

The following is a summary of the reasons for appeal which were submitted to the High Court of Cassation and Justice for Mr. Adamescu.

Due to the fact some aspects are hard to understand by a translator, I shall do my best to explain in judicial terminology. The document is in part a translation and in part an interpretation of the original document because some parts have been summarized, but some parts have been kept and translated.

Regarding the criminal case no. 4153/2/2014 the High Court of Cassation and Justice, Criminal Division, with trial term on 04.27.2015

**TO,
The High Court of Cassation and Justice
Criminal Division**

Mr President of the Court,

I, Dan Grigore Adamescu, as a defendant in criminal case no. 4153/2/2014 before the High Court of Cassation and Justice, Criminal Division, with trial term on 04.27.2015, regarding the appeal against sentence nr. 17 from 02.02.2015 given by the Bucharest Court of Appeal, Criminal Division II, under art. 412 et seq. Criminal Procedure Code., formulate these:

Grounds for appeal

which I ask you to overturn criminal sentence no. 17 from 02.02.2015 Bucharest Court of Appeal, Criminal Division II, with regards to the part of the sentence that concerns me, and pronouncing a new judgment, applying art. 421 pt. 2 lit. a) Criminal Procedure Code in conjunction with art. 17 para. 2 Criminal Procedure Code. based on the provisions of art. 16 lit. c) Criminal Procedure Code., to issue my acquittal.

I. Reasons that pertain to the illegality of the sentence

1. The illegal use of a repealed legal text - art. 7 paragraph. (2) of Law no. 78/2000

The first instance court raised the question of determining the most favourable criminal law regarding the two bribery offenses in my case, since both were committed before 1 February 2014, the date of entry into force of the new Criminal Code. In this regard, the said criminal sentence stated the following: *"Given that, according to the indictment act, the legal classification given to the two bribery acts adduced against the accused, Dan Grigore Adamescu, were those stipulated under art. 290 para. (1) Criminal Code. In conjunction to Art. 6 of Law no. 78/2000, the court, by the principle of criminal law more favourable (mitior lex), the application will apply art. 386 Criminal Procedure Code. and will change the legal classification given by indictment act from the crime stip. by art. 290 para. (1) Criminal Code. rap. Art. 6 of Law no. 78/2000 in the crime prev. art. 255*

para. (1) Criminal Code. (1968) rap. Art. 6 and Art. 7 paragraph. (2) of Law no. 78/2000 apply. art. 13 Criminal Code. (1968) and the offense prev. art. 290 para. (1) Criminal Code. rap. Art. 6 of Law no. 78/2000 in crime prev. art. 255 para. (1) Criminal Code. (1968) rap. Art. 6 and Art. 7 paragraph. (2) of Law no. 78/2000 apply. art. 13 Criminal Code.(1968).

The Court of Appeal acted wrongly in the course of determining the most favourable criminal law in two respects.

Changing the legal classification given the facts in the indictment by retaining the aggravated form provided by art. 7 paragraph. (2) of Law no. 78/2000 to the offenses of bribery, given that I was prosecuted on account of offenses in base form, not the aggravated one. The legal classification change is a complex operation subject to conditions, namely the discussion and explanation of the rights of the defendant parties, conditions whose fulfilment is a guarantee both the rights of defence of the accused and a fair settlement of the case.

The court completely ignored these provisions, by not informing me as to the consequences of such a change and prohibiting me from making my point of view known as to the necessity of such a change, therefore severely violating my right to defence. The consequence of such a change in judicial classification is that the aggravated form of bribery was taken into account, and this form of the crime is punished more severely.

In the Romanian version of these grounds for appeal we showed that the native literature shows that in the event of a change in legal classification of a crime the obligation to explain the consequences of the operation must be fulfilled,

otherwise the operation is null and void if it should harm the accused, and theoretically it doesn't matter that a more severe or less severe crime is retained after the operation. Also the ECHR showed that the operation must be done separate from the act of sentencing – i.e. before the closing arguments, and in no way at the time of giving the sentence – and held Romania responsible for violating art 6 para. 3 of the Convention (case Adrian Constantin v. Romania, 12 april 2011).

Also, the court erroneously said that the most favourable law (*mitior lex*) is the Old law, the one that was before 1 February 2014 by taking into account the minimum of the Old Law. The procedure was illegal because it took into account the aggravated form of the Old Law which, onto the entry into force of the New Criminal Code was repealed at the same time as the entry into force of the Code. So, instead of first applying the reppelation (repealing) law (art. 4 of the Criminal Code) and considering the aggravated circumstance repealed, and afterwards comparing the punishments provided under the New and Old Criminal Code it just made the comparison between the aggravated form from the Old Code and the base form (regular non aggravated form) from the New Code. The aggravated form which was repealed meant that the maximum for the crime should be increased by two years jail (art. 7 para 2 from law 78/2000).

