

High Court of Cassation and Justice  
Judge of Rights and Liberties  
File no.762/2/2014  
Term: 11.06.2014

## CONCLUSIONS

### Generated for defendant-complainant ADAMESCU DAN GRIGORE

**Report no. 316/P/2013 dated 06.06.2014 issued by the National Anticorruption Directorate, Department of Fighting against Corruption, requested the stay on remand of the defendant ADAMESCU DAN GRIGORE – detained on 05.06.2014 – on two counts of bribery, as provided by Article 290 para. 1, Criminal Code, linked to Article 6 of Law no. 78/2000, listed as multiple offences as provided by Article 38 para. 1 Criminal Code**

**The Judge of Rights and Liberties of Bucharest Court of Appeal, Section I, regarding the decision from 06.06.2014, issued for file no. 3762/2/2014, appointed to deal with this application ruled the remand of the defendant ADAMESCU DAN GRIGORE for 30 days, starting on 06.06.2014.**

The defendant, ADAMESCU DAN GRIGORE issued an appeal against this decision for the reasons presented below.

Before the order to stay on remand of defendant ADAMESCU DAN GRIGORE was issued, the Judge of Rights and Liberties noted that:

**A. There is evidence leading to** “the reasonable suspicion that *in May 2013 and December 2013*, the defendant ADAMESCU DAN GRIGORE, as representative of the group of companies he coordinates, de facto and de jure, consisting of: SC SIGUR INDUSTRIAL CONSTRUCT SRL (formerly SC BAUMEISTER SA), SC ASTRA ACTIV IMOB SRL, SC ASTRA TRANING SRL, SC NOVA CUART SRL, SC TNG REAL ESTATE MANAGEMENT SRL, SC MEDIEN HOLDING SRL, SC COMPANIA HOTELIERĂ INTERCONTINENTAL ROMÂNIA SA, SC THE NOVA GROUP INVESTMENTS ROMÂNIA SA, SC ASIGURARE - REASIGURARE ASTRA SA, including **SC BAUMEISTER UTILAJE ECHIPANENTE SRL and SC BAUMEISTER PRESTĂRI SERVICII SRL**, **accepted and indicated the remittance of a bribe in the sum of 15,000 EUR and 5,000 EUR through witness Onuțe Daniel as representative of SC SIGUR INDUSTRIAL (with the help of witnesses Dumitru George Claudiu, solicitor, and Firestain Daniela, manager within The Nova Group and the person who made the payment), and of suspect Borza Monica Angela, an insolvency practitioner and sole shareholder of SC ACTIV LICHIDATOR IUPRL to judges Stanciu Ion and Roventța Elena from Bucharest Court – Civil Section VII, for the purpose of achieving favourable decisions in files**

33293/3/2012, 41848/3/2012 and 19950/3/2013 regarding the insolvency procedures of SC SIGUR ION INDUSTRIAL CONSTRUCT SRL (formerly known as SC BAUMEISTER SA) and SC ACTIV CONSTRUCȚII INDUSTRIALE SRL” (page 13 of the decision).

Thus, the decision also claims that “*the purpose aimed by the defendant and for which the judges were bribed is obvious*” (page 14).

With regards to the obvious objective of this action, **the defence** claims that the defendant, ADAMESCU DAN GRIGORE, as representative of those companies, had no other purpose but to make all necessary efforts to be assisted and represented judicially in the best possible way. Therefore, the named companies were hiring solicitors when the complexity of the cases was beyond the competence level of their own legal advisers and something that one would consider as day to day process, the Judge of Rights and Liberties evaluated it as being a criminal offence.

Going through the evidence held which lead to the charge, the Judge of Rights and Liberties refers to:

**- the denunciation and the witness statements of ONUȚE DANIEL, the first being made on 13.05.2014.**

The examination of the denunciation and witness statements provided by ONUȚE DANIEL reveals his obvious interest to denounce the actions, real or imaginary, of other individuals with the purpose of avoiding criminal liability. This objective has been accomplished by ONUȚE DANIEL as he is now considered a witness not a suspect or defendant.

