

# Cour européenne des droits de l'homme: Affaire Bivolaru c. France (SPINOSI & SUREAU)

2017 Mandat arrêt européen - Affaire Bivolaru

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## Case of Jaroslav Dobes and Barbora Plaskova: Report of Legal Expert (Dr. Athanassios Pantazopoulos)

**REPORT OF LEGAL EXPERT**

**Dr. Athanassios Pantazopoulos**

[Link to full report](#)

*Excerpt:*

“Taking into consideration the Joint Decision of the Department of Justice rejecting the Motion for Reconsideration and the Motion for Bail (release) for lack of merit, stating that Mr. Jaroslav Dobes, Ms. Barbora Plaskova and her minor son Bono Plasek are not refugees and ordered the deportation procedure to be continued and the factual information/reports provided to me by the legal representatives/Attorneys (LIBRA LAW- Dr. Glenn Mendoza) of Jaroslav Dobes and Barbora Plaskova

related to the arrest and detention of Jaroslav Dobes and Barbora Plaskova and the attempt of forcible and illegal abduction of Jaroslav Dobes to the Czech Republic and the opinion/answer to inquiries of their legal representatives/attorneys (Libra Law-Glenn Mendoza), dated October 27th, 2015 and the Affidavits as mentioned above of Jaroslav Dobes, Barbora Plaskova and Marichona E. Siron, where they state and confirm that Jaroslav Dobes was forcibly abducted in the evening of June 10, 2015, handcuffed and taken to the airport for transport to Prague, Czech Republic via Turkish Airline. As revealed in the Turkish Airline record, the plane ticket for passenger Jaroslav Dobes was purchased in Prague on June 4, 2015, or six days before the illegal deportation attempt on June 10, 2015, or even before the DOJ (Department of Justice) could resolve the application for his refugee status. With the deportation attempt carried out without any valid authority, there is every reason for applicants to fear for their lives and safety if deported to the Czech Republic. If only for this, there is also every reason for the DOJ (Department of Justice) to afford protection to the applicants, the fear of persecution being real, wellfounded and fully justified. The same incident verifies in his Affidavit in front of the notary public, dated July 31st 2015, Jaroslav Dobes and states in a very detailed description how the *“Czech authorities involved have violated the International Law and the principles governing refugees and disrespected the authority of the RSPPU (Refugees and Stateless Persons Protection Unit) and the Honourable Secretary of Justice because the attempt of illegal deportation was conducted pending resolution of his request for recognition of the refugees status”*. He also describes how due to immense fear of the situation, the stress and lack of proper nutrition caused by almost a month detention, he collapsed at the airport terminal. The same incident verifies also Barbora Plaskova, who provides also in her Affidavit, in front of the Notary Public dated July 31st 2015, evidences of the issued tickets (under point 12 of the Affidavit). *“She*

*claims that the abduction and attempted deportation dated June 10th, 2015 is a serious manifestation of the Czech government's involvement and grave intention to persecute us".* Furthermore, this incident is also confirmed by Marichona E. Siron in her Affidavit in front of the Notary Public, dated July 30th, 2015. *She also provides evidences (under point 16 of the Affidavit) of the issued tickets under the name of Jaroslav Dobes for scheduled flight on June 10th, 2015 at 08.50 P.M. from Manila- Istanbul-Prague.* Furthermore, I took also into consideration the reports of the Administrative authority – VV Manila (Czech Consulate in Manila), provided to me by the legal representatives/Attorneys (LIBRA LAW- Dr. Glenn Mendoza) of Jaroslav Dobes and Barbora Plaskova and the answer of the Ministry of Foreign Affairs of Czech Republic. I have been also requested to give my opinion on whether the Czech Authorities have provided the necessary protection to the above mentioned Czech citizens and if their attitude and information to the Philippine Authorities were impartial, accurate, complete and objective.

According to the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe says (art. 6.2): **“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”.**

According to the Universal Declaration of Human Rights, article 11, states: **“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”**

According to the **CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION Art. 48** *Presumption of innocence and right of defence*

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has

been charged shall be guaranteed.

It is obvious the lack of protection on the part of the Czech consular authority, which on the one hand says (report, dated May 5th, 2015) that *"It is without any doubt that the Czech Republic is a free, open and democratic country, respecting principles of human rights, including the right for impartial jurisdiction and freedom of religion. The criminal charges against Ms. Plášková are not connected with her religious believe or linked with any illegal oppression beside the police or any other executive authority of the Czech Republic Her request for being recognized as a refugee is absolutely baseless and purposive."* but on the other hand mentions, in the same report to the Department of Justice of the Philippines, without objective and impartial judgment, as befits any Authority, representing the State that *"As her criminal case was subject of general public awareness and related information about the procedure, including the sentence for Ms. Plášková to almost 10 years imprisonment, were broadly published in the media it is without any doubt that she was well aware about these and was intentionally hiding in the Philippines in order to escape the jurisdiction of her home country."* This reference is not objective and impartial, because does not content the crucial information, not even in a supplement, that **the judgment of the court of first instance was canceled in its entirety** by the High Court in Olomouc. The Administrative authority – VV Manila also refers to ***the criminal case as subject of general public awareness and to the image of the case, as presented by the media*** and **does not provide objective, accurate, true and factual information and in that way demonstrates the bias of the administrative authority against Mr. Dobeš and Mrs. Plášková**. This is in a democratic society, where the rule of law prevails, unacceptable! The Administrative authority – VV Manila should act impartially and objectively without relying on the media but only on factual, accurate and objective information. Moreover, the Czech Ministry of Foreign Affairs

in his answer, dated February 12th, 2016, supported the Czech Consulate in Manila and in that way did not respect the fundamental right of “*presumption of innocence*” and also the fundamental principle “*of objective, accurate, complete and impartial judgment*”.

Furthermore, according to the decision of the Department of Justice in Manila “to our mind, mean that there is no judgement of acquittal with respect to the alleged multiple crimes of rape and that the case was returned to the court of first instance to try it again and rule on it. Therefore, the applicants are still subject to criminal prosecution before the proper court in the Czech Republic, which is part of according them due process, in addition to the fact that they are ably represented by counsel. Applicants must face to courts of justice in order to properly defend themselves. This Department will not allow individuals to use the system of refugee status determination in order to evade lawful prosecution of individuals under the guise of claiming to be refugees”...”

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## **Fighting Corruption with Con Tricks: Romania’s Assault on the Rule of Law (David Clark)**

### **Executive Summary**

Democracy in Europe is facing its greatest challenge since the fall of the Berlin Wall. The threat comes not only from the

rise of political movements that openly reject liberal democratic values, including the governing parties of Hungary and Poland, but also from the risk of creeping authoritarianism caused by a gradual decline in standards of governance and the weakening of important democratic underpinnings, such as the rule of law.

