

OSCE / Right to a Fair Trial: The European Arrest Warrant in the Dock (HRLNWF)

OSCE Human Dimension Implementation Meeting

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Working Session 13: Rule of law II / Right to a fair trial

The European Arrest Warrant in the Dock

Recommendations concerning the European Arrest Warrant

Considering that not all EU countries have fair legal systems and the EAW is vulnerable to abuse;

Considering that the EAW's own authority is being undermined while innocent people can be imprisoned for months, have their reputations destroyed and their lives ruined;

Considering that the EAW is sometimes operating in a legal black hole;

***Human Rights Lawyers Network* recommends that the functioning regulations of the EAW system be revised so that:**

- the EAW can only be used for the most serious crimes;
- "wanted person" alerts can only be circulated throughout the EU with its stamp of approval after examination of possible abuses ;
- the EU member state requested to hand over a "wanted person" keeps sufficient margin of appreciation in its decision-making process;
- victims of abuse can have access to redress mechanisms

through a fair, open and impartial process.

***Human Rights Lawyers Network* recommends that the OSCE and the Council of Europe bring possible cases of abuse of the EAW to the attention of the EU.**

***Human Rights Lawyers Network* recommends that Romania**

- does not prosecute opposition newspapers because they criticize the authorities;
- ensures the rule of law and fair trials in line with EU standards and values;
- guarantees the independence of the judges;
- makes sure justice is not misused for political purposes and settlements of scores with opposition leaders and free media;
- cancel the European Arrest Warrant issued against Alexander Adamescu, the owner of *Romania Libera*.

In 2015 alone, the ECtHR delivered 72 judgments (each citing at least one violation) against Romania, the highest number of any EU member state. Among the 47 member states of the Council of Europe, Romania ranked the third highest human rights abuser after the Russian Federation (109 judgments) and Turkey (79 judgments).

Worryingly, 27 of the violations in Romania were for inhumane or degrading treatment of prisoners (Article 3), with many relating to the appalling conditions and treatment in Romanian prisons. In thirteen cases, the violations were due to the lack of effective investigation and in another thirteen cases to the lack of a fair trial. (See ANNEX)

The case of *Romania Libera* and Alexander Adamescu



In January of this year, businessman and owner of the *Romania Libera* newspaper Dan Adamescu died in a hospital in Bucharest following mistreatment in prison by the Romanian state. He was 68. His family said that the conditions in which he was held, and the lack of medical care afforded to him, contributed to his early death.

Dan Adamescu had financed *Romania Libera* after its relaunch as independent newspaper in 1990. Founded in 1877, the newspaper is one of the oldest in Romania. After the fall of communism, it had been a staunch supporter of democracy, the rule of law and had continually exposed corruption in Romanian politics and bureaucracy.

In May 2014, Dan Adamescu was imprisoned in Romania, and sentenced to four years and four months on alleged charges of bribery and corruption, which he and his family vehemently denied. The Adamescu family contends that Dan was falsely convicted on trumped up charges because the Romanian state wanted to control the newspaper and expropriate their businesses.

After Dan Adamescu's incarceration, his son **Alexander Adamescu**, who lives in the UK, began to run the family's business, including the newspaper *Romania Libera*, and to fight for justice for his father. He soon became a target for the Romanian authorities as well.

On 13th June 2016, **Alexander Adamescu**, who is a German citizen, was arrested in London on the basis of a European Arrest

Warrant (EAW) issued by the Romanian government which accuses him of complicity with his father in allegedly condoning bribes to judges. Bucharest asked for his extradition.

Alexander Adamescu denies the charges. He claims that he and his family are being politically persecuted by the Romanian Government because they criticize it in their newspaper *Romania Libera*.

The arrest in London of Alexander Adamescu was the result of investigations by prosecutors of Romania's National Anti-corruption Directorate (DNA).

On 4 May 2016, a first instance court in Bucharest ruled that he should be arrested. His lawyer challenged that decision on procedural grounds on 19 May 2016 but within a couple of hours, Alexander Adamescu had a new arrest warrant issued against him. The DNA had managed to get a new judge handpicked and allocated to their request despite Romanian constitutional rules that court cases must be distributed randomly. Alexander Adamescu was summoned at the door of the court at 13:00 for a hearing at 13:30. The court then backdated the time from 13:30 to 11:00 to give the impression that Alexander Adamescu had been given sufficient time to appear. His lawyer rushed to court unprepared and made his plea as best as he could. Within thirty minutes after the end of the hearing, Alexander Adamescu's new arrest warrant was on the electronic court register. The new judge had read 37 lever arch files of prosecution material, deliberated on the arguments of both sides, taken a decision, admitted a new arrest warrant, and also found the time to file his decision on the court electronic system within that thirty minute window!

