

**With reference to the criminal case no. 4153/2/2014 (2228/2014) of the Bucharest Appellate Court - the Criminal Division II, with judgment term on the date of 09.01.2015**

**TO  
THE BUCHAREST APPELLATE COURT  
The Criminal Division II**

**MISTER PRESIDENT,**

I the undersigned **Adamescu Grigore-Dan**, in capacity of defendant in the case no. 4153/2/2014 (2228/2014), with judgment term on the date of 09.01.2015, by solicitor Gheorghică Mateuț, in accordance with the provisions of the article 390 in the Criminal Procedure Code, am submitting these:

**WRITTEN CONCLUSIONS**

by which **I request to be acquitted in accordance with the provisions of the article 396 paragraph 5 in the Criminal Procedure Code, corroborated with the article 17 paragraph 2 in the Criminal Procedure Code in relation to the provisions of the article 16 letter c) in the Criminal Procedure Code, for the following:**

**REASONS**

**In fact**, by the Indictment prepared by the Prosecutor's Office at the High Court of Cassation and Justice – the National Anticorruption Directorate of the

date of 20.06.2014, was ordered my sending before the court for the committing of two crimes of **offering bribe** provided for by the article 290 paragraph 1 in the Criminal Code in relation to the article 6 in the Law no. 78/2000, as subsequently modified and completed, by applying the article 38 paragraph 1 in the Criminal Code.

**Essentially it is held that** I would have given *"during the months of June and December 2013, by means and with the aid of the witness Onuț Daniel and of the defendant Borza Monica-Angela, based on a single decision, the amounts of euro 10,000, and euro 5,000 respectively, to the defendant Stanciu Ion in order to pass a favourable decision in the case no. 33293/3/2012"*, and during the month of December 2013, respectively, through the same persons, *"the amount of lei 23,000, the equivalent of euro 5,000, to the defendant Roventă Elena in order to pass favourable decisions in the cases no. 41848/3/2012/a1 and no. 19950/3/2013"*.

### **1. Common matters regarding the two crimes of offering bribe**

The accusations brought against me are built on the premise of the particular interest I would have had in the running of the insolvency procedure for SC Baumeister SA, although as I stated before the court *"my involvement in such company only consisted of informal discussions with those managing it, meaning that the same were informing me about matters regarding the company without asking my approval for the orders that regarded the business of the company"*.

The prosecutors determined within the indictment that I would have committed the deeds I was accused of, based on *"the interest of the latter regarding the judging of the insolvency cases" "their interest in connection with*

*the insolvency cases"* (page 161 in the Indictment), *"they had a major financial interest to obtain favourable solutions in the cases regarding the insolvency "* (p. 152), *"the defendants' financial interest"* (p. 151), *"the interest (...) regarding the judging of the insolvency cases"* (p. 161).

At p. 149 in the Indictment is stated that from the structure of the group of companies I was managing obviously transpired my goal to obtain patrimony advantages from the insolvency procedure, which assertion contradicts any legal logic. The insolvency is defined as the condition of the debtor's patrimony that is characterised by the insufficiency of the available money to pay their certain, liquid and due debts. Within such a procedure the obtaining of patrimony advantages is excluded both for the debtor company, and for the creditors, who are usually unable to recover their claims in full.

The prosecutors' preoccupation to point to my personal interest in the committing of the bribe crimes and to emphasise at the same time the lack of interest of the witnesses Onuțe Daniel, Firestain Elena Daniela and Dumitru George Claudiu denotes the **vulnerability of the indictment and the insecurity of the prosecutors**, who are basing their accusations on mere speculations. Thus, the indictment starts as regards my person with the context I would have committed the supposed crimes of offering bribe in, by showing the own interest I would have had in the insolvency cases, and not by describing the deeds I was accused of, as would have been natural, because the same do not exist (p. 148-151).

The inexistence of the deed in its materiality results firstly from the shallowness of the prosecution body in describing the deeds I would have committed.

In describing the supposed criminal activity I was accused of, in the indictment (p. 151-152) the following are held: *"on the occasion of the meetings*

*with the witnesses Onuțe Daniel and Firestain Elena-Daniela, in the months of May-June 2013 and December 2013, which took place at the offices of ASTRA in Bucharest, Str. Nerva Traian or at the offices of S.C. THE NOVA GROUP INVESTMENTS ROMÂNIA S.A. located at Magazinul Unirea, etaj 5, the defendant Adamescu Grigore-Dan and the defendant Adamescu Bogdan Alexander approved the taking from the accounts of S.C. BAUMEISTER UTILAJE ECHIPAMENTE S.R.L. and S.C. BAUMEISTER PRESTĂRI SERVICII S.R.L. of the amounts of money necessary in order to be remitted to the judges who were judging the insolvency cases by the conclusion of legal assistance agreements with the attorney at law Dumitru George-Claudiu, which agreements were not expressing the reality of the performances and of the fee paid".*

It is noted the fact that the prosecutors are only showing the material element of the alleged crime simplistically, in the form of the approval I would have given as regards the payments as mentioned, ignoring the nature of the crime of offering bribe, the form of active corruption the material element of which is always represented by the promising, offering or giving money or other benefits; in my case, **there is not described any own material deed that would represent the contents of the material element in one of the alternatives provided for by the incrimination rule.**

Such supposed approval given by me is emphasised all through the contents of the indictment, as a conclusion that can be drawn from every evidence submitted. Actually there is no direct evidence from which would result that I would have approved the payment of amounts of money as bribe to the judges Stanciu Ion and Roventă Elena.

The accusations brought against me in this case are arbitrary, this being an **assessment and a construing in bad faith** by the prosecution bodies of the evidence invoked.

## **2. The examination of the evidence that is common for the two crimes of offering bribe**

The main evidence the prosecutors are basing their accusations in my regard on, that I would have approved bribing the judges in the insolvency cases of BAUMEISTER, is represented by the **statements of the witness Onuțe Daniel, collaborator of the NAD**, as results from the statement of the same before the court. On the date of 09.01.2015, the witness Onuțe Daniel stated that on the date of 13<sup>th</sup> May 2014 he had agreed to collaborate with the NAD, and also stated what such collaboration consisted of.

Or, according to the article 103 paragraph (3) in the Criminal Procedure Code, the decision to sentence, to relinquish the enforcing of the punishment, or to postpone the enforcing of the punishment **may not be based to a determining extent on the statements** of the investigator, **of the collaborators** or of the protected witnesses.

By the indictment of the date of 20<sup>th</sup> June 2014 prepared by the Prosecutor's Office at the High Court of Cassation and Justice, the National Anticorruption Directorate – the Division for Fighting Corruption was ordered, based on the article 315 paragraph (1) letter b) in the new Criminal Procedure Code, in relation to the article 16 paragraph (1) letter h) in the new Criminal Procedure Code, in relation to the article 290 paragraph (3) in the new Criminal Code, the dismissal of the case as regards the committing by Onuțe Daniel of the complicity to the crime of offering bribe. More precisely, in this case was

considered that the “denounce” submitted by the same as regards the remitting by me of the amount of euro 15,000 to the defendant Stanciu Ion and of euro 5,000 to the defendant Roventă Elena is a cause of nature to exclude the entailing of his criminal liability.

**The dismissal order in the indictment regarding the witness Onuțe Daniel was issued in blatantly breaching the substantive law provision regarding the impunity cause** which is claimed to be applicable in this case, and which would lead to the criminal action lacking object.

For such purpose, the article 290 paragraph (3) in the new Criminal Code sets forth that *"The bribe-giver shall not be punished if they denounced the deed before the prosecution body was notified in regard of the same"*. Therefore, one of the fundamental requirements for such special impunity cause to be applicable is, as also emphasised within the doctrine, for *"the denouncing to occur before the prosecution body was notified"* (Tudorel Toader, *Drept penal român, partea specială [Romanian Criminal Law, the Special Part]*, 7<sup>th</sup> Edition, Editura Hamangiu, Bucharest, 2012, p. 291).

Given the regulation as mentioned, and considering that this is *"a subjective cause, related to the conduct of the perpetrator after committing the deed"* (Constantin Mitache, Cristian Mitache, *Drept penal român, partea generală [Romanian Criminal Law, the General Part]*, 9<sup>th</sup> Edition, Editura Universul Juridic, Bucharest, 2012, p. 376), to speak about the existence of the impunity cause that is specific for bribe offering as regards Onuțe Daniel, it was required for the same to be the one notifying the judicial bodies about the criminal conduct, more precisely for his denounce to have led to discovering the deeds of offering bribe.

By corroborating the so-called "denounce" made by Onuțe Daniel with the technical surveillance measures authorised in the case, which measures provided

part of the evidence support invoked by the prosecutors in preparing the document for sending before the court, it is noted that the requirement as mentioned above was not met.