Romania is a country of particular concern. Although it has earned international praise for its recent efforts to stamp out corruption, a detailed examination of Romania's anti-corruption activities shows that they often provide convenient cover for acts of political score settling and serious human rights violations. The methods used show a considerable degree of continuity with the practices and attitudes of the communist era.

The strong correlation between those targeted for prosecution and the interests of those in power is indicative of politicised justice. Cases have often been accompanied by campaigns of public vilification designed to maximise their political impact. Far from being above politics, Romania's National Anti-corruption Directorate (DNA) is an active participant in its partisan struggles.

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Although the rule of law requires the justice system to work independently of government, there is clear evidence of collusion between prosecutors and the executive in Romania. It is apparent that politicians continue to exert considerable operational influence over the DNA using their control of key appointments and that high-profile investigations have been

politically directed.

There is growing concern about the covert role of the intelligence services in directing anti-corruption prosecutions. The Romanian Intelligence Service (SRI) carries out 20,000 telephone intercepts on behalf of the DNA every year, initiates DNA investigations and, in its own words, regards the judicial system as a "tactical field" of operations. The government has refused to investigate allegations that the SRI has infiltrated the judiciary and prosecution services.

Both the SRI and the DNA have been criticised for undermining judicial independence. Judges who fail to do the DNA's bidding and rule in its favour have themselves become targets of investigation, while those deemed friendly to its interests have seen their loyalty repaid. A pliant judiciary willing to bend the rules helps the DNA to maintain extraordinary conviction rates of 92%.

Methods routinely employed by the DNA amount to serious abuses of process that would cause outrage in most democratic countries. These include parading those arrested in handcuffs for the benefit of the media, threatening the relatives of suspects with indictment as a form of leverage, offering suspects immunity in exchange for implicating someone more senior and newsworthy, remanding defendants in detention for long periods in order to punish and stigmatise them and systematically leaking evidence to the media to prevent a fair trial.

Important principles of justice enshrined in the European Convention on Human Rights and the EU's Charter of Fundamental Rights are being routinely violated as part of Romania's anti-corruption drive. These include the right to a fair trial, the right to a presumption of innocence and protection from inhuman and degrading treatment.

These infringements of human rights standards ought to be a matter of serious concern to Romania's international partners. Actions should include the following:

- The EU should maintain monitoring as part of the Co-operation and Verification Mechanism and supplement existing performance indicators with additional tools designed to assess the impact of anti-corruption policies on human rights and standards of justice.
- The European Commission should trigger its Rule of Law Mechanism designed to deal with emerging systemic threats to the rule of law within the EU.
- US State Department human rights reporting should reflect increased concern about the consequences of Romania's approach to fighting corruption.
- The UK should reform or replace the European Arrest Warrant (EAW) to include stronger human rights safeguards. Two recent cases have highlighted the ability of the Romanian authorities to use the EAW to pursue politically motivated legal actions through the UK courts.
- Pending a change in the current system, UK co-operation with Romania under the EAW should be suspended.

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# European Arrest Warrant: Adamescu Case (HRLNWF)

## EUROPEAN ARREST WARRANT: ADAMESCU CASE

5 September 2017

### CASE BACKGROUND

Alexander Adamescu, a writer resident in London since 2012 with a German passport, is facing a European Arrest Warrant (request for extradition) issued by Romania. Alexander has been educated at the Paris Sorbonne, Humboldt University Berlin and NYU. He is also a graduate from the Royal Central School of Speech and Drama in London.

1. Alexander is the son of Dan Adamescu, a businessman of Jewish origin, who emigrated from Romania in 1979 to West Germany, where he started a real estate business from scratch. Upon his return to Romania he built a business empire in the 1990s and 2000s (The TNG Group – TNG) out of the ashes that Nicolae Ceaucescu's brutal communist dictatorship left behind when it collapsed. The jewel in the crown of TNG became Societatea de Asigurare-Reasigurare Astra S.A. ("**Astra**"), a crumbling State owned insurance company, stripped of assets and beset by old-guard cronies drinking from the company trough. Dan Adamescu transformed it into a nimble and inTNGtive market leader. Through his leadership TNG also acquired interests in Unirea Shopping Center, now Bucharest's leading shopping mall, the Intercontinental hotel, Bucharest's tallest building and a landmark and – in what would prove to be the poisoned chalice – the country's most venerable and widely respected, pro-democracy, editorially fearless newspaper, *România Liberă*.

2. Dan Adamescu kept a low profile and tried to stay out of the spotlight. But his support for Western liberal democratic values, and TNG's ownership of Romania Libera, ultimately brought him and TNG into the political cross-hairs.
3. In 2012 Romania's Prime Minister, Victor Ponta, failed to depose the country's President, Traian Basescu. To accomplish his coup, Ponta even issued an eleventh hour, unconstitutional emergency order to antidemocratically amend the country's voting rules. Ponta blamed his defeat on the *"deontologists" at România Liberă who still today hold lectures of morality to everybody*", and by extension on Dan Adamescu whom he perceived to be a financial supporter of the newspaper and the President, and, therefore, one of the chief architects of Ponta's [\[1\]](#)
4. Ponta had the will and the means to exact revenge.
5. By no later than Q3 2013, Ponta and other powerful State actors launched a pre-meditated and coordinated campaign to get TNG and the Adamescus. In December 2013, Ponta convened a high level meeting. The meeting included Laura Kovesi, the head of the  *Direcția Națională Anticorupție* (the **"DNA"**), which is the State's exceedingly powerful anti-corruption authority. It also included Petre Toba, then chief of the national police force, and Cristian Bizadea, the Deputy General of the Romanian intelligence Service (the **"SRI"**), the much-feared internal State security service that is the contemporary manifestation of Ceausescu's nefarious Securitate. [\[2\]](#) At the meeting they decided specifically to target TNG and the Adamescus:

"Prime Minister Ponta declared that he had received "reliable intelligence" from the SRI... that [Dan Adamescu] and his son, [Alexander Adamescu], through their control of the influential

national daily broadsheet Romania Libera, represented a risk to national security because the media outlet had been used to attack and undermine the government, and because its owners – [Dan Adamescu and Alexander Adamescu] – were foreign nationals.” [\[3\]](#)

6. Thereafter, various State agencies picked up threads of issues that had been trailing Astra and other TNG assets and twisted them into a noose around TNG’s neck.
7. First, the Romanian financial services regulator (the CSA, later replaced by the ASF), sharply pivoted in its approach to Astra. It changed from an appropriately constructive relationship with Astra to a harshly prosecutorial one, in which it wrested control of Astra from TNG and the Adamescus.
8. At the time Astra was in the midst of addressing deficiencies that the CSA had identified in a comprehensive, four month inspection in mid-2013. The CSA/ASF had raised no complaints in response to Astra’s frequent progress reports from September to December 2013. Yet in January 2014 the ASF, newly established by Ponta, suddenly asserted that it needed more information. Instead of simply requesting it from Astra, the ASF launched another unannounced inspection.
9. During that hastily conducted review the ASF made impossible demands on Astra’s staff to produce information without any time to do so. It issued a damning report filled with unsupported conclusions and errors, and gave Astra just two days to comment on it. The ASF also championed a trumped up claim by CNADNR, the State road agency, who absurdly demanded payment on a performance bond for a contractor’s default when the CNADNR had not even alleged that it had suffered a loss. [\[4\]](#) Strikingly, the CSA had previously refused to interfere in this very claim on the basis that it could

not “*intervene in the contracting relationships between the insured and the insurer, established by the parties’ free will*”.[\[5\]](#) That had changed by the start of 2014.