Thus the sentence is illegal because the Court found that the most favourable law was the Old Code with the application of art. 7 para 2 of Law 78/2000 in the circumstance that art. 7 para 2 was explicitly repealed when the New Code entered into force. It should be noted that the maximum for bribery has been raised in the

New Criminal Code to 7 years imprisonment, instead of 5 years in the Old Code. Also the aggravating circumstance added 2 years to the Old Code so that the maximum was 7 year sin the courts view. This we consider was illegal because the court should have considered the aggravated form repealed and applied the Old Code and as such the maximum term of imprisonment should be 5 years (art. 255 Old Crim Code of 1968).

2. The illegality of complementary punishment consisting of a ban of my right to be a director, administrator of a company or coordinate companies abroad

Through the sentence I was forfeited my right to be my director, administrator of a company or to coordinate companies **in Romania or** abroad given that I had committed the offenses of bribery in my work as coordinator of a group of companies which, as accessory punished under art. 64 lit. c) Criminal Code. (1968), during the execution of the principal penalty and also complementary punishment, based on art. 65 Criminal Code. (1968), for a period of three years after the execution of the principal penalty.

Explanation> We in Romania also have accessory punishments and complementary punishments. These are similar in content but different in time of application. A complementary punishment is applied after the main punishment has been executed (i.e. imprisonment) and the accessorial punishments are executed during imprisonment (or other main punishments).

The court's decision is illegal because it exceeds its possibility of enforcement. A national court cannot exceed through its sentence the territory of Romania, but in this case it said that Mr Adamesccu is prohibited to be a director administrator or coordinate companies abroad which is a violation of the principle of territoriality and of the national sovereignty. The only exception was the possibility of international treaties on these matters but at this time none are applicable in the EU on the matter of complementary punishments.

Therefore, under the territoriality of criminal legal norm The first instance could have a complementary penalty of law to produce its effects, but should be limited to an additional penalty ordered within the territory of Romania, and if they wished enforcement and abroad, this It would have been possible through its recognition in the state to be executed under the rules of international judicial cooperation in criminal matters.

II. Reasons for groundlessness

The court fully endorses my description of the facts in the indictment, portraying the objective element of the crimes that I am accused as the agreement that I am presumed to have given regarding the payments mentioned, ignoring the nature of the offense of bribery, whose material element (i.e. the action specifically incriminated) is always done by the *promising, offering* or *giving* money or other

benefits; in my case, there is no such action **described to constitute the material element of the crime, in any of the aforementioned alternative action (promising, offering, giving)**, because from none of the evidence administered does such actions be described.

First of all, the court analyzed the circuit of the money transfer.

- **The way of account transfer from BAUMEISTER SERVICE SRL SC into the Law Office account of GEORGE-Claudiu Dumitru, then money being transferred to the personal account of the lawyer, from where they were transferred into the account of the wife of Onuțe DANIEL opened at Banca Transilvania**

On **01/03/2013** between Law Office GEORGE-Claudiu Dumitru, on the one hand and SC BAUMEISTER SERVICE SRL, on the other hand, was contract of legal **assistance no. 717263/2013**, concerning "*Legal assistance for current customer activity*," agreed the fee in the amount of 10,000 lei, being able to perform its payment in advance.

The legal assistance contract was signed by the witness GEORGE-Claudiu Dumitru, and witness DANIEL Onuțe, as a representative of the company.

Under this legal assistance contract, on 15.05.2013, lawyer George-Claudiu Dumitru drew up and signed invoice no. 00016B to SC BAUMEISTER SERVICE SRL, Billing the "*fee, legal assistance agreement no. 717263 / 03.01.2013*" **invoiced amount of 275,000**lei. The confirmation of receiving said invoice at SC

BAUMEISTER SERVICE SRL, and subsequent registration being carried out by witness FIRESTAIN ELENA-DANIELA on 20/05/2013.

According to the statement of account of 06.10.2013, issued by Banca Italo-Romena for lawyer Claudiu Dumitru GEORGE, that amount was charged to him on **16.05.2013**, by payment order from SC BAUMEISTER SERVICE SRL.

The next day, on 17.05.2013, George-Claudiu Dumitru has transferred the amount of **203,300 lei** in his personal account, by way of "*grant loan*" and the same day, the money was transferred into the account of Onuțe Alina Stefania (DANIEL Onuțe his wife) with the same title "*grant loan*". On 05/20/2013, Onuț DANIEL withdrew from his wife's account, the amount received 203,300 lei, **150,000**lei.

