civil society I mean members of SoJust. The best example is the seminar in Slatina which, besides Lidia Barbulescu, member of the CSM, was also attended by Minister of Justice Monica Macovei. The beginning of the seminar was rather tense, and there were obvious reservations on all sides. After two and a half hours, we nevertheless managed to create the kind of climate that encouraged a constructive dialogue among the participants with notable and helpful outcomes regarding the improvement of the independence of the judiciary. That was mainly thanks to the young judges in attendance, who refused to be influenced by the polarising situation, kept their discussion of existing issues objective, inquired after possible solutions, and offered solutions themselves. The seminar I am referring to took place in November last year and was also attended by a foreign expert, Mr. Christian Schmitz-Justen, judge with the Court of Appeals of Cologne. He stated that, if there was still need for yet more proof that Romania was ready to join the EU, that seminar had been more than eloquent. The Rule of Law Programme South East Europe does not intend to, nor can it actually impose, specific measures on a country like Romania. We only undertake the role as 'mediators' – we can facilitate a forum of

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representatives of those institutions. To succeed, it is crucial that we co-operate with all institutions involved. It is equally important to understand that our programme is not the extended arm of a non-government organisation, of the CSM or of the Ministry of Justice, and that our objective is to promote the independence of the judiciary, and that objective can only be attained if we are able to co-operate with all those institutions to an equal extent.

Our third objective was to produce a concrete and tangible result – a guidebook for judges on pressure factors and conflicts of interest in the justice system. Based on our research and on the opinions of the CSM members, that was the first publication dedicated to judges in Romania that defines independence and impartiality. Another novelty about the guidebook is that it lists pressure and influence factors as well as legal tools and measures that help prevent conflicts of interest and remove pressure factors impairing justice in Romania. CSM member Alexandrina Radulescu, who was invited to one of the seminars as an expert, stressed the fact that, from her point of view, the guidebook was an extremely important resource as it had defined for the first time a referent that had been the subject of comprehensive debate but that was still unclear. The guidebook is by no means exhaustive and it is not the 'Bible' of an independent judiciary either. The responsibility for the document belongs to the three authors (SoJust members Horatius Dumbrava, Dana Cigan, and Cristi Danilet).

1,000 copies have been printed, and will be sent to all cities and towns where there are judges. The guidebook was also intended as a starting point prompting further debate. It is my hope that the dialogue that we initiated at our seminars will be taken further by the judges themselves.

#### **Pressure factors**

*Thinking of the debating during the seminars, what were the main issues that were raised by the judges?*

**Roos:** The judges indicated a constant state of awareness of the pressure factors. For

example, there are material pressure factors such as low pay. Other pressure factors that were frequently mentioned were the mass-media and the lack of a unified case law. The judges did discuss all those things; however, the willingness to debate on them varied from city to city and from person to person. A critical point made at many of the seminars was that judges did not feel that they were represented by any institution of the state. The general feeling was that they stand somewhere in between the Ministry of Justice and the CSM, which makes them victims of the tension dividing the two cited institutions. That was the only aspect specific to Romania that I was able to notice. The German expert who attended the seminars told me that all the other pressure and influence factors could be found, to distinct degrees, in any country.

*Did the participants in the seminars suggest that the identified issues could be solved by codes of ethics rather than by legal measures?*

**Roos:** The answers varied a lot and were always dependent on the particular pressure factors in that city. If we refer to legal measures, which are sometimes called disciplinary measures, there might be a risk that they become an interference with the independence of the judiciary. At the same time, the participants realised that a code of ethics without penalties would take a very high degree of responsibility and awareness on behalf of the judges.

Interview conducted by Razvan Braileanu