10. Despite the lack of genuine justification for such an extreme step, on 28 February 2014 the ASF imposed “special administration” on Astra. That had the effect of removing the Adamescus from the management of the company that was 99% owned by TNG.
11. Second, the DNA seized the opportunity presented by a long running judicial corruption case to contrive criminal charges against Dan and Alexander Adamescu.
12. One of the people implicated in the DNA’s judicial corruption case was a TNG employee. Unbeknownst to TNG’s management, he had embezzled substantial funds from the Group, in effect more than 100,000 EUR. The DNA turned the embezzler into the star – and, in critical respects, the only – witness against the Adamescus. That allowed the DNA, along with compliant SRI and DNA-fearing judges who made shocking statements revealing prejudgment of Dan Adamescu’s guilt, and to publicly and humiliatingly detain Dan Adamescu when he was most needed to promote Astra’s recovery plan.
13. The evidence presented in the bribery proceedings was woeful. It consisted of no physical evidence tying Dan or Alexander Adamescu to any bribery. It instead rested almost entirely on the uncorroborated testimony of the compromised witness, who saved himself from prosecution by implicating the Adamescus. Despite countless hours of wiretaps, the DNA caught barely any mention of Dan Adamescu in all of those conversations, and certainly nothing that actually incriminated him; and they caught no mention at all of Alexander Adamescu.
14. Dan Adamecu’s trial was not trial at all. He was

declared guilty by the judge on his first appearance in court on 6 June 2014, in complete disregard of the presumption of innocence. He was repeatedly refused bail on the basis that he was a foreign national and that he continued to deny the allegations against him. Consistent with the DNA's eye-catching 92% conviction rate, a Romanian court convicted Dan Adamescu. It sentenced him to a long prison term, which ultimately led to his tragic and entirely preventable death while in custody.

15. Third, the ASF petitioned the DNA to commence an "abuse of office" criminal case against the Adamescus based on their leadership of Astra. In connection with that case the DNA imposed asset sequestration orders on most of the rest of TNG's property in Romania. That was done with the expectation that convicting either Dan or Alexander Adamescu for abuse of office would lead to the forfeiture of that property to the Government – including *România Liberă*.
16. Dan and Alexander Adamescu are the victims of a political witch hunt arising from their connection with The Nova Group and its Astra and Romania Libera investments. As described by the DNA Witness, the DNA was called upon to carry out a "*greenfield investigation*", suggesting "*a strong bias against the targets*" – the Adamescus. These are made-to-order criminal proceedings in which "*DNA senior people did not hide from [their teams] their strong interest in finding stuff to incriminate the targets*".[\[6\]](#)
17. So within just six months of a December 2013 meeting among the Prime Minister, the SRI and the DNA, suddenly TNG was in dire straits: Astra was branded as insolvent and placed under special administration; Dan Adamescu was dragged away in handcuffs on national television and incarcerated; and Dan and Alexander Adamescu faced false

but daunting criminal charges that were being pursued by the all-powerful DNA. And within just [twelve] months after that, Dan Adamescu had been convicted and was wasting away in prison; the Astra recovery plan had been scuttled; what had been one of the country's leading insurance companies was placed into liquidation, leaving the rest of TNG's businesses struggling to survive under the constraints of the asset sequestration order. Prime Minister Ponta gloated:

"[...] After many years (too many), ASF has pricked the bubble of corruption and fraud of ASTRA ASIGURARI. In 2013, the Government, the ASF and the BNR have complained to the prosecution and have informed the public about the incredible shenanigans committed by Dan Adamescu (the damage is estimated to be a minimum of 500 million Lei), but the political and media protection that this man has bought along the years was very efficient...". [\[7\]](#)

18. DanAdamescu's mistreatment by the DNA and Romanian courts has been widely condemned. For example:

1. Leading UK politicians from across the political spectrum wrote to the Romanian and UK governments expressing concern over Dan Adamescu's mistreatment – including Lord Lamont of Lerwick, former Chancellor of the Exchequer, [\[8\]](#) leader of the opposition, the Rt. Hon. Jeremy Corbyn MP, [\[9\]](#) Member of Parliament, Mr. Mark Field, [\[10\]](#) member of the European Parliament, Mr. Claude Moraes, [\[11\]](#) and Lord Foulkes of Cumnock P.C. and Lord Dubs, of the UK House of Lords. [\[12\]](#)
2. Members of the Parliamentary Assembly of the Council of Europe criticised Romania for its failure to observe the presumption of innocence – specifically taking issue with Ponta's public accusations of Dan Adamescu, pre-trial judges

referring to allegations as established facts, and the denial of bail on the basis that Dan Adamescu had refused to admit guilt.<sup>[13]</sup> The Parliamentary Assembly of the Council of Europe tabled a resolution in support of Dan Adamescu's right to a fair trial.<sup>[14]</sup>

19. The New York Times summed up Dan Adamescu's case as an example of an "*anti-corruption mania*" that is sweeping Romania, where politicians including Ponta subvert the legitimate processes of investigation and bring proceedings for corruption to satisfy their own political ends, and in a way that violates even the most basic of fundamental rights and procedural norms.
20. During his pre-trial detention and following his conviction, Dan Adamescu was subject to terrible prison conditions, particularly in light of his poor health. He was first detained in remand in the Centrul de Arest Preventiv ("**CAP**"), and was subsequently moved to the Bucharest-Rahova Penitentiary ("**Rahova Prison**"). Upon conviction, he was incarcerated in Rahova Prison and Jilava Prison.
21. Dan Adamescu was never fit for detention and Romania knew this. He had 100% disabled status in Germany,<sup>[15]</sup> and suffered from a number of very serious medical conditions.<sup>[16]</sup> Despite his severe medical needs, Romania failed to make appropriate accommodations for him. Romania insisted on his pre-trial detention, denied his requests for medical treatment, and rejected his applications for parole without valid reason.
22. Even the former president of the ASF, Mr. Dan Radu Rusanu, admitted that detention at the hands of the Romanian authorities was Dan Adamescu's death sentence:

“Adamescu was a very sick man. For Adamescu, the prison meant death. The conditions from the central arrest for Dan Admaescu were a death sentence. A man two meters tall, 144 kg who was not able to bend his knees because of his appearance, was obliged to use a Turkish-style toilet. It was inhuman. Every two days he fell into the toilet. The iron beds had a length of 1.8 meters, and he was two meters tall. He could not lie in the upper bunk bed because he was not able to get down from it. He could find no room between the beds. If he lay in the lower bunk bed, you run the risk that the beetles should come over you. A man of more than 60 years old usually has problems with the prostate and goes twice of thrice a night to the toilet... Adamescu always said: they want to kill me. (sic)” [\[17\]](#)

23. While under house arrest, and subsequently when back in prison, Dan Adamescu made many requests for medical treatment, which were repeatedly denied.