As specified on page no. 26 in the indictment, Onuțe Daniel appeared before the prosecution bodies on the date of **13.05.2014**, on which occasion he gave a statement by which he would have informed the same about the crimes of offering bribe he had taken part in, in capacity of accomplice, which statement he titled "denounce", and which he did not initiate, as he stated before the court: *"On the 13<sup>th</sup> May 2014, while exiting the Bucharest Tribunal, I was approached by a gentleman from the NAD who asked me if I agreed to provide some information, and when I arrived at the NAD and I was provided details about things that were of interest to them I **agreed to provide explanations in the form of a statement** that can be found in the case file. My collaboration with the NAD consisted of the fact that I disclosed the matters I know and that are relevant for the case, and also the fact that I had two discussions with BORZA MONICA and FIRESTAIN DANIELA, while wearing wiretapping devices."* Thus, it is contrary to the reality the submission in the indictment according to which Onuțe Daniel went to the NAD in order to submit a denounce. As he stated, he was asked to go to the NAD in order to give a written statement, which can be found in the case file, and not a denounce.

Should he have submitted a verbal denounce, according to the provisions of the article 290 paragraph (2) in relation to the article 289 paragraph (6) in the Criminal Procedure Code, the same should have been recorded in a minute, which minute cannot be found in the case file.

As of such date, however, prosecution acts were already being accomplished in regard of the supposed denouncer, which fact results from the contents of the same indictment.

Thus, within the section showing the authorising measures ordered during the prosecution, as regards the technical surveillance measures, it is textually stated that: *"On the date of 18.11.2013, by means of the conclusion no. 309 passed in the case no. 7560/2/2013, the Bucharest Appellate Court authorised, for a 30-day term, starting with the date of 18<sup>th</sup> November 2013 until, and including, the date of 17<sup>th</sup> December 2013, as following: I. The wiretapping and recording of the telephone calls and communications of any type from the terminals with the call numbers: 1. (...) – used by Borza Monica Angela, and also of the telephone communications of any type to and from such telephones; 41. (...) – used by Onuțe Daniel, and also of the telephone communications of any type to and from such telephones"* (pages no. 421, 425 in the indictment).

By the same conclusion was also authorised the *"Intercepting and audio and video recording of the environmental discussions between the named Borza Monica Angela (...), Onuțe Daniel, or between the same and other persons in connection with the deeds forming the object of the investigations in this case, the recording of images from such meetings and discussions, and also the recording of images referring to any other matters forming the object of the case"* (page no. 426 in the indictment), and respectively *"The localising and monitoring by GPS or by other electronic surveillance means of the named Borza Monica Angela (...), Onuțe Daniel, and also of the transportation means used by the same or inside which they are located"* (page no. 427 in the indictment).

Moreover, there was noted a consistency of the Bucharest Appellate Court in authorising such type of measures, for which purpose I evoke the conclusion no. 341 of the date of **17.12.2013** in the case no. 8201/2013 (mentioned on the page no. 428 in the indictment), the conclusion no. 10 of the date of **16.01.2014**, issued in the case no. 256/2/2014 (page no. 433 in the indictment), the

conclusion no. 38 of the date of **14.02.2014**, issued in the case no. 976/2/2014 (page no. 437 in the indictment), the conclusion no. 55 of the date of **17.03.2014** in the case no. 1776/2/2014 (page no. 441 in the indictment), the conclusion no. 86 of the date of **08.04.2014** in the case no. 1992/2/2014 (page no. 444 in the indictment), or the conclusion no. 103 of the date of **16.04.2014** passed in the case no. 2653/2/2014 (page no. 444 in the indictment); each of such conclusions regard both Borza Monica Angela, and Onuțe Daniel.

Or, **the conclusions evoked precede the date on which Onuțe Daniel would have informed the authorities about the criminal activity he took part in**, and therefore it is impossible to submit the fact that on the date of 13.05.2014, 6 months after the authorising of the first technical surveillance measure, the prosecution bodies were not already notified ex officio as regards the same. From such conclusions results that as regards him the prosecution bodies had already been notified as early as the date of 18.11.2013, which period covers the whole duration of the criminal activities.

Therefore, given the fact that the so-called denounce by Onuțe Daniel was not made before the prosecution body was notified as regards the deeds of offering bribe, as the corresponding rule in the new Criminal Code requires, it could not be held in favour of the same the existence of the impunity cause that is specific for the crime of offering bribe, and thus the order in the indictment by which was ordered **the dismissal as regards the witness Onuțe Daniel is based on an impunity cause that does not exist.**

However, in breaching the legal provisions, such solution was reached, and **Onuțe Daniel kept the capacity of witness in exchange for his collaboration, which obviously implied involving me to such criminal scheme, which fact results from the evolution of the witness' statements, which were more and more elaborated every time.**

Also, the using of the witness Onuțe Daniel in capacity of collaborator is unlawful, going against the provisions of the article 148 in the Criminal Procedure Code, which regulates the using of collaborators.

The evidence obtained following the cooptation of the witness Onuțe Daniel and the equipping of the same with devices also cannot be deemed lawfully obtained from the perspective of the requirements arising from the guaranties provided by the European Convention on Human Rights.

In a recent case, *Prăjină vs. Romania*, of the date of 7<sup>th</sup> January 2014, the Court presented in details **the ratiocination it follows** when hearing the witness on whose statement the decision to sentence is based to a determining extent in order to determine the equitable nature of the lawsuit, and one of the stages of such checking is to assess the weight of the witness' statement within the context of the case being examined. Just as in the case mentioned above, the denouncer's statements plays an extremely important role, considering the limited number of evidence brought against me. Thus, similar to the situation held in the case *Papadakis vs. The Former Yugoslav Republic of Macedonia* (26.02.2013), in my case, the most important proof is the statement of a witness who was involved to the operation as an *agent provocateur*. In absence of more solid evidence, such evidence, obtained without observing the legal provisions, may not be the decisive ground for a decision to sentence, relinquish the enforcing of the punishment, or postponing the enforcing of the punishment.

Other evidence used is the environmental records of the date of 14.04.2014 of the discussions with the defendant Borza Monica Angela and the witness Firestain Daniela. Or, the same admitted before the court: "*my collaboration with the NAD consisted of the fact that (...) I had two discussions with BORZA MONICA and FIRESTAIN DANIELA, while wearing wiretapping devices.*"

It also has to be noted the way the European Court assesses whether in a case are observed the provisions of the article 6 in the Convention regarding the right to an equitable lawsuit. Thus, in the event of a provocation, the same assesses the existence of prior operational information to lead to the reasonable suspicion that a person committed a crime. Or, in my case, the fact that the wiretaps were obtained two days after the submitting of the so-called denounce clearly proves that such information did not exist. The Court passed convictions of the defendant states when the prior operational information was not concrete and was not made available for the defendant (*Baltinis vs. Latvia*, 8<sup>th</sup> January 2013, *Lagutin and others vs. Russia*, 24<sup>th</sup> April 2014).

The statements of the witness Onuțe Daniel, a witness with questionable credibility, may not be considered in solving this case, given the assembly of the statements given by the same during the criminal lawsuit. For such purpose can be pointed out a series of contradictions that do nothing but confirm the fact that, by the statement of the date of **13.05.2014** and by the statements that followed it, the same aimed to secure for himself the most favourable situation, namely the exoneration from liability.

As an example, I will only list here few of the contradictions between the statements of the witness Onuțe Daniel.

Mainly, there are noted inconsistencies regarding the amount he would have given the defendant Borza as regards the first stage of the insolvency procedure for SIGUR INDUSTRIAL CONSTRUCT: on the date of **13.05.2014** he stated that *"I remitted her an amount of about 30,000, 40,000 or 45,000 Euro, but I cannot accurately specify the quantum of the amount"*, on the date of **15.05.2014** he stated that he had given the same *"the amount of about 40,000 Euro, but I cannot accurately specify the quantum of the same, because the amount kept fluctuating around such value"*, according to the prior agreement

*("we were to remit the latter, from what I remember, the demanded amount of about 40,000 EURO"), on the date of 02.06.2014 he stated that he had remitted to Monica "the amount of 25,000 or 30,000 Euro", the prior agreement being that "there will be paid 5 instalments of 40,000 Euro each", while before the court, on the date of 09.01.2014, he said that "during the discussion with Borza Monica we had agreed that for each stage of the insolvency procedure for BAUMEISTER the judge will be paid an instalment of 45,000 Euro, and for each of the stages of the insolvency for ACTIV CONSTRUCȚII INDUSTRIALE the judge will be paid an instalment of 15,000 Euro".*

A matter of particular importance is that within the statement of the date of **13.05.2014** the witness Onuțe submits that *"the amount was remitted to me by bank transfer from one of the companies in the group",* without any reference to the involvement of George Dumitru in the circuit of the amount, and on the date of **15.05.2014** he suddenly starts mentioning the same, providing multiple details: *"the amount of money was transferred, as fee, by bank transfer into the account of the attorney at law George Dumitru opened with the bank Unicredit or Italo-Romena. The same subsequently transferred such amount in lei into my account opened with Banca Transilvania".*

The same specifies that *"in the original statement I did not specify to whom, but in the meanwhile **I remembered that I had asked the attorney at law George Claudiu Dumitru** to help me with a fee I was to receive in my turn, and so he agreed to help me for such purpose"* (prosecution statement of the date of 15.05.2014), although as results from the evidence brought they had a very close cooperation.