What is obvious from his statements is the extremely vague and imprecise character of his narrations when he refers to the alleged involvement of the defendant ADAMESCU DAN GRIGORE in the criminal activity of bribing the two magistrates.

**- the denunciation statement of the suspect BORZA MONICA ANGELA (from 14.05.2014).**

The same remark applies for this statement as well, with the note that the defendant ADAMESCU DAN GRIGORE didn't know the suspect and that he never discussed this with her. In this respect, it is relevant the note on **page 33 of the report to hold on remand** which displays an excerpt of the telephone conversation between ONUȚE DANIEL and BORZA MONICA ANGELA, the latter telling the first: “*But I think it would be better to talk to him, you know? ...(...)...general conversation. Well, look, I trust Daniel, so let's talk, I don't know what...(...)... Just to know me a little, **to get acquainted with me** (our highlighting) because maybe he thinks I am naive*”.

This section reveals the fact that the defendant ADAMESCU DAN GRIGORE did not know the suspect and the latter insisted she spoke with the first (we mention that this telephone conversation took place on 06.12.2013, 18:32:06);

- **the witness statements of DUMITRU GEORGE CLAUDIU.**

In these statements, the witness makes no declaration regarding the potential involvement of the defendant in the criminal activities of corrupting the two judges.

- **the witness statements of FIRESTAIN ELENA DANIELA.**

In these witness statements she claims to **draw the conclusion** from a conversation with ADAMESCU ALEXANDER (the defendant's son) and witness ONUȚE DANIEL, that the cash will be given to the judges...that it **was suggested** that these fees will help in the insolvency proceedings of SC "BAUMEISTER" SA (page 17 of the report). Therefore, the witness makes no reference to any conversation with the defendant ADAMESCU DAN GRIGORE, only with other people.

- **the reports and transcripts of telephone and other recorded conversations.**

This kind of evidence does not incriminate the defendant ADAMESCU DAN GRIGORE as those conversations were between other individuals and the referrals to the defendant cannot be considered as plausible grounds for suspicion. Moreover, these conversations were carried out by the informants with the purpose of involving the defendant in their criminal and illegal actions.

From the evidence presented, one would conclude that witnesses ONUȚE DANIEL, DUMITRU GEORGE CLAUDIU, and suspect BORZA MONICA ANGELA had elaborated a plan to withdraw cash from the company represented by the defendant ADAMESCU DAN GRIGORE. These amounts of cash were withdrawn as fees based on legal assistance contracts. The trail of money is described on pages 10-14 of the report to hold him on remand, and the notes from within the report prove the agreement between the three of them beyond doubt. Alternatively, on the assumption that that the defendant ADAMESCU DAN GRIGORE would have wanted to bribe the two judges anyway, he would not have used such a transparent money trail but instead used **cash** to provide an anonymous character to his criminal behaviour. Furthermore, in the eventuality of achieving a favourable decision for the three files, witness and solicitor DUMITRU GEORGE CLAUDIU would have benefitted from a "success fee", as per the standard clause in contracts of legal assistance.

In any event, as determined insofar, the defendant ADAMESCU DAN GRIGORE did not meet the two judges and the allegation that he had knowledge of the remittance of the money is unreasonable. Even the prosecution stated that the suspicion is improbable when the defendant ADAMESCU DAN GRIGORE was informed he was a suspect on 22.05.2014, as the prosecution did not take any preventive measures.

Starting on 22.05.2014 and until the remand of the defendant on 05.06.2014, no new elements appeared which could establish a factual situation. The closing argument on page 15 regarding the acquisition of the bank documents on 03.06.2014 is irrelevant as this evidence shows no proof of the defendant's involvement in the criminal activity in which the other suspects and defendants have been involved. Moreover, this data could have been obtained on 13.05.2014 when the witness ONUȚE DANIEL submitted the contracts of legal assistance (attached to additional documents) to vol. IV of the criminal liability file, which also contained the agreed fees. Therefore, the procurement of this data does not justify the conclusion of Judge of Rights and Liberties.