24. While imprisoned, he also made complaints to prison guards and was denied access to his medication. [\[18\]](#) He recounted that:

I was denied my usual medication for a period of 37 days despite the fact that my family had brought me my medication. I made written requests to the prison warden but it was all in vain. The doctors at Rahova didn't bring me my medication invoking some bureaucratic grounds. I was very worried and feared for my life. I could have died without my usual medication. It is not understandable to me how the doctors deprived me of my medication and put my life at risk during such a long time period. [\[19\]](#)

25. Concerned at Dan Adamescu languishing in prison without medical treatment, on 17 August 2016, the President of the United Kingdom Law Society wrote to the President of Romania. [\[20\]](#) He reminded Romania of its international



law obligations towards Dan Adamescu and “*urge[d]*” Romania to immediately allow him to receive the urgent medical operation he required, and to ensure that the conditions of his detention were humane, and allowed access to medical care and meetings with his lawyers.[\[21\]](#) The Romanian Chief Commissioner for Penitentiaries later responded, wholly rejecting the assertion that Dan Adamescu had not received appropriate care.[\[22\]](#)

26. Then, on 13 September 2016, Dan Adamescu nearly died.[\[23\]](#) Prison guards ignored his requests for help, and only relented when he lost consciousness. He was rushed to the Floreasca public hospital. Dan Adamescu was given life-saving emergency surgery to treat an infection that had been left to spread all over his body.[\[24\]](#) He had developed severe complications after doctors at Rahova Prison hospital had attempted to drain an inguinal infection in an unsterile environment, and without medication or anaesthesia.[\[25\]](#) Rahova Prison had failed to appropriately treat his wounds.[\[26\]](#) Only after 10 days’ hospitalisation at Floreasca hospital was Dan Adamescu sufficiently recovered to return to prison.[\[27\]](#)
27. In the meantime, a doctor was located in Romania who was able to perform the knee operation Dan Adamescu required.[\[28\]](#) His family members and lawyer had, with no success, been trying for several months to have him transferred to hospital to have the operation.
28. In the meantime, Dan Adamescu’s counsel had submitted a request for conditional release on probation. The Ministry of Justice postponed consideration of his parole on the basis that he had not served sufficient time to achieve the purpose of punishment.[\[29\]](#) Only a few days following the request, and two days before the postponement, on 23 October 2016, news of Dan Adamescu’s

parole rejection was leaked to the Romanian media.[\[30\]](#) The media report criticised the “*billionaire’s*” attempt to seek conditional release.[\[31\]](#)

29. After a long period of stabilisation in hospital,[\[32\]](#) on 8 November 2016, Dan Adamescu was able to have a long-awaited knee operation.[\[33\]](#) It was now over two years since he first requested permission for medical treatment. Dan Adamescu appealed the decision to deny him early release on parole, pleading that at 68 years old and given his poor health, detention was torture.[\[34\]](#) On 23 November 2016, the Court rejected his appeal, on the basis that he had not participated in sufficient prison programs to demonstrate his rehabilitation.[\[35\]](#) Although it acknowledged that his health was “*precarious*”, the Court did not take into account the fact that Dan Adamescu was “*bedridden*”, incontinent, and disabled.[\[36\]](#) As no prison programs were available for the disabled Dan Adamescu, he had no opportunity to demonstrate a willingness to be rehabilitated.[\[37\]](#) His appeal was consequently dismissed.[\[38\]](#)
30. At that point, Dan Adamescu’s health rapidly deteriorated. Although he was unconscious and in “*an extremely serious state*”,[\[39\]](#) prison authorities initially refused to allow his sister to visit him in intensive care.[\[40\]](#)
31. Dan Adamescu never recovered. He died on 23 January 2017.[\[41\]](#)
32. Romania was aware of Dan Adamescu’s severe illnesses. Numerous witnesses recounted his visibly deteriorating health,[\[42\]](#) which was worsened by the terrible conditions in which he was forced to remain. Romania ignored international criticism of its treatment of Dan Adamescu. Even Nova’s counsel in this arbitration

sought assurances from Romania to provide him the urgent medical care he required, to prevent a heightened risk that he could die prematurely and thus preventing him from participating in the arbitration.<sup>[43]</sup> And yet, Romania refused to grant such assurances,<sup>[44]</sup> even when it would have cost Romania nothing to give the assurance of adequate medical treatment. Instead, Romania considered Nova's request as referring to "elite treatment", such as "*Belugua Caviar from Persia and Don Perignon Krug Grande Cuvée from France or Stoli Elit Vodka from Russia, with Turkish belly dancers and a Punkah from India*".<sup>[45]</sup> Dan Adamescu was left to die in Romania's custody in the saddest but most predictable way.

33. Even after his death, Romania has not been forthcoming, refusing to release his body to his son, and withholding important medical and autopsy documentation.<sup>[46]</sup>
34. Desperate to save his father from Romania's clutches and preserve the business empire he had created, Alexander Adamescu instructed lawyers from Debevoise to prepare an international investment claim against Romania in front of ICISD – a World Bank organisation based in Washington. On 25 August 2015, TNG (on Alexander Adamescu's instructions) first notified Romania of its intent to commence this arbitration. Romania's response came quickly. Within 3 weeks, Alexander Adamescu was being investigated for participating in the bribery proceedings for which his father stood trial.
35. On 25 March 2016, the DNA applied to the Bucharest Tribunal for Alexander Adamescu's preventative arrest in the Bribery Proceedings which was approved by a court on 4 May 2016. With Dan Adamescu already in Romania's custody, securing Alexander Adamescu's imprisonment would prevent TNG from effectively pursuing its claims

in this arbitration.