Moreover, while the first statement is based on mere suppositions according to which the amount remitted to the defendant Borza was to be delivered by the same to the judge Stanciu (*"The amount of money was given in*

*order to be remitted to the judge Stanciu. Such understanding of mine was strengthened by the fact that after the amount of money was given she told me that after I gave the amount of money she told me that she was going to go to the court, and I understood that she will give the money to the judge."*), in the second statement the suppositions turn into certainties ("*Borza Monica-Angela assured me that she will go to the judge personally and will remit him such amount*"), and within the statement given before the court on the date of **09.01.2015** he returns to the original suppositions: "*I was created the conviction that BORZA was remitting the money to the judges as I was meeting her and handing her the money close to the tribunal, and she was entering the tribunal having the money with her*".

Also, while on the date of **13.05.2014** he submitted that the amount "*was exchanged at an exchange office*", without specifying who did that, on the **15.05.2014** he mentioned that "*such amount was exchanged by me at an exchange office in the area of Str. Corneliu Coposu, without currency exchange documents*".

Moreover, while within the statement of the date of **13.05.2014** the witness Onuțe does not state that on the first meeting he had with the defendant Borza the same would have mentioned the amount of money demanded, on the occasion of the statement of the date of **15.05.2013** he says that the same would have told me that it was necessary to pay a fee of euro 30,000-50,000.

From the statement given on the **15.05.2014** results that Onuțe would have not known the fact that the money was to be given in instalments corresponding to every stage ("*Borza Monica-Angela also specified that «if you gave for those you did not give for this», which meant that money was given for the opening of the procedure, but not for the solving of the appeals too*"), but according to the statement of the 02.06.2014 there were discussions about the amounts of money,

namely about the 5 instalments related, and according to those stated on the date of **12.06.2014** there would have been agreed from the very beginning a quantum of about EURO 300,000 that was to be paid in instalments: *"Considering the stages of the insolvency procedure and the fact that such amounts were to be remitted depending on the going through every stage the two approved an aggregate quantum of about EURO 300,000, agreeing that for every instalment I would have their approval"*, which matter was maintained in the statement given before the court: *"agreeing that for the favourable solving of the stages involved by the insolvency procedure for the two companies as mentioned amounts of money will be remitted in five instalments to the judges STANCIU and ROVENȚA with the Bucharest Tribunal"*.

The same amount of Euro 300,000 is also mentioned in the statement before the court, which amount results *"by adding the five instalments of Euro 45,000 Euro for Stanciu and the five instalments of euro 15,000 each for Roventă"*. But, the witness does not explain why the judges would have received amounts much lower than the amounts agreed and the amounts handled by himself and George Dumitru.

On the date of **13.05.2014** there is mentioned no informing of Adamescu Dan Grigore about the appointing of the defendant Borza as official receiver, much less the existence of any approval in such respect, on the date of **15.05.2014** he refers to the fact that I would have agreed to pay the "fees" that in the end were to reach the defendant Borza, and on the date of **12.06.2014** he mentions that he would have obtained, in April 2013, my approval as regards the appointing of the defendant Borza as official receiver (but, the following question arises: how could he have obtained such an approval since during the period as mentioned there was no meeting between me and the witness Onuțe, which fact results from the minute of the date of **16.06.2014** - vol. 11, p. 274-

277?), which fact was maintained in the statement given before the court ("I submit that in the spring of 2013, before BORZA MONICA was appointed as liquidator, I informed ADAMESCU DAN about such matter, but I don't know anymore whether during the prosecution I was asked or not about this detail too. I submit that ADAMESCU DAN knew, since the spring of 2013, that BORZA was going to be appointed as liquidator for BAUMAISTER, and I think the name sounded familiar to him considering that the same BORZA MONICA was judicial liquidator for OȚELUL GALAȚI too.").

The other statements the indictment is based on come from **the defendant Borza Monica Angela and the witness Firestain Daniela, who know about my supposed approval solely from what the witness Onuțe Daniel told them.**

As regards the statements of the defendant Borza Monica Angela, such matter is also emphasised within the indictment, where on p. 181 is noted that: "from Onuțe Daniel the defendant understood that Adamescu Grigore Dan and Adamescu Bogdan Alexander knew about the amounts of money Onuțe was giving her" (suspect's statement of the date of 02<sup>nd</sup> June 2014).

On the same line goes the defendant's statement **of the date of 16.06.2014 before the prosecution body:** "I received such money from Onuțe Daniel, representative of the Baumeister group of companies. He told me that for the remitting of the amounts of money he had the approval of Adamescu Grigore Dan" and **of the date of 03<sup>rd</sup> November 2014 during the judgment:** "Onuțe Daniel was introducing himself as the representative of Adamescu Grigore Dan and Adamescu Alexander and SC Activ Construcții Industriale (...) Onuțe Daniel told me that the money, namely Euro 5,000 was given to me with approval from the defendant Adamescu Grigore Dan (...) I submit that I

*referred to the defendant Adamescu in this statement as Onuțe Daniel told me that Adamescu was managing the company Baumeister".*

My involvement is supposed by the defendant without any other factual ground from which she would draw such conclusion: "*I submit that about the remitting by me to the defendant Rovența knew myself and Onuțe Daniel and **likely** the members of the Adamescu family*" (the statement of the defendant Borza Monica Angela of the date of 03<sup>rd</sup> November 2014 during the judgment).

As regards the credibility of the same, I also mention that as of the date of her "self-denounce", 14.05.2014, the same stated that she understood ***to collaborate with the prosecution bodies*** for the finding of the truth, the meaning of the notion of collaboration being as explained by the witness Onuțe Daniel.

Also, the defendant stated before the court on the date of 03.11.2014 that apart from the amounts of money given to the judges she had not received any other amount of money, leaving it to be understood that she intermediated the remitting of such amounts of money as bribe without any personal interest, which aspect cannot be deemed credible.

Also, as regards the **witness Firestain Elena Daniela**, the same only submitted as regards my involvement aspects that had been brought to her knowledge by the witness Onuțe Daniel, specifying that she did not think he was completely credible.

Please see, for such purpose, the statement of the **witness Firestain Elena Daniela of the date of 12.12.2014**: "*I submit that I don't know very concretely what the amounts of money requested by Onuțe Daniel represented (...) on the two meetings as mentioned, from the manner Onuțe Daniel raised the question of the amounts of money to be paid, I understood or guessed that those were money for the judges, but this was not expressly said during the discussion. I submit that during the two discussions it was not clearly said that the amounts*

*of money will reach the judges (...) I submit that I did not tell Dan Adamescu about the fact that Onuțe Daniel was telling me about the money given to the judges because it was not my place to debate such matters (...) **I maintain my statement given at the prosecutor's office that I actually did not believe that ONUTE was telling the truth when he was talking about the money given to the judges**".*

Moreover, before the court she stated on the date of 12.12.2014 that she did not pay attention to the discussions on the occasion of the meeting on the topic of the insolvency for S.C. BAUMEISTER S.A. between me, her and the witness Onuțe and, moreover, she even specified that *"in my view Onuțe Daniel was also talking nonsense and I was not relying hundred percent on whatr he was saying, because he used to make up stories"*.

It can be noted the fact that the witnesses Onuțe and Firestain are granted particular credibility although the same, as results from the very contents of the document for sending before the court, took active part in the deeds I was accused of, and therefore their submissions should be considered with reservation, as they have the potential of having a questionable nature.

As regards the bribe offering committed by intermediaries, within the jurisprudence was decided that *"the perpetrator offering money or other benefits to an official, in the ways and for the purposes as set forth by the law, **has the capacity of author of the crime of offering bribe, and not of accomplice, even though the money or the benefits come from other persons, and the act regarding the job duties of the official or the act contrary to the job duties refers to the same, as the author is the person directly committing the deed provided for by the criminal law, irrespective of the method of committing the same "*** (H.C.C.J., the Criminal Division, decision no. 181/2008, [www.scj.ro](http://www.scj.ro)). The doctrine and most of the jurisprudence consider, however, that *"although the*

*interposed person performs by their activity the very action being incriminated, such person is liable in capacity of accomplice to the crime of offering bribe, as while according to the law the author may also commit the deed directly, the intermediary, who acts in their name and with the intention to help them, may only have the capacity of accomplice"* (Explanations IV, 2<sup>nd</sup> edition, 2003, p. 141) (G. Bodoroncea ș.a., *Codul penal, Comentariu pe articole [The Criminal Code, Comments by Articles]*, Ed. C.H. Beck, Bucharest, 2014, p. 631). Whatever the opinion adhered to by the judicial bodies, the capacity of witness could not be held for Onuțe Daniel and Firestain Daniela.

Such matter should be kept in mind the more that there are numerous contradictions as regards the statements of the witness Onuțe Daniel, and the statements of the witness Firestain are based, as I stated, on suppositions arising from what Onuțe Daniel told her, not revealing any element of fact regarding my conduct.