**B. The condition provided in Article 223, para. 1, letter. b, Criminal procedure Code is fulfilled** which states that "*the defendant is trying to influence another participant to committing the offences, a witness or an expert or trying to destroy, alter, conceal or steal material evidence, or to compel another person to adopt such a behaviour*".

The rationale on pages 15 and 16 of the decision lacks judicial rigour since:

- the situation to which the prosecutor makes reference precedes 22.05.2014 when, by means of report, the complainant ADAMESCU DAN GRIGORE was informed he was a suspect;

- the telephone conversations which are the basis of the claim took place on 19.05.2014 and 21.05.2014, at which time ADAMESCU DAN GRIGORE was not aware he was implicated in the case in which FIRESTAIN ELENA DANIELA had been questioned (15.05.2014);

- the text aims at the actions of a defendant, of which ADAMESCU DAN GRIGORE was not considered until 05.06.2014;

- the text aims at exercising influence on the witness with the obvious objective of compelling said witness to make statements which are not true and witness FIRESTAIN ELENA DANIELA had already been examined on 15.05.2014 and she did not want to make any further statements later on, maintaining her initial one (19.05.2014). With reference to the last occurrence, the conversations between the witness and the defendant ADAMESCU DAN GRIGORE were aimed at the possibility of hiring a solicitor for legal assistance and under no circumstances for changing the statement.

Consequently, the defendant ADAMESCU DAN GRIGORE did not exercise any sort of influence on witness FIRESTAIN ELENA DANIELA bearing in mind that his status of defendant was only confirmed on 05.06.2014 and the assumed illegal action would have been performed on 19.05.2014 and 21.05.2014.

**C. The condition provided by Article 223 para. 2 of Criminal Procedure Code is fulfilled**, taking into account that "*based on the evaluation of the seriousness of the actions, the methods and circumstances of the actions, his entourage and his background, the criminal record and other circumstances regarding his person, it is noted that his deprivation of freedom is necessary to prevent a state of danger for the public order*".

From this perspective and in conclusion, it is sustained that when deciding to hold on remand, the following were taken into consideration:

- the gravity of the charge;
- the trail of the bribe and the involvement of intermediaries forms conspiracy with the purpose to ensure the success of achieving illegal benefits for both parts;
- the circumstances referring to the defendant as a person “who can create the public perception of the idea that you may even buy justice with such a position, as one pleases and for personal interest in order to achieve even more material benefits and that fortunes defend illegal conduct and confers immunity before the law.

*Furthermore, the attitude of the defendant on influencing the course of the investigation by reaching out to a vital witness in order to find out the truth with the success of this influence being caused by the financial vulnerability and subordination of the witness to the defendant, represents another element to be taken into consideration in order to appreciate the necessity and proportionality of measure to keep on remand, at least for this phase of the trial, with a set purpose as provided by Article 202 of the Criminal Procedure Code” (page 17 of the decision).*

Contrary to the beliefs of the Judge of Rights and Liberties, the defence considers that all these circumstances are favourable to the defendant, not unfavourable. Regrettably, the Judge of Rights and Liberties departs from the illegal presumption that due to his social position, the defendant ADAMESCU DAN GRIGORE can influence the good course of justice which breaches the right to a fair trial.

It is precisely because of this high degree of social and professional integration, lack of a criminal record, age, health condition, and entourage that the deprivation of freedom of the defendant ADAMESCU DAN GRIGORE is not justified.

To conclude, **in effect**, we ask that our appeal is admitted and the closing argument is annulled by rejecting the proposal to keep him on remand.

**We also** ask for admission of this appeal and the partial annulment of the decision and implement another preventive measure towards the defendant such as judicial control or house arrest, taking into account that the objective of the criminal case, established by Article 202 of the Criminal Procedure Code, can also be achieved without depriving the defendant ADAMESCU DAN GRIGORE of his freedom. By applying such a measure, the defence considers that none of the risks identified by CEDO are possible.

On behalf of the defendant-complainant,  
solicitor Marian Nazat