36. On 19 May 2016, Judge Nita granted Alexander Adamescu's appeal, revoking the arrest warrant and allocating the application to the Court of Appeal for retrial. Then followed a series of extraordinary procedural events. The whole retrial process – including listing, reading, hearing, deliberation, judgment and publication – was completed within less than 5 hours of Judge Nita's appeal judgment. The procedural irregularities in the Court's grant of the DNA's new application for an arrest warrant were the following:

1. The retrial was not randomly allocated to a judge, but was selectively listed before Judge Matei, in breach of a fundamental protection due to defendants.
2. The summons notifying Alexander Adamescu of the retrial hearing was printed only 30 minutes before the hearing was due to start, and was never served on Alexander Adamescu. [\[47\]](#)
3. Judge Matei had between 30 minutes and 1.5 hours to read the case file containing thousands of pages, to deliberate on the arguments, to draft his judgment and to have it transmitted to the Bucharest Police. [\[48\]](#)
4. A new judge may only be allocated to a case that must be re-judged after the reasons are known why the case has come to be re-judged. But the Minutes of Judge Nita's decision no. 232 / C were published in the afternoon of 19 May 2016 and were sent to the General Directorate of the Bucharest Municipal Police (DGPMB) only at 3.39 pm [\[49\]](#) – just one minute before the new arrest warrant was issued by Judge Matei and sent off to the DGPMB at

3.40 pm. [\[50\]](#) Indeed, Judge Matei had been assigned and had listed his hearing for 1.30pm, well before Judge Nita had published her verdict. [\[51\]](#)

5. Judge Matei's decision was immediately leaked to the media and details of the new arrest warrant appeared on news site, Adevarul, at 5:06 pm. [\[52\]](#) The Romanian media knew about the decision *before* Alexander Adamescu's own lawyer had received it the following day. [\[53\]](#)

37. Attempts to conceal the breaches of due process were made, with the summons for the retrial stating that it was posted on the courtroom door at 11am, but the printing stamp showing that the summons was not even printed until 1pm. [\[54\]](#)

38. These factors strongly suggest that Alexander Adamescu's arrest warrant was pre-meditated and the outcome pre-determined. [\[55\]](#)

39. On 6 June 2016, the Bucharest Court of Appeal issued an EAW for the arrest and surrender of Alexander Adamescu. On 13 June 2016, Alexander Adamescu was arrested in the United Kingdom. Despite having twice volunteered to report to a police station to be arrested by appointment, Alexander Adamescu was arrested in public shortly before an event in London he was due to speak at about the abusive aspects of the arrest warrant process that Romania had deployed. Far from hiding his whereabouts, Alexander Adamescu had invited the Romanian Ambassador to attend. British Police informed Alexander Adamescu that the Romanian embassy had specifically requested they arrest him before the event. [\[56\]](#)

40. The British media highlighted the abusive nature of Alexander Adamescu's prosecution and misuse of the

EAW. [\[57\]](#)

41. In August 2016, Alexander Adamescu's counsel wrote to the DNA requesting that Alexander Adamescu be permitted to undertake a polygraph test in the United Kingdom. [\[58\]](#) The DNA subsequently rejected his requests as "groundless" by order dated 28 September 2016. In the meantime, Alexander Adamescu remained subject to restrictive bail conditions pending the scheduled extradition proceedings. [\[59\]](#) Despite these conditions, Romania continued to take action, issuing a further request for mutual legal assistance to the Metropolitan Police, [\[60\]](#) and requesting the issuance of an Interpol Red Notice against Alexander Adamescu. [\[61\]](#)
42. Romania's abuse of the EAW regime has been criticised by civil society. For example, the Hampden Trust condemned the persistent and unacceptable lack of separation between the institutions of politics, the economy, and the secret state in Romania in proposing reform or exit from the EAW. [\[62\]](#) Human Rights Without Frontiers similarly criticised Romania's use of the EAW "to neutralise" Alexander Adamescu, particularly in circumstances where there was no evidence of criminal wrongdoing. It further observed that: "*Alexander Adamescu obviously angered the Romanian authorities and as a reaction to the arbitration, it appears as though the DNA decided to orchestrate his arrest by using the EAW system and thereby deter him from pursuing his legal action.*" [\[63\]](#)
43. On 29 March, the ICSID tribunal issued a provisional measures decision ("**PMO 7**") recommending Romania to withdraw or suspend the warrant against Alexander Adamescu. The tribunal accepted Nova's arguments that, following the death of his father, Alexander Adamescu is "the only person alive" with the knowledge needed to manage TNG's claim and instruct counsel, as well as a

key witness in the case.

44. The Tribunal held that Romania's pursuit of Adamescu for alleged misconduct in relation to Astra is inconsistent with its contention that that he is not essential as a witness. "[I]t is difficult to understand as a matter of logic how he could be both central to Romania's criminal proceedings regarding Astra and at the same time immaterial to Nova's ICSID case alleging that those same proceedings [...] reflect a political vendetta against the Adamescu family," it says.
45. On 19 April 2017, TNG requested Romania accept to be bound by and confirm it will comply with the Tribunal's order to suspend the request for extradition.[\[64\]](#) On 22 April 2017, Romania responded to Nova stating that Tribunal's order was "*flawed on multiple grounds*" and that it "*will not withdraw the extradition request*".[\[65\]](#)
46. As at the date of this summary, Romania has still failed to comply with the Tribunal's order and is actively pushing the United Kingdom to surrender Alexander Adamescu to imprison him in Romania. On 24 August 2017, Westminster Magistrates Court Judge Zani refused Alexander Adamescu's application to stay the proceedings on the basis of PM0 7 and decided that the extradition procedure must continue. The main extradition hearing is scheduled for 27 November 2017 in front of Judge Zani.
47. As explained by Mr. Adamescu in his second witness statement (see ¶¶476-480), the DNA prosecutor responsible for his Bribery Proceedings, extradition proceedings, and the separate Abuse of Office claim, admitted that the bribery case was contrived. Adrian George Matei confirmed that he knew Alexander Adamescu did not have any knowledge of the bribes paid to the judges implicated in the bribery case.[\[66\]](#) But the prosecutor has expressed his confidence that Alexander

Adamescu can be convicted of bribery on a “*cut and paste*” basis following the conviction of his father for the same offences. Prosecutor Matei made clear that the DNA’s focus is on the Abuse of Office Proceedings. The reason for this is that a conviction for Abuse of Office is essential for Romania to be able to transfer liability for Astra’s bankruptcy.[\[67\]](#) Hence, while the EAW was issued on the basis of the bribery charges, Romania actually seeks to have Alexander Adamescu extradited to Romania so that it can try him for Abuse of Office.[\[68\]](#)

48. Such a story of a political conspiracy at the highest levels of government targeting a private business group and its leaders is entirely plausible in a good many countries, especially those with authoritarian rulers, weak institutions and little respect for the rule of law. Despite being an EU Member State, the regrettable truth is that the pattern is all too familiar in Romania. It remains a country bedeviled by the legacy of Ceausescu and the omnipotent Securitate, in which political power is often used to serve personal ends, anticorruption enforcement is highly politicized, and weak institutions bend to the will of establishment bosses. Like the Securitate before it, “*the Romanian Intelligence Service continues to play an aggressive, yet undisclosed role in criminal investigations and has influence over the judiciary system – even infiltrating and influencing judicial outcomes*”[\[69\]](#) and going so far as to describe the judicial process as a “*tactical field of operations*”.[\[70\]](#)
49. International investment law forbids such ruthless treatment of TNG’s investments. It forbids the ASF’s inconsistent, non-transparent and arbitrary regulatory treatment of Astra. It forbids the misuse of politically motivated criminal prosecutions in which



guilt is largely presumed. It forbids the step by step destruction of a legitimate business to satisfy a political vendetta. It forbids the reckless death while in State custody of the investor's patriarch.