The assertion in the indictment according to which the submissions by the witnesses Onuțe Daniel and Firestain Elena-Daniela, according to which I would have given my approval for the remitting of the money to the judges following the prior discussion and meeting with the same, would be "*confirmed by the annotations made by the witnesses Ștefan Ștefania and Mihai Loredana-Anita – chairman's assistant, and manager's assistant, respectively, within S.C. ASIGURARE REASIGURARE ASTRA S.A. on the work notebooks, which were taken on the occasion of the investigations by the prosecution body, the sequence of the meetings being shown in the minute of the 16.06.2014 (vol. 11, p. 274-277)*" is an assumption based on means that do not have the ability to provide direct evidence as regards the deed I was accused of. Besides, in such notebooks were scheduled meetings to take place, which scheduling would on

many occasion suffer changes, and thus the fact that such meetings actually took place cannot be proven.

Please see, for such purpose, the fact that, according to the minute mentioned above, on the date of 31.10.2013 a meeting would have taken place between me and the witnesses Onuțe and Firestain, which meeting according to one notebook was scheduled at 11:00 hours, and according to the other at 13:00 hours; moreover, on the date of 04.09.2013 a meeting would have taken place between me and Onuțe Daniel that, just the same, was scheduled according to the two notebooks at two different times, namely 10:00 hours, and 09:00 hours, respectively, which meeting is impossible to have taken place since the witness **Ștefan Ștefania submitted herself, on the occasion of the statement given before the court on the date of 12.12.2014**, that Onuțe would have not had direct access to my office in absence of members of the management, or, according to the minute as mentioned, the same would have come alone. From the inconsistencies shown results the fact that such minute seen by the prosecutors as evidence has a questionable nature, and the accusations brought against me cannot be based on such evidence, the more that the contents of the discussions cannot be proven.

It is noted the fact that the prosecution bodies are basing their accusation on deductions that exceed the legal reasoning, drawing conclusions that represent the expression of subjectivism, and such an approach is contrary to the requirements of an unbiased and objective analysis that should characterise any act of procedure. The mere notes in the work notebooks regarding the existence of some meetings may not be deemed relevant in relation to the alleged criminal nature of the contents of the same.

The fact that such events are not denied cannot be equivalent to a confirmation of talking during such meetings on the topic referring to the judges

handling the insolvency procedure for S.C. BAUMEISTER S.A., and thus the assertion in the document for sending before the court according to which *"the evidencing relevance of such meetings resides in the fact that, on one hand, they confirm the submissions by Onuțe Daniel and Firestain Elena Daniela, according to which the amounts of money to be remitted to the judges as bribe were taken out of S.C. BAUMEISTER PRESTĂRI SERVICII S.R.L. and S.C. BAUMEISTER UTILAJE ECHIPAMENTE S.R.L. only after the approval from the defendant Adamescu Grigore-Dan and the suspect Adamescu Bogdan Alexander was obtained, and on the other hand, the interest of the latter in the judging of the insolvency cases"* (p. 161 in the indictment) has a tendentious nature, the prosecutors invoking evidence unable to support the accusation brought against me.

I specify here the fact that according to the Minute of the date of 16.06.2014 regarding the identifying of the meetings between me and Firestain Daniela and Onuțe Danie the same took place **during the period 04.09.2013-10.12.2013**, and thus the statement of the latter before the court, according to which the plan as mentioned above was known from me from the very beginning proves to be untrue. Untrue is also the specification within the same statement regarding the meeting between me, him and Firestain Daniela in June 2013 at the offices of Baumeister, according to the minute invoked.

In the matter of the inconsistency between the statements brought and this minute, I am emphasising the two statements of the key witnesses in the case: **the statement of the witness Firestain Elena Daniela of the date of 12.12.2014:** *"(...) on the two meetings mentioned - December 2013, and respectively in the beginning of the year 2014, likely in January-February –"* and **the statement of the witness Onuțe Daniel:** *"I submit that during the year 2013, I had with Mrs. Firestain and Mr. Dan Adamescu three or four meetings,*

*discussions on which we talked about the stage of the insolvency procedures and the amounts of money, and also about the circuit by which they were to be remitted to the judges involved in the insolvency procedures".* It has to be noted the fact that the statement of the witness Onuțe Daniel is not accidental, as in absence of the meetings with me during the spring of the year 2013 it could not be submitted that I would have known and I would have given my approval - material element of the crime of offering bribe in this case - for the amount of euro 10,000 remitted to the judge Stanciu Ion, and under such conditions the accusation of offering bribe would be not proven.

As relevant evidence is also invoked the **statement of the witness George Dumitru Claudiu during the prosecution, of the date of 15.05.2014**, which confirms the circuit of the amounts of money, but states that *"Onuțe Daniel asked me for an amount of money, without specifying any details as regards the reason for such request"*. The statement of the same does not confirm that the money received and transferred to Onuțe Daniel would have represented amounts to be remitted to the judges Stanciu Ion and Roventța Elena, and does not mention my name.

Besides, **the witness Dumitru George Claudiu did not state before the prosecution bodies, on the date of 15<sup>th</sup> May 2014**, that he would have had any meeting with me: *"depending on the situation, on the occasion of fulfilling the legal assistance agreements, I talked, occasionally, with Adamescu Alexander, Onuțe Daniel, Lucian Ciufoaia, Adrian Rus, Firestain Daniela and other authorised persons within the company"*. The same stated that he did not know the final destination of such money.

Other evidence invoked is **the telephone and environmental discussions wiretapped and recorded by the NAD.**

On p. 65 in the indictment is specified that my involvement would result from the contents of the telephone discussions between Onuțe Daniel and Dumitru George Claudiu during the period 09.12.2013-10.12.2013, in which actually no reference is made to my person.

The only references, to which the indictment also sends on the same page, are subsequent to the date of 13.05.2014, when the denounce was made by the witness Onuțe Daniel.

Thus, there are invoked **the environmental discussions between the defendant Borza Monica Angela and Onuțe Daniel on the date of 14.05.2014** (p. 94-103 in the indictment, p. 171-189, vol. 12 prosecution file) and **the environmental discussions between the witness Onuțe Daniel and Firestain Daniela on the date of 14.05.2014** (p. 106-115 in the indictment, p. 192-203, vol. 12 prosecution file).

I reiterate the fact that since the date of 13.05.2014, and 14.05.2014, respectively, the witness Onuțe Daniel and the defendant Borza Monica Angela admitted their collaboration with the NAD prosecutors, and thus their discussions doubtlessly have a note of provocation.

Such a discussion deemed by the prosecutors relevant as regards my involvement is the one of the date of **14.05.2014** between the witnesses Onuțe Daniel and Firestain Daniela (rendering minute, p. 192-203, vol. 12 prosecution, p. 160 in the indictment). When analysing such discussion it is important to take into account the fact that it is subsequent to the statement of the date of 13.05.2014 of the witness Onuțe Daniel and to his accepting of the collaboration with the NAD prosecutors, of the contents of which it is a part, and thus all the questions of the witness are aimed to provoke and to obtain answers in the line of the accusations brought against me that were to be submitted.

The prosecutors' assertions lack truthfulness, as from the contents of the discussion between the two does not explicitly result the fact that I would have approved the transactions taking the form of the crimes of offering bribe; moreover, to the questions of the witness Onuțe: *"They were discussed, but when you made the payments, did he approve then? Don't want him changing his mind now!?"*, and respectively *"What, is there any payment he did not approve?"*, the witness Firestain does not give a firm, incriminating answer, from which would result that any payment would be first approved by me, but answers ambiguously (*"Man, I could not talk about such things with him on the phone."*, and respectively *"Well, I did not have the O.K. to talk about them."*). As regards such question before the court the witness replied that: *"within the telephone discussion with Firestain I asked her whether Adamescu Dan gave his approval for the payment of some instalments, to have a new confirmation of such circumstance, because I felt I needed to."*

Within such context, it has to be emphasised the fact that the submissions by the witness Firestain are based on suppositions and deductions, and not on concrete, certain elements susceptible to support the accusations brought against me; it is noted the using of suggestive expressions for such purpose on the occasion of the statement before the court on the date of **12.12.2014**, which expressions denote the mostly subjective nature of those submitted: *"i was left with a vague idea that..."*, *"I was left with the idea that..."*, *"...my guess..."*, *"...it could be possible to..."*, *"I don't know very concretely..."*, *"...might have been..."*.

Within such discussion the witness Onuțe Daniel specifies **"in the end they were asked as fees, they were paid as fees"**, which aspect he is also specifying before the court: *"I submit that within certain discussions with Adamescu Dan I only used the term fees or those fees"*. The witness adding that

it was a code language "with the meaning as clarified on the explicit discussion with Adamescu Dan, in the beginning, when we agreed to give money to the judges" is untrue, because such meeting in the beginning never took place, as I will show below within the analysis of the meetings.

As I also submitted by **my statement of the date of 05.12.2014**, *"as regards the statement given by Firestain, please take into account that within a discussion she had with Onuțe, when the same asked whether Adamescu knew about the money, she replied that he only knew about the fee (...)"*.