The witness Claudiu Dumitru George (testimony of 05.15.2014 from DNA) said about the amount of approximately 200,000 lei "*in the summer of 2013, I can not specify the exact month, we discussed a contract with Onuțe DANIEL, representative of one of the companies in the group SC BAUMEISTER SA, for the provision of legal services. For services rendered I charged a fee. During the contract Onuțe DANIEL asked me a sum of money without me providing details about the reason for the request, the amount of which I can not specify the date, but it is possible to rise to about 200,000 lei. In these circumstances, Onuțe DANIEL told me that he will transfer this amount, together with related fees, in addition. After we received the money in its totality, we made efforts to withdraw cash. For banking reasons we made a loan agreement concluded between me and Onuțe DANIEL for the sum mentioned above. I say that this was fictitious, because I had no intend of asking for a refund .*

So from the account of **SC BAUMEISTER SERVICE SRL** the sum of **275,000 lei (approx. 61,000 Euro) was removed, of which 71,700 lei remained at Law Office George Dumitru (approx. 16,000 Euro), 53.300 lei remained in the wife of Onuțe Daniel account (approx. 12,000 Euro) and 150,000 lei were taken by Onuțe Daniel (about 33,000 Euro).**

The court held that this sum of money was that Onute Daniel gave the sum to Borza Monica Angela (25000-30.000 Euros) in order to be given to mr. Stanciu Ion – judge. The court also finds that the sum of 10.000 Euros had been given in this way to judge Stanciu Ion.

The sentence reads that *"to meet their financial interests, the defendant Dan Grigore Adamescu needed a mechanism in which he implicated a judicial officer and CFO of some of the companies in the group, a lawyer with which various contract were to be signed and the support of a liquidator (insolvency practitioner) and, not least, the final decision of insolvency judges that could be bribed"*

So, **in the opinion of the court, to give a bribe of 10,000 Euros, I have designed a mechanism that costs me 5 times more. Thus, it is considered absurdly that I was willing to pay an amount of 51,000 Euro, to offer a bribe of 10,000 Euros.**

In reality, the circuit that was described before **define fraudulent means to gain money everyone involved and indicated by the court** namely Onuțe Daniel legal officer of Baumasiter and lawyer George Dumitru Daniel and liquidator Borza Monica Angela.

- **The manner of transfer of the money from the account BAUMEISTER UTILAJE ECHIPAMENTE SRL into the Law Office account of GEORGE-Claudiu Dumitru, which was opened on the same day at UniCredit Tiriac Bank and the subsequent transfer of funds to the witness DANIEL Onuțe.**

On 07/11/2013 a legal assistance contract was signed between DUMNITRU GEORGE CLAUDIU and SC SIGUR INDUSTRIAL CONSTRUCT SRL represented by liquidator Borza Monica Angela. The object of the contract was legal representation in case number 19950/3/2013 of the Bucharest Tribunal.

Under Article 2 of the legal assistance contract, the fee was set to 180,000 lei + VAT, and also the parties can agree to establish a success fee later on. Also, Article 5 of the contract *,Other Clauses: the parties agree that the fee payment could be made by SC BAUMEISTER UTILAJE ECHIPAMENETE SRL "*.

Under this contract On **12/10/2013**, George-Claudiu Dumitru issued invoice series CAB no. 00130042, totaling **223,200 lei** (180.000 43.200 lei + VAT collection) to SC BAUMEISTER UTILAJE ECHIPAMENTE SRL.

Under "*Description of goods or services supplied*" mentioned "*legal aid fee under the contract no. 717289/2013*" and settled payment term 12.10.2013. The invoice was signed by CLAUDIU GEORGE DUMITRU and the client by FIRESTAIN ELENA DANIELA and Onuțe DANIEL.

On 09.12.2013 witness Dumitru George- Claudiu opened at Unicredit Tiriac Bank - Branch, and on 12/10/2013, the law office of George-Claudiu Dumitru received from SC BAUMEISTER UTILAJE ECHIPAMENTE SRL the sum of

180,000 lei, plus VAT 43.200. **Of the 223,200 lei, lawyer George-Claudiu Dumitru withdrew cash sum of 222,040 lei on 12.10.2013.**

I emphasize that defendant Angela Monica Borza reported on **June 2, 2014** in front of the prosecution: *"I never had discussions on contracts with the lawyer (George Dumitru - Ed) and this legal assistance contract for an amount of 180,000 lei plus VAT where the success fee and payment to be made by another company in the group was never signed by me, it is counterfeit sure to be made by Onuțe Daniel and lawyer George Dumitru, because I never, in 14 years of career, never signed a contract for legal assistance without the approval of the creditors (...) I repeat this contract is counterfeit"*. This statement was completely ignored by the court.

The court held that: *"according to the statement of the witness Onuțe Daniel, on 10.12.2013 he received from the witness George Dumitru in cash the sum of 100,000 lei that he exchanged to euro and sent (15,000 or 20,000 Euros) to Monica Borza defendant, so that she could then give to defendants Ion Stanciu and Rovența Elena, judges in the Bucharest Tribunal. On 11.12.2013, Monica Borza gave to Ion Stanciu, judge, the sum of 5,000 Euros and on 10/12/2013 to Rovența Elena, judge, amount of 23,000 lei, the equivalent of EUR 5,000, in order for them to give a favourable decisions in cases of insolvency no. 33293/3/2012, and 41848/3/201219950/3/2013 that they were invested to judge.*

Therefore the following sums of money were transferred to the account of lawyer George Dumitru: the amount of **223,200 lei (approx. 50,000 Euro)**, of which he kept an amount of **123,200 lei for himself (approx. 27,500 Euro)** and handed the sum of 100,000 **lei to Onuțe Daniel (approx. 22,500Euro)**.