50. Nothing can be done to wipe out all the consequences of Romania's illegal acts. No decision can restore Astra to its pre-breach status. Astra is a dead insurance company. No decision can bring back Dan Adamescu from the grave. Nothing can undo the kidnap attempt against Alexander's partner Adriana in front of their children's nursery. No decision can really make up for the grinding anxiety that Alexander Adamescu experiences trying to protect what remains of TNG while fearing for his and his family's safety.
51. In the ICSID proceedings, TNG seeks compensation from Romania for €328 million.
52. TNG's evidence is supported by the following Witness Statements and Expert Reports:
  1. Second Witness Statement of Bogdan-Alexander Adamescu, Director of TNG;
  2. First Witness Statement of Razvan Lucian Chiruta, Editor-in-Chief of Romania Libera;
  3. First & Second Witness Statements of Adriana Constantinesu, ex-employee of Astra and Alexander Adamescu's partner;
  4. First Witness Statement of John Cutts of Pall Mall Capital, who assisted with attempts to sell Astra;
  5. First Witness Statement of Gianina Iovanel, Public Relations Manager at Astra and TNG Romania;
  6. First & Second Witness Statements of DNA Witness;
  7. First & Second Witness Statements of ASF Witness;
  8. First Witness Statement of ANAF Witness;
  9. First Expert Report of SC Strategy Ltd;
  10. Second Expert Report of SC Strategy Ltd; and
  11. First Expert Report on Quantum, Kiran Sequeira &

Garrett Rush (Versant Partners).

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[1] Facebook post by Victor Ponta, Facebook [online], 26 August 2015, available at: <https://ro-ro.facebook.com/victor.ponta/posts/1014481618591725> (emphasis added), **Ex. C-39**.

[2] Kieran Williams and Dennis Deletant, *Security Intelligence Services in New Democracies: The Czech Republic, Slovakia and Romania* (Palgrave Macmillan 2001), pp. 231-232,

[3] *An Expert Report in relation to UK Extradition Proceedings*, SC Strategy Ltd., 19 September 2016 (as amended on 29 September 2016, 4 January 2017 and 18 January 2017). SC Strategy Ltd is an international strategic consultancy founded in 2012 by Sir John Scarlett KCMG OBE and Lord Carlile of Berriew CBE QC. Sir John is the former Head of MI6. Lord Carlile is a leading expert on issues of fraud and corruption. In their first expert report, SC Strategy consider certain events relating to the conspiracy against The TNG Group and its officers. The second of their reports is an accompaniment to the statements from the anonymous witnesses, explaining the circumstances in which they have demanded anonymity and the context within which they have provided testimony at great personal risk

[4] Transcript of television interview with Misu Negritoiu, Reality TV,

[5] Notice No. 855 of 31 January 2013 *op cit.* Respondent's Counterstatement in Case No. 11570/3/2013, p. 27, (8), **Ex. C-696**

[6] Second witness statement of DNA witness, answer 6

[\[7\]](#) Facebook post by Victor Ponta, Facebook [online], 26 August 2015, available at: <https://ro-ro.facebook.com/victor.ponta/posts/1014481618591725> (emphasis added), **Ex. C-39**.

[\[8\]](#) Letter from Lord Lamont to Alexander Adamescu, 17 July 2014, **Ex.C-985**; see also Letter from FC0 to Lord Lamont, 11 August 2014, **Ex. C-69**.

[\[9\]](#) Letter from Jeremy Corbyn to Chief Prosecutor, 3 October 2014, **Ex. C-986**; Letter from Jeremy Corbyn to Adrian Bordea, 9 October 2014, **Ex. C-987**; Letter from Jeremy Corbyn to George Maior, 9 October 2014, **Ex. C-988**; Letter from Jeremy Corbyn to Georgian Pop, 9 October 2014, **Ex. C-989**; Letter from Jeremy Corbyn to Livia Doina Stanciu, 9 October 2014, **Ex. C-990**; Letter from Jeremy Corbyn to Robert Cazanciuc, 9 October 2014, **Ex. C-991**; Letter from Jeremy Corbyn to Titus Corlatean, 9 October 2014, **Ex. C-992**; Letter from Jeremy Corbyn to Victor Ponta, 9 October 2014, **Ex. C-993**; Letter from the Rt. Hon. Jeremy Corbyn MP to Victor Ponta, Prime Minister of Romania, 9 October 2014, **Ex. C-68**.

[\[10\]](#) Letter from David Lidington to Mark Field, 2 December 2014, **Ex. C-994**.

[\[11\]](#) Letter from Claude Moraes to Bogdan Aurescu, 5 December 2014, **Ex. C-995**.

[\[12\]](#) Letter to Lord Foulkes of Cumnock P.C. and Lord Dubs, 5 November 2014, **Ex. C-996**.

[\[13\]](#) *Mr Dan Adamescu and the Right to a fair trial*, Motion for a resolution tabled by Mr James Clappison and other members of the Assembly, Parliamentary Assembly, 21 April 2015, **Ex. C-67**.

[\[14\]](#) *Mr Dan Adamescu and the Right to a fair trial*, Motion for a resolution tabled by Mr James Clappison and other members of the Assembly, Parliamentary Assembly, 21 April

2015, **Ex. C-67**.

[\[15\]](#) Witness Statement of Dan Adamescu (Extradition Proceedings), 20 September 2016, ¶7.

[\[16\]](#) Including, severe knee arthritis (gonarthrosis), leading to him becoming wheelchair bound and which required total replacement with a customised prosthesis; ventricular fibrillation, and a weak heart operating at 40-50% capacity (cardiac insufficiency grade IV); type-II diabetes, for which he required a special diet; systemic lupus erythematosus; pituitary adenoma, which he relied on hormone replacement therapy to manage; obesity, for which he had gastric band surgery that required medical adjustment every three months; fatty liver disease, which worsened his diabetes; oscillating blood pressure; psoriasis vulgaris; bullous pemphigoid, an autoimmune disease affecting the skin, which required immune-suppressing drugs; and anxiety. See Medical Reports of Dr Rosak, 11 June 2014, 9 September 2014 and 22 August 2014, **Ex. C-1018, Ex. C-58 and C-59**; and Medical Report of Dr Fruntelata, 4 March 2016, **Ex. C-60**; Witness Statement of Dan Adamescu (Extradition Proceedings), dated 20 September 2016, ¶¶7-14.