About the judges Stanciu and Roventța the witness Firestain stated that she heard for the first time on the 14.05.2014 from Onuțe Daniel at the time of the meeting with the same at the office within the premises of SC NOVA INVESTMENT SRL. *"The same told me the names of the two judges following the pressure I put on him, which pressure was because I had noticed a strange behaviour on him. On the same occasion he told me that he did not give the money directly to the judges, but through the liquidator Borza Monica"* (the statement given during the prosecution, of the date of 15.05.2014).

Obviously, the names of such judges were mentioned within such discussion as the witness was wearing wiretapping devices mounted by the NAD on such date, and the interest was to obtain evidence in support of his denounce.

Actually, the evidence the indictment is based on obviously reflects **an agreement between the witnesses Daniel Onuțe, George Dumitru and Daniela Firestain**, by which to take out of the patrimony of the two companies amounts of money as fees based on legal assistance agreements, of which agreement I was not aware, although such fact is aimed to be induced by the statements of the same; for such purpose, it is noted, as I pointed out, a progressive orientation of the statements of the witness Onuțe towards incriminating me: thus, while in the first statement the references to my person

are brief, without supporting a direct involvement, during each of the following statements the witness gets to remember my involvement in every stage, by granting approval repeatedly in regard of matters such as the appointing of the named Borza as official receiver or the amounts to be remitted. Therefore, at least one question mark is rising as regards the credibility of a denouncer who changes his statement from one hearing to the next for the purposes of creating a favourable situation for himself.

Another relevant aspect as regards the existence of an agreement between such witnesses is that, as the witness Poppa Lilica herself submits within the statement given on the date of **11.06.2014** during the prosecution, "*on the date of 04.1.2012 Dumitru George Claudiu concluded the legal assistance agreement no. 652619 which **he signed, although he was not entitled to, as he was a substitute solicitor, having for subject matter the representation in the insolvency case no. 33293/3/2012 before the Bucharest Tribunal***"; moreover, as results from the very legal assistance agreement mentioned, the parties to the agreement are Daniel Onuțe, in capacity of director of S.C. BAUMEISTER S.A. and The Lilica Poppa Law Practice, and not George Dumitru. Therefore, it is obvious the circumstance that the amounts forming the object of the agreements were meant to follow an unnatural route.

The explanation by the witness Onuțe Daniel, before the court, according to which "*we preferred to use, in order to take out the money, the attorney at law George Dumitru, as it was less costly financially (...) we used the attorney at law George Dumitru because it was more advantageous financially*" is refuted by the mere examining of the agreements and of the invoices paid to the same.

Also, the statement of the **defendant Borza Monica-Angela of the date of 03.11.2014 before the court is in the line with those pointed out: "I submit**

*that I received from Onuțe the 15,000 Euro and another 5,000 Euro and not other money which Onuțe and Dumitru George likely received".*

It is also the defendant explaining the way the agreement no. 717289 of the 07.11.2013 was concluded between the law practice of the attorney at law George Dumitru and SC SIGUR INDUSTRIALE CONSTRUCȚII signed by the official receiver Activ Lichidator IPURL, represented by Borza Monica Angela for the amount of 180,000 lei + VAT.

She submitted on the date of 02<sup>nd</sup> June 2014 before the prosecution bodies: *"I never discussed on the agreements with this attorney at law (George Dumitru – o.n.), and such legal assistance agreement concluded for the amount of 180,000 lei plus VAT, where he is also given a success fee, and the payment would be made by another company in the group, was never signed by, **it was definitely forged by Onuțe Daniel and the attorney at law George Dumitru,** because in 14 years of activity I never signed a legal assistance agreement without approval from the creditors (...) I repeat, this agreement was forged".*

Such statement is contradicted by the witness Onuțe Daniel, who in the court investigation stage submits the following: *"the stamp of Mrs. Borza Monica's company and the stamp with the name of the same were affixed on the legal assistance agreement by express order from the defendant Borza"*, which statement cannot be considered by the court, for the reasons I stated above, but plays the role of demonstrating once more **the untruthfulness of the statements of the witness.**

Thus, based on a fake agreement, the witness Firestain Daniela ordered the payment of a considerable amount of money the destination of which was not clarified by the document for sending before the court, and which has no connection with my person.

Also fake was the collaboration they announced on the site of the law practice of George Dumitru: *"I was not an employee of the law practice of George Dumitru. I submit that, at some point, the attorney at law George Dumitru asked me and a colleague from the newspaper România Liberă for permission to present us on his site as collaborators, but I was not an employee or a subordinate in any way of the law practice of George Dumitru"* (the statement before the court of the date of 09<sup>th</sup> January 2015).

As I submitted by my statement **of the date of 05.12.2014**: *"within our discussions reference was not made to the judges or the names of the judges involved in the lawsuit (...) within the discussion I had with Onuțe, Dumitru or Firenstein it never came to giving money as bribe (...) I think **Onuțe and Dumitru were stealing from the company BAUMEISTER because Dumitru received from Baumeister 500,000 Ron after which I understood he granted Onuțe a loan of about 200,000 Ron, therefore Onuțe did not have the money from me, but from Dumitru** (...) In my opinion the accusing statements against me given by Onuțe and Dumitru are untrue and cannot be explained other than by the fact that the same had been caught with some illegal activities and were forced to give statements that would incriminate me"*.

The prosecutor is asking himself within the indictment what interest the witnesses Onuțe Daniel and Firestain Elena Daniela or the attorney at law Dumitru George Claudiu would have had to get involved into an action of illicit nature, subject to the risk of identification?

I feel that the fragment reproduced below, part of the discussion of the date of 14.05.2014 between the witness Onuțe Daniel and Firestain Daniela is clarifying as regards their interest, to use money from Baumeister for their own interest:

F.D.E.: *And there are also those large settlement amounts, those large amounts, there are ...[unintelligible]....*

O.D.: *I don't know precisely anymore.*

F.D.E.: *Sixty thousand RON ...[unintelligible]....*

O.D.: *What? I don't know anymore.*

F.D.E.: ***Those are in your name.***

O.D.: *I closed some of them.*

F.D.E.: *...I don't know, I'll check (...) Plus there are these now which I made with this people **which are on me***

O.D.: *Yes. Protocols.*

It is obvious from the evidence brought in the case that Onuțe Daniel's interest exceeds the interest of a simple employee intermediating the bribe. As can be seen from the discussions with the defendant Borza Monica Angela, on the date of 09.12.2013 they scheduled with the bank the withdrawing of the amount of 100,000 lei from his wife's account, for the case he would have not received the loan from Dumitru George. When he receives it he "breathes in relief" (discussion 10.12.2013, 13:40:55 hours, p. 79-80 in the indictment – *"Now it's sorted out, it's over. I am breathing in relief"*).

Also, the Legal Assistance Agreement no. 717263 of the date of 03.01.2013 between the law practice of Dumitru George and SC Baumeister Prestări Servicii SRL is signed by Onuțe Daniel. In the same line the accusations against me were built, the question rises what interest did Onuțe Daniel have to dispose of 100,000 lei from the family money to remit it to the defendant Borza Monica Angela?

On p. 183, the indictment is synthesised as following:

- The remitting of the money to the judge Stanciu Ion was done in two instalments (June 2013 – 10,000 Euro and December – 5,000 Euro);

- The remitting of the money to the judge Roventța Elena (December 2013 – 5,000 Euro, equivalent to 23,000 lei);

It is submitted that such remittals were done after the witness Onuțe Daniel first took out of the patrimony of SC BAUMEISTER UTILAJE ECHIPAMENTE SRL and SC BAUMEISTER PRESTĂRI SERVICII SRL the amounts of 203,300 lei (May 2013 – o.n.) and 100,000 lei (December 2013 – o.n.) based on agreements concluded with the attorney at law George Claudiu Dumitru and remitted as "loan" after the transferring into bank accounts and their withdrawing in cash. It is ignored the fact that 203,300 lei represents the equivalent of about 45,000 Euro, and 100,000 lei represents the equivalent of about 22.5 thousand Euro.

On the session of the date of 09.01.2015 the witness stated, however, that he had only received from companies within the group the amount of 15,000 euro in order to remit it to the defendant Borza Monica for the judges, but he does not know precisely how the amount was mentioned in the accounting records by the witness Firestain Daniela.

On the same session the witness stated that "*on aggregate, for the two insolvency cases, I gave about 20,000 Euro*", contradicting again his own statements, but supporting by this the accusations in the indictment. Just two paragraphs above he had specified that "*as regards the insolvency procedure for Activ Construcții Industriale, from the beginning of the summer and until December 2013, on every judgment term I remitted to the defendant Borza Monica amounts of money between 5,000 and 10,000 euro*". He also submitted that he was surprised with the fact that the defendant Borza Monica Angela only acknowledged having received 15,000-20,000 Euro.

Considering such reasons, obviously, the statements of the witness Onuț Daniel cannot contribute in finding the truth in this case, and cannot be taken into account when solving the case.

Also, the indictment sends to a series of telephone discussions between other persons, which discussions do not regard me, the merely incidental references to my person being unable to provide the suspicion with a plausible nature, the more that some discussions were obviously provoked by the denouncer for the purpose of involving me to their illicit actions.