So, in the opinion of the court, based exclusively on the witness statements of Onuțe Daniel, the price of making a bribe of 10,000 euros was 5 times higher, 50,000 Euro, contrary to any logical reasoning of any person.

In conclusion, the content of the evidence concerned about concrete ways in May and December 2013 were removed money from company accounts BAUMEISTER MACHINERY EQUIPMENT SRL and SC SC BAUMEISTER SERVICE SRL, resulting not in any way my involvement, On the contrary, the exclusive involvement of witnesses Onuț Daniel Elena-Daniela Firestain-Claudiu Dumitru George.

➤ **Based on this circuit the money, the court first gives credence to allegations in the indictment and to the witness Daniel Onuțe regarding the fact that during 2013 I had several meetings with Onuțe Daniel and Daniela Firestain in which we designed a mechanism to bribing judges Roventța Elena and Ion Stanciu.**

The court found, wrongly, that "*witnesss statements made by Daniel Onuțe are confirmed by witness Firestain Daniela, recognizing that she participated along with Onuțe at **several meetings with** defendant Dan Grigore Adamescu at the headquarters of Baumeister, at Astra Insurance headquarters and the Hotel Intercontinental in Bucharest.*" The statement is contrary to reality both in terms number of meetings and the place where they occurred.

I pointed to the court two key witness statements in question: **Elena Daniela Firestain witness statement dated 12.12.2014, from trial phase " from what I**

*remember, regarding the insolvency issue I had with Dan Grigore Adamescu and Daniel Onuțe a maximum of two meetings (...) at the two meetings mentioned - December 2013 respectively in early 2014, probably in January-February - "and **Daniel Onuțe witness** statement:" during 2013, we had Firestain and Mr. Dan Adamescu three or four meetings, discussions we talked about the state of insolvency proceedings and fees and the circuit the money was supposed to follow in order to be given to the judges involved in insolvency proceedings ". The statements are contradictory.*

It is worth noting that Daniel Onuțe witness statement is not accidental, since in the absence of meetings with me in the spring of 2013 one could sustain that and I knew I would have agreed - material element of the offense of bribery in the present case - the judge handed 10,000 Euros Ion Stanciu, and in these circumstances the accusation of bribery would be unsubstantiated.

The court is not considering these inconsistencies, but rather argues that two statements were corroborated, thus that they had participated in several meetings with me in the year 2013, when in fact **Firesatin Daniela confirmed one meeting, at the end of 2013.**

Also, although it said the two meetings were held at the Intercontinental Hotel Astra Asigurari, **the court added Baumeister headquarters.**

Firestain Daniela witness told the court that *"one of the meetings was held at the headquarters of Astra in Nerva Traian Insurance, Exhibiting at the office. I think meeting at the headquarters of Astra Insurance took place in December 2013 because outside it was cold. At the meeting attended Onuțe Daniel, Mr. Adamescu*

and the undersigned Firestain. A second meeting was held in early 2014, probably in January-February at Intercontinental".

The witness repeated several times in the same statement that the wording on insolvency of Baumeister held **only two meetings, only one of which 2013**. During *those two discussions* she made it clear that no amount of money will go to the judges.

At the same time, say that **Stefan Stefania** said, at the time the declaration before the court on **12.12.2014** that Onuțe Daniel did not have direct access to my office in the absence of people management, and the witness Onuțe Daniel confirmed, in front of the court, where he said that "*at the talks with Dan Adamescu attended Mrs. Firestain* " and my statement dated 05.12.2014, which have shown that an employee can not come to me unless accompanied by a director.

These are essential, **because the accusation that I knew of the plan to bribe the two judges was unknown to me at these meetings.** At the same time this stresses the superficiality and lack arguments of the court.

➤ Starting from these two hypotheses, the court states that I had a motivation in order to bribe the two judges.

A. The court held that, my deed which, in June 2013 and December 2013 (12/11/2013) through and with the help of the witness and the Onuțe Daniel and defendant Borza Monica **I sent Ion Stanciu, judge at the Bucharest Tribunal,**

EUR 15,000 (EUR 10,000 in June 2013 and EUR 5,000 in December 2013), to issue a favourable decision in case no. 33293/3/2012, namely to

- accept the opening of insolvency proceedings the debtor SC SIGUR INDUSTRIAL SRL (formerly BAUMEISTER SA)
- for appointment as trustee IPURL ACTIV LICHIDATOR
- for admission of claims SC EAST BUCHAREST COMMERCIAL PARK SRL and SC ASIGURAREA REASIGURARE ASTRA SA.

With the help of Onuțe Daniel and defendant Borza Monica Angela the court stated that I bribed judge Stanciu Ion twice during the years 2013, first with 10.000 Euros and then 5.000 Euros both bribes regarding the same case file.

The accusations are false because I had no interest to bribe the judges in order to start the insolvency procedures, a procedure that can be started by any creditor easily if there is an unpaid debt longer than 90 days. The insolvency request was made by ECOSTRAT GRUP SRL for. 361.897,19 lei, over the minimum value.