[\[17\]](#) *Dan Radu Rusanu, his first interview after the acquittal: shattering disclosures about the detention conditions and the nightmare Dan Adamescu passed through*, Antena 3, 19 April 2017, p.2, **Ex. C-999**.

[\[18\]](#) First Witness Statement of Alexander Adamescu, ¶90; Witness Statement of Constaze-Eurgenia Calinescu, 7 February 2017, p. 3, **Ex. C-766**.

[\[19\]](#) Witness Statement of Dan Adamescu (Extradition Proceedings), dated 20 September 2016, ¶57.

[\[20\]](#) Letter from the Law Society to Klaus Iohannis, 17 August 2016, **Ex. C-131**.

- [\[21\]](#) Letter from the Law Society to Klaus Iohannis, 17 August 2016, **Ex. C-131**.
- [\[22\]](#) Letter from Chief Commissioner for Penitentiaries to the Law Society, December 2016, **Ex. C-1003**
- [\[23\]](#) Witness Statement of Adriana Constantinescu, ¶29.
- [\[24\]](#) Witness Statement of Adriana Constantinescu, ¶29.
- [\[25\]](#) Witness Statement of Constanze-Eugenia Calinescu, 7 February 2017, p.4, **Ex. C-766**.
- [\[26\]](#) Witness Statement of Adriana Constantinescu, ¶¶24, 26-27.
- [\[27\]](#) Witness Statement of Constanze-Eugenia Calinescu, 7 February 2017, p.4, **Ex. C-766**
- [\[28\]](#) See, eg. Witness Statement of Constanze-Eugenia Calinescu, 7 February 2017, p.5, **Ex. C-766**.
- [\[29\]](#) Letter from Jilava Bucharest Prison to Musetescu & Asociatii, 25 October 2016, p. 5. **Ex. C-780**.
- [\[30\]](#) Media article, Pro TV, 23 October 2016, **Ex. C-1005**.
- [\[31\]](#) Media article, Pro TV, 23 October 2016, **Ex. C-1005**.
- [\[32\]](#) Witness Statement of Constaze-Eurgenia Calinescu, 7 February 2017, p. 5. **Ex. C-766**.
- [\[33\]](#) Medical Report of The National Penitentiary, 27 December 2016, **Ex. C-783**.
- [\[34\]](#) Decision of the Bucharest Court, 23 November 2016, p.4 **Ex. C-781**.
- [\[35\]](#) Decision of the Bucharest Court, 23 November 2016, pp.11-13, **Ex. C-781**.
- [\[36\]](#) Decision of the Bucharest Court, 23 November 2016,

p.11, **Ex. C-781**.

[\[37\]](#) Witness Statement of Adriana Constantinescu ¶38.

[\[38\]](#) Decision of the Ilfov Court, 21 December 2016, **Ex. C-782**.

[\[39\]](#) Letter from Dr. Predescu to Jilava Prison, 27 December 2016 p. 1, **Ex. C-1008**; Witness Statement of Constaze-Eurgenia Calinescu, 7 February 2017, pp. 5-6. **Ex. C-766** .

[\[40\]](#) Witness Statement of Adriana Constantinescu, ¶42.

[\[41\]](#) Witness Statement of Constaze-Eurgenia Calinescu, 7 February 2017, p.6, **Ex. C-766**.

[\[42\]](#) See eg. Witness Statement of Constaze-Eurgenia Calinescu, Ex. C-766; Witness Statement of Adriana Constantinescu, ¶22.

[\[43\]](#) Letter from Claimant to Respondent, 22 June 2016, **Exhibit C-111**; Letter from Claimant to Respondent, 15 July 2016, **Exhibit C-112**.

[\[44\]](#) See eg, Letter from Respondent to Claimant, 20 October 2016, **Ex. C-114**; Letter from Respondent to Claimant, 5 November 2016, **Ex.C-115**.

[\[45\]](#) Romania's Rejoinder on Claimant's Request for Provisional Measures, ¶ 80.

[\[46\]](#) Witness Statement of Adriana Constantinescu, ¶¶52-58; See eg, Letter from Dancu Catalin Radu to the Bucharest Forensic Medical Investigation Institute, 27 January 2017, **Ex. C-793**; Letter from Chief of Morgue Laboratory to Alexander Adamescu, 21 February 2017, **Ex. C-1009**.

[\[47\]](#) Chronology, 19 May 2016, P. 1, **Ex. C-1030**]; see also, Summons with timestamp 13:00:06, 19 May 2016 **Ex. C-1024**.

[\[48\]](#) Chronology, 19 May 2016, P. 1, **Ex. C-1030**; see also, Facsimile transmitting decision from Court at 15:39, 19 May 2016, **Ex. C-1025**; Court File Archive Summary, **Ex. C-1026**

[\[49\]](#) Facsimile of Decision No. 232/DL from the Bucharest Court of Appeal to the D.G.P.M.B. – Prosecution Office, 19 May 2016, **Ex. C-735**

[\[50\]](#) Facsimile of Decision at 15.40, 19 May 2016, **Ex. C-736**

[\[51\]](#) See Second Witness Statement of Alexander Adamescu at ¶467.

[\[52\]](#) *'Bucharest Court of Appeal Issued A Warrant of Preventative Arrest In Absence'*, Adevarul, 19 May 2016, **Ex. C-182**

[\[53\]](#) Decision of the Bucharest Court of Appeal, stamped received by Mustescu si Asociatii on 25 May 2016, 19 May 2016, **Ex. C-1027**.

[\[54\]](#) Summons with timestamp 13:00:06, 19 May 2016, **Ex. C-1024**

[\[55\]](#) See, Summons with timestamp 13:00:06, 19 May 2016, **Ex. C-1024**; Facsimile transmitting decision from Court at 15:39, 19 May 2016 **Ex. C-1025**.

[\[56\]](#) First Witness Statement of Alexander Adamescu, ¶ 71.

[\[57\]](#) See e.g., *'EU Arrest Laws Insult Justice'* in *'This is NOT the time for ugly political opportunism'*, The Daily Mail, 18 June 2016, **Ex. C-87**.

[\[58\]](#) Letter No. 604 from Mr. Radu Dancu (Alexander Adamescu's counsel), 26 August 2016, **Ex. C-1036**.

[\[59\]](#) Westminster Magistrates Court Bail Form, 20 September 2016, **Ex. C-139**.

[\[60\]](#) Email from Detective Constable Paul Valverde, Metropolitan Police, to Andrew Smith, Corker Binning, 4 October 2016, **Ex. C-147**. See also, Letter from Corker Binning to International Criminality Unit, Home Office, 12 October 2016, **C-148**.

[\[61\]](#) A Red Notice requires member countries to notify Romania (through Interpol) whenever the person subject to it comes to their attention, most frequently at border controls. Letter from the Commission for the Control of Interpol's Files to Ms Heikkila, dated 6 October 2016, **Ex. C-149**.