There are also invoked in the indictment the meetings between the witnesses Ionescu Mircea Mihai, Ivan Cătălin Daniel at the domicile of the witness Firestain Elena Daniela, of the date of 17.05.2014, which have no connection with the deeds of corruption I was accused of and do not bring any evidence in the case, and thus their reproducing starting with p. 164 in the indictment is useless and irrelevant.

The same with the dialogues I had on the date of 19.05.2014 with several persons, among which the witness Firestain Elena Daniela. As I stated by my statement of the date of 05<sup>th</sup> December 2014, the only thing I did was a humane gesture of help, which I would have done for any person within the company, to send her a solicitor.

The prosecutors' assertions reproduced on p. 166-170, according to which I would have attempted to influence the statements of the witness Firestain Elena Daniela, are unsupported, do not form the object of the case and do not prove in any way the accusations brought against me, namely of offering bribe.

In supporting the accusations brought against me, within the indictment is used the assigning of a criminal nature to my conduct subsequent to the committing of the two deeds I was accused of: *"the defendant Adamescu Grigore-Dan, having been informed about the investigations conducted by the*

*National Anticorruption Directorate, by Firestain Elena-Daniela, attempted to influence the course of the investigation, taking advantage of the authority he has over the same and of his subordinate's financial dependence towards him "* (p. 165 in the indictment). For such purpose are invoked a series of dialogues I had on the date of 19.05.2014 with several persons, among which the witness Firestain, which dialogues have **no criminal relevance** and **come to artificially substitute the complete absence of the evidentiary support in favour of the crime I was accused of**. Such dialogues, which, besides, regard matters exceeding the subject matter of this case, are **subsequent** to the date on which the alleged crimes of offering bribe had already been exhausted, and their invoking expresses **the determination of the prosecution bodies to use any element they could find in connection with my person, be it relevant or not**, for the purpose of creating a court notifying document as complex as possible.

Although such aspects are given extensive space within the indictment, I feel that they are mere speculations that cannot prove the committing of any crime by me, and I do not understand to submit defences against them.

For example, I submit that my question "*nothing changed with you, it remained the same?*" (p. 169 in the indictment) is construed like by this I suggested the witness to change her statement. There is no reason for which this phrase could not be construed like I asked whether the witness still had the capacity of witness, since there existed, obviously, a possibility for her capacity to change to suspect or defendant, as he participated in the supposed crimes of offering bribe. Of course such a construing would have dismantled prosecutor's whole theory regarding the influencing of the witness' statement, and they could not submit that "*from the action of the defendant Adamescu Grigore Dan of influencing and controlling the statements of the witnesses transpires the idea of*

*direct involvement to the activity of bribing the judges"* (p. 170 in the indictment).

In addition, I specify once again that the authorising of the wiretapping and the recording the indictment is based on was ordered **in the end of the year 2013 for the first time, on the 18.11.2013 by means of the Conclusion of the Bucharest Appellate Court no. 309 and the authorisation no. 301 of the same date.** By these were authorised the wiretapping and recording of the discussions and the communications of the persons involved to the criminal activity, the wiretapping and the recording of the environmental dialogues of the same, and also the capturing of images and the localising of such persons, among which the denouncer Onuțe Daniel and the defendant Borza Monica Angela. The surveillance measures were extended, and new ones were authorised, respectively, until the date of 06.05.2014, after which technical surveillance warrants were issued.

If at any time, all through such period, **the suspicion existed that the money the witness Onuțe Daniel and the defendant Borza Monica Angela were using came from me and were serving my interests, there would have been requested the authorising of the wiretapping and the recording of the discussions and the communications,** able to provide evidence regarding the committing of the crimes I was accused of. In this case there was never requested the authorising of the wiretapping and recording of my discussions and communications, although in my regard the evidence able to provide direct proof against me would have been possible wiretapping and recording.

As results from the case, such recording of certain telephone discussions during the period **19.05.2014-21.05.2014**, reproduced in the minute of the 27.05.2014 (p. 312-326, vol. 12 prosecution file) referring to the witness Firestain Elena Daniela was taken over from the case no. 67/P/2013, also on the

agenda of the NAD (the Ordinance of the date of 02.06.2014, p. 301-311, vol. 12 prosecution file).

Therefore, there was another case on the agenda of the NAD where the wiretapping and recording of my telephone discussions had been authorised, and thus had they been able to provide evidence to support the accusations brought against me, or at least the supposed interest I had for the way the insolvency of Baumeister S.A. was going, they would have been used. Please see, for such purpose, **the technical surveillance warrant no. 243/UP of the date of 28<sup>th</sup> February 2014, 16:30 hours**, by which was ordered the wiretapping of my communications for a 30-day period since the date of 28.02.2014 until the date of 29.03.2014 (p. 327, vol. 12 prosecution file).

Therefore, please find the fact that the Indictment **is not based on evidence** for the purpose of the law, **either direct or indirect**, from which would result the existence of the deed I was accused of. The deeds described, as presented by the prosecutors in the court notifying document, are the result of a cognitive ratiocination that has nothing in common with the criminal law.

**3. As regards the crime of offering bribe provided for by the article 290 paragraph 1 in the Criminal Code with reference to the article 6 in the Law no. 78/2000 to the defendant Stanciu Ion (15,000 Euro)**

It is held against me that I would have given during the months of June and December 2013, by means and with the aid of the witness Onuțe Daniel and of the defendant Borza Monica Angela, the amounts of 10,000 Euro, and 5.000 Euro, respectively, to the defendant Stanciu Ion in order to pass a favourable decision in the case no. 33293/3/2012.

The deed of offering bribe to the defendant Stanciu Ion (15,000 Euro) is described in the indictment starting with p. 172, from the perspective of the statements of the witnesses Onuțe Daniel, Firestain Elena Daniela and Dumitru George Claudiu.

There is reproduced **the statement of the witness Onuțe Daniel of the date of 02<sup>nd</sup> June 2014**, according to which in connection with the insolvency case of S.C. Sigur Industrial Construct S.A., "*the first instalment related to the opening of the procedure and the appointing of the official receiver, namely of the insolvency practitioner Activ Lichidator IPURL, was paid in the month of May-June 2013*".

In consensus with such statement is also **the statement of the defendant Borza Monica of the date of 2<sup>nd</sup> June 2014** before the prosecution bodies, from which results that Onuțe Daniel remitted her the amount of 10,000 Euro (in the euro currency), in a white envelope, which she was to deliver to the judge Stanciu Ion, for the opening of the procedure, and which she handed to the same behind the tribunal.

Such statements are untruthful, as it cannot be asserted that an interest would exist to offer bribe for the opening of the insolvency procedure, which can be easily opened by request from any creditor whose claim against the patrimony of the debtor is certain, liquid and due for more than 90 days, and meets the requirement of the threshold value as set by the law. In this case, the petition was submitted by the creditor S.C. Ecotrat Grup S.R.L. for a claim of 361,897.19 lei, much above the threshold value.

**From the perspective of the subjective side**, in the case of the crime of offering bribe "*the bribe-giver acts for a special purpose, namely the accomplishing, the non-accomplishing, or the delaying of the accomplishing of an act regarding the job duties of the person on which the act of corruption is*

*being committed, or the performance of an act against such duties”* (T. Toader, *Drept penal român, partea specială [Romanian Criminal Law, the Special Part]*, 7<sup>th</sup> Edition, Editura Hamangiu, Bucharest, 2012, p. 290). From the evidence brought cannot result, however, as regards me, the existence of such a special purpose.

There are also groundless the assertions in the indictment, taken from the statement of the witness Onuțe Daniel, according to which bribe would have been offered for the opening of the insolvency procedure for Baumeister S.A. under the conditions that the same submitted an appeal by which it requested the petition for the opening of the insolvency procedure to be denied on the date of 07.11.2013 (p. 11-15, vol. 13 prosecution file).

At the same time, the appointing of the official receiver too is a lawful possibility of the creditor or of the debtor, and thus the committing of a crime in order to achieve such interest is not justified. The receiver is appointed by proposal from the creditor or the debtor, should they submit such a request. In this case the request for the appointing of the receiver Activ Lichidator S.R.L. was submitted by the intervener for their own interest EAST BUCHARES COMMERCIAL PARK S.R.L. on the date of 12.03.2013. Therefore, there was no interest to offer bribe to appoint the official receiver, since such possibility is provided for by the law, but such statements are given for the purpose of strengthening the prosecutors' speculations regarding my interest in the insolvency procedure for Baumeister, in absence of other evidence. For the same purpose, in the statement mentioned above the witness emphasises again that such amounts of money were given "with the knowledge of Adamescu Dan Grigore".

Besides, the witness Onuțe Daniel himself stated, both during the prosecution: *"I think it was possible for favourable court decisions to be passed*

*in such cases, completely or partly, even based on the documents in such case files only"* (the statement of the date of 15.05.2014), and also during the court investigation: *"I think that in the cases related to the insolvency of the two companies in our group we were right in proportion of 50%"*, that the requests for the solving of which the supposed bribe would have been offered were also admissible in absence of such amounts of money. However, he claims that it would have been agreed to give amounts of hundreds of thousands of euro for such bankruptcy procedures.