On 29th March 2017, the International Centre for Settlement of Investment Disputes (ICSID)* stated in a dispute opposing Alexander Adamescu's Dutch holding company Nova Group Investments, B.V. v. Romania (Case No. ARB/16/19):

1. The Tribunal recommends, pursuant to Article 47 of the ICSID Convention, that **Romania withdraw (or otherwise suspend operation of) the transmission of European Arrest Warrant Ref. 3576/2/2016 by the Romanian Ministry of Justice** and associated request for extradition submitted to the Home Office of the United Kingdom on 6 June 2016, **and refrain from reissuing or transmitting this or any other European Arrest Warrant or other request for extradition for Alexander Adamescu** related to the subject matter of this arbitration until the Final Award in this case is rendered.

Alexander Adamescu is a 38-year old playwright. He is now residing in London with his wife and three young children where he studies at the Royal Central School of Speech and Drama.

The UK has not deported yet but his extradition could be implemented at any time.

2015	Judgments finding at least one violation					Other Articles of the Convention																								
	Total	Total	Total	Total	Total	2	2	3	3	3	3	4	5	6	6	6	7	8	9	10	11	12	13	14	PI-1	PI-2	PI-3	PI-4		
	Judgments finding at least one violation	Friendly settlements/Out-of-court judgments	Other judgments*	Right to life – deprivation of life	Lack of effective investigation	Inhuman or degrading treatment	Lack of effective treatment	Prohibition of torture	Conditional violations*	Prohibition of slavery and forced labour	Right to a fair trial ¹	Right to liberty and security	Length of proceedings	Non-enforcement	No punishment without law	Freedom of thought, conscience and religion	Freedom of assembly and association	Freedom of expression	Right to marry	Right to an effective remedy	Prohibition of discrimination	Protection of property	Right to education	Right to free election	Right not to be tried or punished twice	Other Articles of the Convention				
Albania	7	7												2	1	5									4	5				
Andorra	0																													
Armenia	8	8						2	1				1	5				1				1		2						
Austria	8	5	2	1									1	1	2			1					1							
Azerbaijan	19	19							1	4			7	2				2			2		1		3		6	2		
Belgium	13	11	1	1					3	1	1		3	5									2							
Bosnia and Herzegovina	3	2	1										1				1									1				
Bulgaria	32	28	2		2		2	1	10	5			3	5		3		3	2	1			9		6		2			
Croatia	25	17	8			1		2	3				4	5				6									2			
Cyprus	6	5		1									8	1									1	1						
Czech Republic	4		2	2																										
Denmark	0																													
Estonia	5	3	2											2	1			1					1		1					
Finland	7	5	2												1					1								3		
France	27	17	10					2		3		2	6		1		1		3			1								
Georgia	4	2	1		1												1								2					
Germany	11	6	5										1	3			1		2				1							
Greece	47	43	4						12			1	5	5	20	1				1	2		24	1	1	1		1		
Hungary	44	42	2			1	1		6				3	1	21								12	2	9					
Iceland	1	1																			1									
Ireland	0																													
Italy	24	21	3					1	1	1			7	1		1	1	6					2		7			1		
Latvia	7	6		1					1				4					2		1										
Liechtenstein	2	2												1	1															
Lithuania	14	9	2	1	2				1					1			1	1						1	4					

1. This table has been generated automatically, using the conclusions recorded in the metadata for each judgment contained in HUDOC, the Court's case-law database.
 2. Other judgments: just satisfaction, revision, preliminary objections and lack of jurisdiction.
 3. Cases in which the Court held there would be a violation of Article 3 if the applicant was removed to a State where he/she was at risk of ill-treatment.
 4. Figures in this column may include conditional violations.
- * Four judgments are against more than one State: Belgium and the Netherlands; Republic of Moldova and Russian Federation; Russian Federation and Ukraine; and Slovenia and Austria.

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