From the subjective side of the crime, (*dolus*) bribery must be committed with direct intent and with a special purpose (*dolus specialis*).

The facts of the case were misinterpreted by the Court as it had retained the fact that the bribe was issued in order for the insolvency case to take part, whereas Baumeister was on the opposing side, contesting the insolvency case.

Regarding the naming of the judicial administrator, I mention that this was requested by EAST BUCHAREST COMMERCIAL PARK SRL on 12.03.2013.

Therefore there was no motivation to bribe the naming of judicial administrator since law permitted such a naming to every party involved.

Furthermore, Onuțe Daniel statements convey the fact that a favourable outcome of the cases was probable, basing his claims on the documents that were presented in court for those proceedings. He considered that the judicial claims were admissible even if there would have been no bribery involved.

Another controversial matter is that after the presumed bribe had taken place judge Stanciu Ion ruled in a way that was contrary to the interests of SIGUR INDUSTRIAL CONSTRUCT SRL (former BAUMEUISTER SA) by rejecting as tardy the action which was started by this company, and also rejecting this company's similar action with regard to Arabesque SRL. This proves that the judge acted according to his beliefs and was not bribed beforehand.

In court Stanciu Ion acknowledged the fact he had been given the sum of money but the purpose of the sum was other than the for which he was indicted. On 03.11.20124 he declared in court that Mrs Borza told him it was a vacation leave instalment (it's not an error in translation). Though this is a gift it was given unconditionally by Borza, and as such it cannot be interpreted as a bribe because it was given without demanding that the judge do something for Borza or myself. Also what is certain is that there is no involvement on my behalf in the actions of Borza or Onute.

The court did not take into account the testimonies of the defendants and dismissed the real intent of these gifts; Borza had the interest to befriend the judges

in order to be appointed as judicial administrator in as many cases as possible due to the fact the judge elect the judicial administrator.

Regarding the second instalment of money **given** in December, in the indictment act it is said that on 11.12.2013 Onuțe Daniel met Borza Monica Angela and gave her 5000 Euro which she, later on, gave to Stanciu Ion in her car, parked on a street beside the Bucharest Tribunal.

These have been retained by the court because of Onuțe Daniels testimony. This testimony is false because the sum of 100.000 lei is much more than the sum which is said to have been given as bribe in December (23.000 Euros).

Judge Stanciu Ion said he received the sum of 500 Euros but said that defendant Borza never spoke to him about Mr Adamescu. He added that he never knew Mr Adamescu before trial. Defendant Borza said that this sum of money was a Christmas gift.

It is clear that judge Stanciu Ion never had the representation that the money could come from me, as he was aware that the money was a gift coming from Borza herself. The court states that it is irrelevant that mr Adamescu did not know judges Stanciu and Roventă as long as the defendant was aware and agreed that as a company policy sums of money should be given to judges. The court ignored the fact that even the judges didn't know who I was because it is fact that I had no involvement with the actions of Borza and Onuțe.

As I said in court on 05.12.2014, there can be no link between me and the sums of money paid to judge Stanciu since he states that these were paid for a vacation and also as a Christmas gift. Also this is backed up by the witness statement of Lilica Poppa who said on 12.12.2014 that Mr Adamescu had a lot of

problems and didn't think he would give money to judges. She also said she was never told by Onute Daniel or George Dumitru about such money.

For these reasons I ask the appeal court to approve my appeal and acquit me for the charges that were mentioned before

B. The court also condemned me for bribing, with the help of Onu'e Daniel and defendant Borza Monica Angela judge Roventa Elena, judge with tenure at Bucharest Tribunal by giving her the sum of 23.000 lei (5000 Euros) in order for her to give a favourable decision in case file nr. 41848/3/2012/a1 and nr. 19950/3/2013.

Judge Roventa Elena is a defendant charged with receiving bribes through the defendant Borza Monica Angela to the sum of 23.000 lei (5000 Euros)

As the indictment act shows, the sum of money was given out of Borza Monica Angela's own funds, so that the accusation of bribery on my behalf is absurd, because it's impossible for such a crime to be committed in these circumstances. Also the said sum of money has nothing to do with me, because it is proved that the money was given with another purpose. Borza Monica Angela confessed that she gave the sum of money to Roventa Elena in her car, on 10.12.2013, money she previously withdrew from the bank.

In front of court Borza Monica Angela said that the purpose of the money was in order to accelerate the process of finalizing the table of creditors for SC ACTIV CONSTRUCTII SRL, the money being given by her, and afterwards reimbursed by Onute Daniel (on 11.12.2013). This is contradicted by Onute Daniel

who stated that on 02.06.2014 he did not know until 15 may 2014 that Borza had given Roventa money, and the sum should be given back by me.