From the insolvency case solved by the judge Stanciu Ion is noted that on the date of 18.06.2013, after receiving the amount of money, the same ordered the following: the denying as late of the appeal submitted by SIGUR INDUSTRIAL CONSTRUCT SRL (former BAUMEISTER SA) to the petition from ARABESQUE SRL. Denies as ungrounded the appeals submitted by SIGUR INDUSTRIAL CONSTRUCT SRL (former BAUMEISTER SA). **Therefore, there were given solutions against the interest** of the debtor SIGUR INDUSTRIAL CONSTRUCT SRL, according to the judge's own conviction.

The receiving of such amount of money was admitted by the defendant Stanciu Ion before the court, the purpose of the same being however different from the one asserted by the indictment.

He stated **on the date of 03.11.2014** that the purpose of the amounts of money was completely different: *"I don't remember precisely if I received the amount of 10,000 Euro in June or July 2013, but the defendant Borza told me it was a vacation instalment"*.

As regards the second instalment of money, of the month of December, on p. 91 in the indictment is held that on *"the date of 11.12.2013 Onuțe Daniel met the defendant Borza Monica Angela at the office of the same, where he remitted*

*her the amount of 5,000 Euro which she in her turn remitted to him in her personal car on a street near the Bucharest Tribunal, the amount of 5,000 Euro being inside a white envelope”.*

Such submissions are confirmed by the statement of the witness Onuțe Daniel of the date of 02<sup>nd</sup> June 2014 where he stated that *"for the month of December I remitted an amount of money to Borza Monica Angela. Such amount of money I had received from the attorney at law George Dumitru, who had been paid such amount as attorney's fee. The abovementioned attorney at law withdrew the amount of money of about 100,000 lei from UniCredit, the Unirea branch, and handed it to me directly (...) the amount of money to be remitted to the judges by means of Borza Monica Angela".* I specify that the amount of 100,000 is more than it is said would have been given in the month of December.

Also, the defendant Borza Monica Angela stated that since the date of 06.12.2013 the witness Onuțe Daniel called her several times, insisting to give more money to the judge, and thus on the date of 10.12.2013 he remitted the amount of 5,000 Euro for the judge Stanciu Ion, which she in her turn remitted to the judge on the date of 11.12.2013.

The receiving of such amount of money was also acknowledged by the defendant Stanciu Ion before the court, but the same stated on the date of 03.11.2014 that **"the defendant Borza never spoke to me about the defendant Adamescu. I submit that before the starting of the criminal investigation in this case I did not know the defendant Adamescu"**.

Like in the case of the first instalment, the purpose of the same was specified by the defendant Borza Monica: *"because the winter holidays were getting close she wished to give some of that money to the judge Stanciu Ion"* (the statement of the witness Onuțe Daniel of the date of 15.05.2014).

Therefore, the defendant Stanciu Ion never had the representation that the amount of money received was coming from me. Since I did not know those on whom the act of corruption was being perpetrated, how could I have aimed to influence the conduct of the same in exercising their job duties?

As I stated **on the date of 05.12.2014**: *"I feel, having heard the defendant Borza, that no connection can be made between my person and the amounts paid by the same to the judge Stanciu, since it was said that such amounts of money were given either for the vacation, or for Christmas"*.

In support of the inexistence of my involvement to this criminal action I also rely on the statement of the witness Lilica Poppa, given on the judgment session of the date of **12.12.2014**, where she stated that *"Mr. Adamescu was having many problems and I do not think he would have asked the solicitors to intervene with the judges. Onuțe Daniel or George Dumitru did not tell me that they ever gave money to the judges"*.

For such reasons, I request to be acquitted for the committing of the crime of offering bribe provided for by the article 290 paragraph 1 in the Criminal Code with reference to the article 6 in the Law no. 78/2000 to the defendant Stanciu Ion (15,000 Euro).

**2. As regards the crime of offering bribe provided for by the article 290 paragraph 1 in the Criminal Code with reference to the article 6 in the Law no. 78/2000 to the defendant Rovența Elena**

By the Indictment I am accused that during the month of December 2013, **by means of the witness Onuțe Daniel and the defendant Borza Monica Angela**, I would have given the amount of 23,000 lei, the equivalent of 5,000

Euro, to the defendant Rovența Elena, to pass favourable decisions in the cases no. 41848/3/2012/a1 and no. 19950/3/2013.

Since the offering implies the actual remitting of the money or of other undue benefits, and also the receiving of the same directly or indirectly by the bribed person, this being the only way the offering of bribe is correlative with the crime of accepting bribe, against the defendant Rovența Elena was held that she would have received, during the month of December 2013, from me, **by means of the defendant Borza Monica Angela**, the amount of 23,000 lei, the equivalent of 5,000 Euro, to pass favourable decisions in the cases no. 41848/3/2012/a1 and no. 19950/3/2013.

As is held from the very court notifying document (p. 119) the remitting of the amount of money to the defendant Rovența Elena by the defendant Borza Monica Angela was done from own funds, and thus holding against me such crime is absurd.

In this line goes **the statement of the suspect Borza Monica Angela of the date of 2<sup>nd</sup> June 2014 in the prosecution phase**: "on the date of 10.12.2013 I went to the tribunal, wherefrom I left by car with Rovența Elena and remitted her the amount of 23,000 Ron, the equivalent of 5,000 Euro, **which money I had withdrawn from the bank previously**".

Before the court **the defendant Borza Monica-Angela stated on the date of 03.11.2014**: "*in December 2013 I gave the defendant Rovența Elena the amount of 23,000 Ron to speed up the finalising of the creditors' table regarding the debtor SC ACTIV CONSTRUCȚII SRL (...) I submit that the amount of 23,000 Ron I gave from my own money to the defendant Rovența, but Onuțe Daniel returned it to me, meaning that he gave me 5,000 euro on the date of 11.12.2013*".

This fact is contradicted by the statement of the witness Onuțe Daniel who in his statement of the date of 02<sup>nd</sup> June 2014 specified that Borza Monica Angela told him that she had already remitted to the judge Rovența Elena an amount of 5,000 Euro, and will recover such amount after it will be remitted by me, in respect of which, however, on the date of 15<sup>th</sup> May 2014 he stated that a "*after about one month, following a discussion with Borza Monica Angela, the same told me that she would still have to recover from us the amount of 5,000 Euro which she had remitted from her own money for the judge Reovența Elena*".

Therefore, there is no evidence from which would result that, had such amount of 5,000 Euro been actually remitted, it would have been given by Onuțe Daniel as my intermediary. **There is absolutely no connection between the amount remitted by the defendant Borza Monica to the judge Rovența Elena and my person.**

From the statement of the **witness Onuțe Daniel of the date of 02<sup>nd</sup> June 2014** results that another amount of money would have been given: "*on the meeting with Borza Monica Angela it was confirmed to me that such amounts had been remitted and I remember that in December she told me that on aggregate she gave 10,000 Euro to the judge Stanciu Ion and 10,000 Euro to the judge Rovența Elena. I specify that for Rovența Elena I understood that 5,000 had been given from Borza Monica Angela's money and 5,000 Euro from the money I remitted to her, on aggregate 10,000 Euro*".

As regards ACTIV CONSTRUCȚII INDUSTRIALE, for the first stages of the procedure he submits that amounts of money **between 5,000 and 10,000 euro** were given, and for the month of December he remitted an amount of money of **15,000 or 20,000 euro** to Borza (p. 5).

Besides, in the indictment, while as regards the supposed crime of offering bribe committed it is held that the intermediaries were Onuțe Daniel and Borza Monica Angela, for the supposed crime of accepting bribe the defendant Rovența Elena was accused of the capacity of intermediary is only held for the defendant Borza Monica Angela, because, obviously, the amount of money didn't even come from Onuțe Daniel. Therefore, **it is inadmissible that I am accused of having offered as bribe such amount of money.**

It is also important the fact that the defendant Rovența Elena never had the representation of the fact that the amounts of money allegedly received would have come from anyone but Borza Monica Angela. This fact results from **the statement of the defendant Borza during the prosecution (2<sup>nd</sup> June 2014)**, where she states that during the month of May 2014, "*when I told Rovența Elena that it wasn't me who gave her the money, but Onuțe Daniel, at which time she became very aggitated, I explained her that the money was from Onuțe Daniel and not from me*".

Thus, even if the submissions of the defendant regarding the remitting of the amount of money to the defendant Rovența Elena would be true, the defendant Rovența obviously never had the representation that the amount of money she received would have come from a person other than Borza Monica Angela, and much less that it was coming from me.

Besides, she stated before the court that there was no discussion referring to the name Adamescu, and that the defendant Borza had not said anything like that either: "*I never knew the defendant Adamescu before the starting of this criminal case, and I did not hear anyone referring to such person*".