[\[62\]](#) *'Why the UK should Reform or Exit the European Arrest Warrant: Problems and Excesses of the Romanian Anti-Corruption Fight'*, Hampden Trust, in association with The Freedom Association and Economic Policy Centre, 2016, **Ex. C-1040**.

[\[63\]](#) Human Rights Without Frontiers, Study Case: Alexander Adamescu, March 2017, p.5, **Ex. C-1041**.

[\[64\]](#) D&P letter to D&G, 19 April 2017, **Ex. C-1042**.

[\[65\]](#) D&G letter to D&P, 22 April 2017, **Ex. C-1043**.

[\[66\]](#) Second Witness Statement of Alexander Adamescu, ¶478.

[\[67\]](#) Second Witness Statement of Alexander Adamescu, ¶¶479-480.

[\[68\]](#) Romania's Observations on Claimant's Request for Additional Measures, 14 October 2016, ¶¶25, 12

[\[69\]](#) 'Commission on Security & Cooperation in Europe: U.S. Helsinki Commission: "The Romanian Anti-Corruption Process: Successes and Excesses"' (14 June, 2017), p. 3, **Exhibit C-835**. <https://www.csce.gov/sites/helsinkicommission.house.gov/files/unofficial-transcript/0614%20The%20Romanian%20Anti-Corruption%20Process%20-%20Successes%20and%20Excesses.pdf> accessed 11 July 2017.



[70] Alina Mungiu-Pippidi, 'CSM asks Judicial Inspection to probe into SRI's potential breach of judiciary's independence' (The Romania Journal, 26 May 2015), **Exhibit C-836**.

[www.romaniajournal.ro/csm-asks-judicial-inspection-to-probe-in-to-sris-potential-breach-of-judiciarys-independence/](http://www.romaniajournal.ro/csm-asks-judicial-inspection-to-probe-in-to-sris-potential-breach-of-judiciarys-independence/) accessed 11 July 2017

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

**OSCE Human Dimension Implementation Meeting**

**Warsaw, Tuesday 19 September 2017**

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

**The European Arrest Warrant in the Dock**

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### **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*.

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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 13<sup>th</sup> 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		
Albania	7	7												2	1	5										5				
Andorra	0																													
Armenia	8	8							2	1				1	5						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				
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		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		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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# Memorandum on the abuses in the Romanian arrest warrant procedure of Alexander

# Adamescu

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***By Eeva Heikkila***

## **Executive summary**

Alexander Adamescu is a German national who was born on 6 May 1978 in Bucharest. He is the son of Dan Adamescu, a prominent German businessman of Romanian birth. Alexander Adamescu is accused by Romania's National Anticorruption Directorate (DNA) of consenting to bribery based on the declarations of a sole prosecution witness. Romanian courts issued two national arrest warrants against Alexander Adamescu: a first warrant on 4 May 2016 which was cancelled on 19 May and a second arrest warrant that was issued on the very same day, 19 May 2016 and then converted into a European Arrest Warrant on 6 June 2016. Alexander Adamescu was arrested in London on 13 June and faces extradition to Romania.

Alexander Adamescu's two arrest warrants were issued in gross violations of key tenets of Romanian and international law:

- The DNA did not charge Alexander Adamescu in June 2014 when the case was brought to trial against his father, but reactivated the file only in September 2015 after Alexander Adamescu engaged lawyers who sued Romania.
- Despite an almost two-year long inactivity, Chief-prosecutor Laura Kovesi suddenly announced the DNA's intention to arrest Alexander Adamescu on live TV on 25 March 2016 calling him a fugitive and a threat to to public order in the DNA's submissions. Kovesi also declared that her agency knew where he was, but then on the same day wrote to the court to demand that the arrest warrant procedure be speeded up since his whereabouts were not known.

- For the first arrest warrant hearing on 4 May, Alexander Adamescu was summoned via e-mail addresses that were not his and by calling phone numbers that were admittedly incorrect.
- In his judgement issued on 4 May, Judge Malaliu copied and pasted the DNA report, grounding his decision to arrest Alexander Adamescu on the DNA reasoning that he must be guilty for the offences for which he was charged.
- After Judge Nita made it known that she intended to cancel the first arrest warrant on procedural grounds, a second judge, Judge Matei, was immediately assigned to re-judge the arrest warrant without the safeguard of random allocation as guaranteed by Romanian procedural law and before Judge Nita's judgement had been published.
- The hearing was scheduled for 1.30 pm on 19 May 2016. The paper was printed at 1pm but pre-dated by a court agent to have been filled out at 11 am. 57-60 Lincoln's Inn Fields, London WC2A 3LJ Telephone 020 7993 7600 Facsimile 020 7993 7700 DX: 34 Chancery Lane E-Mail: info@gclaw.co.uk Website: <http://www.gardencourtchambers.co.uk> 3
- Alexander Adamescu was summoned at 1pm on the court door to appear in half an hour in front of the court.
- The hearing began at 2.40 pm and closed at between 3.10-3.20 pm. At 3.40 pm, the Court sent a fax of the arrest order to the Municipal Police of Bucharest. Judge Matei had no more than half an hour to read the case file containing thousands of pages, deliberate on the arguments of the parties, write down his sentence and have it sent to the Bucharest Police.
- Judge Matei's sentence was immediately leaked to the media by the Romanian authorities. At 5.06 pm Alexander Adamescu's new arrest warrant appeared on a news website.
- Alexander Adamescu's appeal on the second arrest warrant



was rejected on 25 May 2016 by Judge Ghena on the grounds that a more lenient measure would determine a strong negative reaction among the public opinion.

Alexander Adamescu's arrest warrant was issued with a blatant disregard for due process and the rule of law. First, the DNA invented the image of a dangerous fugitive at large who's so obviously guilty that his arrest was needed to protect the public from his person. Then the Courts in Romania unconditionally, and in full, accepted this account of the DNA, without even trying to give the semblance of granting him a fair trial.

The haste with which the Court of Appeals, on 19 May 2016 turned the matters around would appear to show that the whole purpose of the exercise was to arrest Alexander Adamescu no matter what. In an unprecedented series of breaches of his fundamental rights, he was denied an independent judge, not summoned to trial, and handed a decision that was implemented so rapidly that it could only have been taken before his trial had started. The immediate leaking of his arrest warrant to the Romanian media showed that Alexander Adamescu was not allowed to be a free man even if this meant dispensing with the law altogether.

Alexander Adamescu's case is totemic of the vast gulf between Romania's rhetoric on its progress towards becoming a liberal democracy committed to an independent judiciary and the stark reality faced by its citizens. It is emblematic for the true nature of some of Romania's praised anticorruption cases which provide cover for the oppression of dissenting voices, political score settling, economic raids and outright character assassinations. For there to be real change, both the international community and those with the power to enact the urgently needed judicial reforms in Romania must finally take heed of this.

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