

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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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.

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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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 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:

- 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 Admescu'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 histrial, 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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