By **the statement of the date of 17.11.2014 the defendant Rovența Elena** specified that: "*the defendant Borza submitted before the court that she gave me the amount of money from her own money and because Onuțe was insisting to*

*speed up the official receiver appointing procedure and so I do not declare the company bankrupt. I submit that I did not satisfy such request from the defendant Borza, but two days after the alleged discussion I decided against the interest of the same, meaning that I declared the company bankrupt. I submit that the decisions passed by me were lawful, the company referred to in the indictment no longer had any assets".*

Indeed, by the Decision of the date of 12.12.2013, the court ordered in the main case no. 41848/3/2012 the bankruptcy by simplified procedure of the debtor S.C. ACTIV CONSTRUCȚII INDUSTRIALE S.R.L. by the special trustee S.C. AETERNITAS CONSULT&CONSTRUCT S.R.L., the dissolution of the debtor company, the removing of the debtor's right to direct, and confirmed as judicial liquidator RTZ & PARTNERS FILIALA ALBA S.P.R.L. According to the courts portal against such decision no appeal was submitted.

The statement of the defendant Rovența Elena according to which SC ACTIV CONSTRUCȚII INDUSTRIALE SRL (FORMER SC BAUMEISTER CONSTRUCȚII CIVILE SRL) no longer had any assets, which fact is confirmed by the written documents in the insolvency file, for which reason she declared the bankruptcy of such company, blatantly contradicts the prosecutor's assertions, according to which the money was given to the judges so they do not pass unfavourable decisions, as **“such a situation would have led to personal financial losses hard to quantify”** (p. 149).

Please note that within the indictment there is no reference to the main case, which had for subject matter the insolvency procedure for SC ACTIV CONSTRUCȚII INDUSTRIALE SRL (FORMER SC BAUMEISTER CONSTRUCȚII CIVILE SRL), the case no. 41848/3/2012, the only one that could have gone according to the stages described by the witness Onuțe Daniel.

The witness Onuțe Daniel stated that in the case of ACTIV CONSTRUCȚII INDUSTRIALE he had agreed with me on **5 instalments of 10,000 euro** each (p. 3), as following:

1. the changing of the official receiver that had already appointed by the court;
2. the solving of the appeals submitted against the table of claims;
3. the solving of the actions for annulment, if any;
4. the remaining final of the table of claims;
5. the closing of the insolvency procedure, namely the striking off from the trade register;

Within the same statement he states that the amount was subsequently changed to **15,000** Euro for each instalment, which amounts were to be remitted to the judge Rovența Elena (statement at the NAD on the 2<sup>nd</sup> June 2014).

In line with those stated by the witness Onuțe Daniel is also the statement of the defendant Borza Monica Angela, who stated that "*I remitted the amount of 5,000 Euro to Mrs. Rovența Elena (...) The purpose of remitting the amount of money was the appointing of another liquidator agreed by Mr. Onuțe Daniel, other than the one appointed by the court*" (statement of the date of 14.05.2014, during the prosecution).

I emphasise the fact that such aspects specified by the two do not form the subject matter of the two cases for the solving of which it is supposed that bribe was accepted. It is held by the indictment that it was aimed the obtaining of favourable decisions in the two cases no. 19950/3/2013 and no. 41848/3/2012/a1. As can be noted by studying the two cases the solutions ordered in the same do not support in any way the allegations in the indictment.

Thus, **the solution ordered in the case no. 19950/3/2013 on the date of 23.12.2013** is as following: **partly** grants the action for annulment having for

object the action for the annulment of the agreement no. 479/23.11.2012 submitted by RTZ & PARTNERS FILIALA ALBA SPRL for SC ACTIV CONSTRUCȚII INDUSTRIALE SRL. **Partly** annuls the agreement authenticated under no. 479/23.11.2012 meaning that it removes the provisions of the article 3 paragraph 2 in the agreement referring to the amount of 1,500,000 euro, calculated at the NBR exchange rate of the 11<sup>th</sup> December 2012, being the calculated fixed global compensation.

Within the Indictment it is submitted on p. 146 that the two decisions were favourable to the companies coordinated by me. Although I stated that I was not coordinating the business of Baumeister, playing no role in the business of the same, supposing that the submissions in the indictment would be true, it is obvious that the interests of the two companies ACTIV CONSTRUCȚII INDUSTRIALE SRL and SC SIGUR INDUSTRIAL CONSTRUCT SRL were contrary, and they were holding the capacities of claimant, and respectively defendant. Thus, whatever the decision passed by the court, the same would have left room for interpretation, as it could be favourable to one or the other company. In this case, a decision to partly grant was passed, so that in a risky manner it was construed as favourable to both companies "coordinated by me".

**The solution ordered in the case no. 41848/3/2012/a1 having for subject matter an appeal against the preliminary table on the date of 23.12.2013** was as following: partly grants the appeal submitted by SC SIGUR INDUSTRIAL CONSTRUCT SRL – in insolvency against the preliminary table of claims for the debtor ACTIV CONSTRUCȚII INDUSTRIALE SRL. Orders the entering to the table of the creditors SC SIGUR INDUSTRIAL CONSTRUCT SRL (former BAUMEISTER CONSTRUCȚII CIVILE SRL), with a claim with a quantum of 32,138,094.28 lei, formed of 28,953,238.32 lei main debt and 3,184,855.96 lei the value of the penalties, certain, liquid and due.

In this case also, the solution is to **partly** grant, and so it cannot be asserted that a favourable solution was passed. Just the same, whatever the solution passed by the court the same was leaving room for interpretation, as it could be favourable to one of the two companies with contrary interests, SC SIGUR INDUSTRIAL CONSTRUCT SRL (former BAUMEISTER CONSTRUCȚII CIVILE SRL) – appellant and ACTIV CONSTRUCȚII INDUSTRIALE SRL – respondent.

I also specify that it is wrongly stated within the self-denounce of the defendant Borza Monica ("*Mr. Daniel Onuțe offered the amount of 5,000 Euro so I give it to Mrs. Rovența Elena in order to obtain the favourable solving of the appeal in favour of Baumeister SA and Activ Construcții Industriale, meaning the rejecting of the other creditors*") and is held in the indictment on p. 29 that the claim of SC Baumeister SA would have been appealed against by other creditors, as the appeal was submitted by SC Baumeister SA.

In line with those stated above is also the statement of the defendant Rovența Elena who stated during the prosecution, on the date of 19.05.2014, that she did not favour any debtor or creditor participating in the insolvency procedure, by request from Mrs. Borza Monica Angela.

On p. 152 in the Indictment is also stated that the entering of the claim of SC SIGUR INDUSTRIAL CONSTRUCT S.R.L. to the table of claims of S.C. ACTIV CONSTRUCȚII INDUSTRIALE S.R.L., for the purpose of becoming a majority creditor, would have allowed, on one hand, **the changing of the liquidator RTZ SPRL – Filiala Alba**, and, on the other hand, **the opening of the insolvency procedure and the appointing of ACTIV LICHIDATOR IPURL as official receiver.**

It is absurd to assert that there is an interest to offer bribe for the opening of the insolvency procedure, which can be easily opened by request from any

creditor whose claim against the patrimony of the debtor is certain, liquid and due for more than 90 days, and meets the requirement of the threshold value as set by the law. As stated, the debtor was in impossibility to pay its debts, **and the insolvency was obvious.**

I also specify that there is no legal obligation for the receiver judge to appoint as official receiver the liquidator of the company, in this case RTZ SPRL – Filiala Alba, so that the same could not have been changed without the alleged interventions. The receiver is appointed by request from the creditor, should they submit the petition, or from the debtor, should they submit the petition. There was no interest to offer bribe to appoint the official receiver, since such possibility is provided for by the law.

For such purpose it is relevant the statement of the witness Onuțe Daniel himself, from which results that: "*the defendant Rovența did not change the official receiver*" (09.01.2015, the Bucharest Appellate Court, the Criminal Division II). Therefore, the purpose the supposed bribe would have been offered for was not achieved, and thus not even the likelihood of having committed the crime of offering bribe exists.

For such reasons I request to be acquitted for the committing of the crime of offering bribe provided for by the article 290 paragraph 1 in the Criminal Code with reference to the article 6 in the Law no. 78/2000 to the defendant Rovența Elena (5,000 Euro).

In this case, the expressing of my approval for the remitting of the amounts of money to the judges as bribe was not proven, and the solution of the court may not be based on mere presumptions having resulted from the statement of a witness interested in his exoneration from criminal liability.

As a conclusion, I am requesting you to, in solving the case, take into account the evidence brought and the fact "that the standard of the evidence required in accordance with the rigours of the European Convention on Human Rights is *the evidence beyond any reasonable doubt*." [*Velikova vs. Bulgaria*, no. 41488/98, ECHR 2000-VI].

For such reasons, **in accordance with the provisions of the article 396 paragraph 5 in the Criminal Procedure Code corroborated with the article 17 paragraph 2 in the Criminal Procedure Code in relation to the provisions of the article 16 letter c) in the Criminal Procedure Code, I am requesting you to order my acquittal.**

19.01.2015

DAN GRIGORE ADAMESCU

by solicitor Gh. Mateuț

TO THE PRESIDENT OF THE BUCHAREST APPELLATE COURT –  
THE CRIMINAL DIVISION II