Therefore there is no evidence that the sum of 5000 euros was given through Onute Daniel by me to judge Roventa Elenain December 2013. Also)Onute addes that in fact the sum of 10.000 Euros had been given to Roventa Elena by Borza Monica Angela. For ACTOV CONSTRUCTII INDUSTRIALE for the first stages of the procedure, he says that sums of 5.000 to 10.000 Euros were given, and for December he gave about 15000 or 20.0000 Euros to Borza.

Also in the indictment act it is held that Onute was not an intermediary for bribing Roventa Elena so the accusations brought against me have no ground because there is no link between me and Borza Monica Angela who gave the sum of money to Roventa Eelena.

Also Roventa Elena did not have knowledge that the sums of money had come from somebody else than Borza, as her testimony shows: :*”Roventa Elena became very agitated when I told her that the money came from Onute and not form me”*. Roventa Elena said in court that there had been no discussion involving my name and neither did Borza make any reference to me in her presence.

The court considered that the bribe was given in order for Roventa Elena to give a favourable decision in case files nr. 41848/3/2012/a1 and nr. 19950/3/2013, by approving the action started by SC SIGUR INDUSTRIAL CONSTRUCT SRL against the preliminary creditor table of SC ACTIV CONSTRUCTII INDUSTRIALE SRL by including this company under the list of creditors, and also not to annul the contract between SC ACTIV CONSTRUCTII INDUSTRIALE SRL and SC BAUMEISTER SA.

As can be noted, such actions were not followed by the judge, but opposite solutions were given to the civil case, which were not favourable to myself. The before mentioned contract was partially annulled towards the sum of 1.500.000 Euros. So the civil sentences given by Roventa Elena were not at all favourable to myself, not taking into account the fact that I proved I had no control over the activity of Baumeister.

With regards to the inclusion in the table of creditors, the action was only partially admitted by Roventa Elena and as a consequence, SC SIGUR INDUSTRIAL CONSTRUCT SRL was held as a creditor for the sum of 32.138/094 lei. Because that action was only partially admitted it cannot be considered a favourable decision of Roventa Elena.

For these reason I ask the appellate court to admit my appeal and acquit me for bribing judge Roventa Elena.

- **With regard to the means of evidence used against me by the court, it is held that the main testimony is that of Onute Daniel which is a DNA collaborator (National Anticorruption Department – DNA)**

Although on 09.01.2015 witness Onute Daniel recognized the fact that he accepted to be a collaborator of DNA showing that his benefit was immunity from prosecution, by using him as a witness instead of a suspect or defendant, the court ignored the fact that his quality is that of an interested party. Thus, under art. 103

para 3 of the Criminal Procedure Code (CPC) the sentence cannot base itself in an important degree on the testimony of a collaborator, yet this what the Court has done.

In the sentence the court considers Onute Daniel as a witness and not a collaborator failing to recognize his true procedural quality in the case.

For his crimes, Onute Daniel received a resolution from the prosecutor absolving him of all his crimes because there was a cause of impunity. This solution was given illegally by the prosecutor because Onute Daniel made his testimony after the prosecutor had already started the criminal case and was making investigations into de matter, and the legal impunity clause states that the testimony in which the person who bribes denounces his crimes, must be made before the judicial organs are aware of the crime.

For a number of procedural reasons, the fact that Onute Daniel did not denounce his actions in a timely manner is proved by reference to the way he made his first statement and the way the DNA prosecutor recorded it and also the investigation afterwards was conducted. At the time Onute denounced his acts he was already being investigated for his crimes by the prosecutor, and this is mentioned in the indictment act.

Also the use of his testimony violates art. 148 CPC that speaks of using collaborators, and thus all evidence that he provided is null because they were illegally obtained. In a recent case, *Prajina v. Romania* from 7 jan 2014, the ECHR detailed the issues regarding the hearing of the witness which serves as the main basis of the sentence. Like in the case mentioned Onute's testimony is very important due to the general lack of evidence in the case. My case is also similar to

Papadakis v. FYRM (26.02.2013), because the main evidence against me is the testimony of a provocative agent. In consequence without a solid mass of other evidence such a testimony cannot uphold the solution of the court.

Also the court ignored the fact that the witness statements of Onute Daniel are not credible because they are contradicted by other evidence in the case. These contradictions were presented to the court but were ignored by it.

These inconsistencies are: the difference between the sum of money that was given to defendant Borza, because Onute Daniel changed his testimonies over time by changing the sum of money that was given to Borza; the fact the he at first does not implicate lawyer George Claudiu Dumitru into the circuit of money, only to add him later; at first he supposes that the money would be given to judge Stanciu, and afterwards in his testimony he becomes sure that the money was supposed to be given to judge Stanciu; he states that money was exchanged in Euros at an exchange office and in a later testimony he details the exact place of the exchange and add that is was done without documents; at first he makes no reference to Mr. Adamanescu and in later testimonies adds that I had an involvement in the fact that Borza Monica Angela was named judicial liquidator in the circumstances that I had no meetings in that time frame with Onute Daniel.

It has to be mentioned that there is a gradual change in the testimonies of Onute Daniel in a way that makes more references to me, and tend to support the accusations brought against me. The fact that his attitude changes over time means that he was not truthful and was influenced by the prosecutor in giving such statements.

➤ **The other statements that were taken into account by the court – defendant Borza Monica Angela and witness Firestain Daniela – are in fact based on the facts seen by Onute Daniel who informed both Borza and Firestain. As a consequence, every aspect known by the two is known as a result of their discussion with Onute Daniel**

Regarding Borza Monica Angela's statements in the indictment act it is shown that this is hearsay evidence from Onute Daniel, and not first account evidence.

My implication in the case is deduced by the defendant by interpreting the statements made in private to her by Onute Daniel.

As to her credibility it should be pointed out that her first statement in which she denounces her acts and recognizes her guilt is made on 14.05.2014 after she was contacted by Onute Daniel and informed of the proceedings. Thus she chose to collaborate with the prosecutor in order to receive immunity. Also art. 19 of OUG 43/2002 was applicable so her sentence was diminished and she received a suspended sentence to jail time (she does not have to be imprisoned) although the case revolves around her criminal actions. Also she said in front of court that she received no other sums of money except for the bribes for the judges, claiming that she had no personal interest in the matter. This is a contradiction from her other statements in which she said she wanted to befriend these two judges.

Also, regarding Firestain Daniela, her accounts are also based on what Onute Daniel told her, but she added that she does not entirely believe what Onute

Daniel told her. She said that Onute Daniel led her to believe the money was supposed to be for bribing judges but during the actual conversations on the subject at which she participated there was no talk of bribes. Also she said over the course of the trial that when Onute Daniel told her the money was for bribes she did not believe him. The court selectively used Firestain Daniela's testimony by omitting important aspects, and contouring facts in a way that was not meant by the witness.

Also, the court should have had some reservations in the credibility of both Firestain and Onute's testimonies because they are presumed to have participated in the criminal acts that are brought against me so the court should not have based its decisions without taking into account this participation.

Also the High Court jurisprudence say that is a man effectively gives a person a bribe even if the money is from someone else he is the author of the crime and not the accomplice. On the other hand the professional literature say that the reverse is true. In any case, Onute and Firestain could not have been considered witnesses.

But, even though there existed many contradictions between witnesses the court considered that my defence was not real and considered that the accusations against me were proven by the statements of the two; Onute and Firestain.

➤ Wiretaps and surveillance used as evidence.

The court make references to the conversations that were recorded between Onute Daniel and Claudiu George Dumitru, but in these conversations there is no

reference to myself. These conversations confirm the money circuit but do not implicate me whatsoever.

Other conversations mentioned are the ones between Firestain and Borza Monica Angela which were made at Onute Daniel's initiative, who had received such instructions from the prosecutor.

Clearly there has been a violation of art. 6 of the Convention as to the use of such means to obtain evidence because these conversations were taking place one day after Onute Daniel testified his crimes and offered to help the prosecutor. As such the operational information for the use of a provocative agent were not concrete and were not presented to the defendant as in *Baltinis v. Latvia*, 8 jan 2013, *Lagutin v. Rusia*, 24 april 2014).

Moreover there are conversation that took place between Borza Monica and Onute Daniel; after he testified his crimes to the prosecutor.

I must remind the court that on 13.05.2014 and 14.05.2014 both Onute Daniel and Borza Monica Angela accepted to collaborate with the prosecutor so that the discussion between the two have the stain of provocation on them.

Taking this into account should have made the court reinterpret the conversations between said parties as either having been influenced by the prosecutor or having been created solely to help the accusations brought before me.

About the judges Stanciu and Roventa the witness Firestain said she first heard on 14.05.2014 from Onute Daniel, when she met him at the office of SC NOVA INVESTMENT SRL. He asked him about them, he told her their names and the fact that through Borza they had received money. Of course the names were pronounced in this meeting because Onute Daniel had recording technology

on him and the whole conversation was being recorded by DNA in order to further their case.

- Regarding the evidence in the case, the first time wiretaps and other surveillance methods were permitted was on **18.11.2013 when Înceierea Curții de Apel București** (The decision of the Court of Appeal) **nr. 309 and authorisation nr. 301 were emitted.**

Through these, the prosecution had the possibility to intercept and record any and all conversations, and also to use other surveillance measures. These authorizations were prolonged until 06.5.2014, after which technical surveillance warrants were emitted. If during this period there was any suspicion that I had any involvement in the money that is said to have been given to the judges, the prosecutor would have asked the court to intercept my calls and also to make recordings of all my conversations, but the prosecution never asked for this.

As a matter of fact, the only recordings in the case file that regard my conversations are the ones between 19.05.2014-21.05.2014, and they represent aspects regarding witness Firestain and were taken from another case of the DNA , case file 67/P/2013. As a consequence there was a criminal investigation regarding myself where such methods were authorized and indeed my conversation were recorded in the same period. It's clear that if there were any evidence regarding my involvement in the money given to the judges such evidence would have been used in the present case.

Also since both Borza Monica Angela and Onuyte Daniel were both collaborators of DNA they could have come to meet with me while wearing recording technology. This did not happen because Onute Daniel was aware of the fact that I knew nothing of their illegal activity.

Because of these there is no evidence to indicate the fact that I ordered or expressed any opinion regarding the bribes that were offered to the judges by other persons in the case.

From the evidence in the case file there is no clue or piece of evidence that would prove I was aware of the fact that sums of money were being given to the two judges and there is no piece of evidence to prove that I consented to the offering of such bribes. Furthermore, there is evidence that the sums of money that are in the indictment act were taken from the accounts of companies in the groups of companies fraudulently, based on the personal interest of Onute Daniel.

In fact, the evidence in support of the indictment clearly reflects an understanding between Daniel Onuțe, George Dumitru and Daniela Firestain, by which these wanted to extort money out of the companies by the use of legal assistance contracts and other such fees;

A relevant aspect that was mentioned by the witness Poppa Lilica is that the lawyer George Claudiu Dumitru had no right to sign the legal assistance contract for case number *nr. 33293/3/2012*. Also from the contract it is stipulated that the

administrator of SC BAUMEISTER SA is Daniel Onute and also that the contract is signed with Lilica Poppa and not with George Dumitru. This proves the fact that the sums of money would have an irregular circuit.

Onute Daniel gave an explanation for the use of George Dumitru. In his account he stated that the use of George Dumitru was cheaper. This statement is a lie because in order to bribe 20.000 Euros another 90.000 Euros were spent.

Also Borza Monica Angela, said in front of court that she received 15.000 Euros from Onute once and another 5000 Euros a second time and other sums of money were probably take by Dumitru and Onute for themselves.

Borza Monica Angela also shows that she thinks the contract in question is a forgery because she is aware that no such contract could have been signed without the approval of the creditors of the firm. This testimony is contradicted by Onute Daniel who says that the stamp of Borza's company name was applied on the legal assistance contract at the demand of Mrs. Borza. This statement is false proving the ill intention of Onute Daniel because it is not confirmed by any piece of evidence. It is common knowledge that the judicial administrator cannot approve the payment of such a sum of money – lawyer fee- for a company that is about to go bankrupt and is in insolvency state, a state that is characterized by the lack of money and the company being under the control of it's creditors.

In these circumstances Firestain Daniela made payments for a forged contract. These large sums of money have an unknown destination to this day, and the prosecution made no attempt to prove where the sums went and how I am involved in all this.

The way that this contract was signed is shown by the witness Colceru Ionut who said in front of court that he found out that Onute Daniel asked Kimm Mihai to put the stamp of ACTIV LICHIDATOR IPURL on George Dumitru's power of attorney delegation. At that moment he did not know the lawyer was back there but found out later that it was George Dumitru. Witness Kimm Mihai also told the court that he applied the stamp on George Dumitru power of attorney delegation so that he may represent Baumeister. At that moment George Dumitru did not tell him what was the legal fee of the contract. Mr Dusa Gruia's testimony is also in the same way, corroborating those we have previously mentioned.

From these testimonies it is evident that the stamp of ACTIV LICHIDATOR IPURL had been in the possession of Onute Daniel. This points to the fact that he indeed was the one who signed the legal assistance contract instead of the administrator and also used the stamp in order to validate the contract.

The signing of the contract, it doesn't even matter who signed instead of the judicial administrator, excludes any implication on my behalf to the criminal acts in the present case.

It is evident from the evidence in the file that the interest of Onute Daniel is way past the interest of a regular employee, intermediary for a bribe. He has personal gain. From his conversations with Borza MONICA Angela (09.12.2013) he made a scheduling at the bank to pick up 100.000 lei from his wife's account if he would not receive the loan from George Dumitru. When he does receive it he has a sigh of relief (recording from 10.12.2013: "*It's done. I'm relieved now*"). Also contract nr. 717263 from 03.01.2013 between Dumitru George and SC Baumeister Prestări Servicii SRL is signed by Onuțe Daniel. What interest would

Onute Daniel have to give 100.000 lei from his family account in order to give to Borza Monica Angela?

In court on 09.01.2015 Onute Daniel stated that from the companies in the group he received only 15.000 Euros to give Borza Monica Angela in order to be given to the judges. In the same court term he said he had received 20.000 euros on one account, contradicting himself again. Also Borza testified she received only 15.000-20.000 Euros in total.

Having said all this, it is clear that the statements of Onute Daniel cannot contribute to finding the truth in the present case and cannot be used by the court to reach a decision.

All these aspects contribute to the conclusion that the Courts assessment of the facts is wrong as the court has based its findings on wrongfully interpreted information based on unreliable sources such as the witnesses in the case (who are actually collaborators for the prosecution). In way is it proved that I had any knowledge of the sums of money offered to the judges nor did I condone such acts or were a part in their fulfilment.

27.04.2015

DAN GRIGORE ADAMESCU

Rep by att. Gh. Mateuț

TO THE PRESIDENT OF THE HIGH COURT OF CASSATION AND
JUSTICE – CRIMINAL DIVISION