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Memorandum

on the abuses

in the Romanian arrest warrant procedure of

Alexander Adamescu



Executive summary

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

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

- The DNA did not charge Alexander Adamescu in June 2014 when the case was brought to trial against his father, but reactivated the file only in September 2015 after Alexander Adamescu engaged lawyers who sued Romania.
- Despite an almost two-year long inactivity, Chief-prosecutor Laura Kovesi suddenly announced the DNA's intention to arrest Alexander Adamescu on live TV on 25 March 2016 calling him a fugitive and a threat to public order in the DNA's submissions. Kovesi also declared that her agency knew where he was, but then on the same day wrote to the court to demand that the arrest warrant procedure be speeded up since his whereabouts were not known.
- For the first arrest warrant hearing on 4 May, Alexander Adamescu was summoned via e-mail addresses that were not his and by calling phone numbers that were admittedly incorrect.
- In his judgement issued on 4 May, Judge Malaliu copied and pasted the DNA report, grounding his decision to arrest Alexander Adamescu on the DNA reasoning that he must be guilty for the offences for which he was charged.
- After Judge Nita made it known that she intended to cancel the first arrest warrant on procedural grounds, a second judge, Judge Matei, was immediately assigned to re-judge the arrest warrant without the safeguard of random allocation as guaranteed by Romanian procedural law and before Judge Nita's judgement had been published.
- The hearing was scheduled for 1.30 pm on 19 May 2016. The paper was printed at 1pm but pre-dated by a court agent to have been filled out at 11 am.

- Alexander Adamescu was summoned at 1pm on the court door to appear in half an hour in front of the court.
- The hearing began at 2.40 pm and closed at between 3.10-3.20 pm. At 3.40 pm, the Court sent a fax of the arrest order to the Municipal Police of Bucharest. Judge Matei had no more than half an hour to read the case file containing thousands of pages, deliberate on the arguments of the parties, write down his sentence and have it sent to the Bucharest Police.
- Judge Matei's sentence was immediately leaked to the media by the Romanian authorities. At 5.06 pm Alexander Adamescu's new arrest warrant appeared on a news website.
- Alexander Adamescu's appeal on the second arrest warrant was rejected on 25 May 2016 by Judge Ghena on the grounds that a more lenient measure would determine a strong negative reaction among the public opinion.

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

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

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

Introduction

Alexander Adamescu is a German national who was born on 6 May 1978 in Bucharest. He is the only son of Dan Adamescu, a prominent German businessman of Romanian birth who emigrated to Germany in 1979. Alexander Adamescu grew up near Frankfurt am Main and studied mathematics, philosophy and economics in Berlin and Paris between 1997 and 2004. He began a career at consulting firm McKinsey & Company in Munich which he left to assist his father Dan Adamescu who chaired business group The Nova Group (TNG) in Romania. He moved to London in 2012 to begin a new career as a playwright. Since the concerted and ongoing attack by Romania on Dan Adamescu since 2014, and then subsequently on himself since 2015, he has dedicated his life to a quest for justice for his family.

A self-made successful German businessman, Dan Adamescu decided to return to Romania in the 1990s. Driven by a sense of duty to play his part in the revival of Romania, Dan Adamescu also made substantial contributions towards the country's democratisation and development. Under his leadership, TNG invested time, money and effort in supporting *România Liberă*, a leading national newspaper originally established in 1877. Under his stewardship, this popular outlet consistently uncovered and exposed the corruption of many in national positions of authority.

Championing democratic values and the rule of law, *România Liberă* was highly critical of Romania's Social Democratic Party, or "PSD" (the successor party to the Communist Party of the Ceauşescu era), and its leader, the Romanian Prime Minister Victor Ponta who held office from May 2012 to November 2015. *România Liberă* regularly criticized the PSD for the extensive corruption, nepotism and greed that plagued its ranks. This rendered both the newspaper and Dan Adamescu a target for persecution by powerful members of the PSD.

Back in 2002, Dan Adamescu had acquired one of Romania's leading insurance companies, Astra Asigurari (Astra), through a privatisation process aiming to prepare Romania to join the European Union. After Dan Adamescu acquired Astra, he discovered that a series of corrupt transactions had been carried out that benefited individuals with ties to the Romanian Government and other state entities. He also discovered that such transactions had robbed Astra of virtually all its cash and other liquid assets. However, by 2009 Dan Adamescu had successfully turned the business around and Astra had become the country's leading provider of insurance. Between 2012 and 2014 Astra received approval to provide services throughout the European Union. Astra's growth and performance from 2001 to 2012 surpassed all its local and international competitors in Romania and the company won numerous industry awards for its achievements.

In 2012, the Socialist Party – leading the coalition (USL) - won the elections and Victor Ponta became the Prime Minister. Having been a long standing subject of criticism and investigative articles by *România Liberă*, as soon as he entered office he launched an onslaught against the Adamescu family. In particular, he targeted Astra, with the aim of cutting off its ongoing funding of *România Liberă*.

It was at this time that Romania’s financial services regulator, the “ASF”, seized upon a spurious insurance claim by a state-owned company (ultimately proven to be legally invalid) to wrest management control of Astra away from TNG. The ASF then arbitrarily and unfairly thwarted administrator-proposed recovery plans designed to address Astra’s under-capitalisation, even though the ASF had itself previously approved them. It was in this way that the ASF forced Astra into bankruptcy. As a result of the ASF’s actions, Astra is a complete loss for TNG. Moreover, the ASF is now, by deliberate omission to perform certain of its regulatory functions, causing TNG to suffer more losses in respect of other investments.

On 24 May 2014, in the midst of the ASF’s campaign against Astra and two days after Dan Adamescu had been named as a suspect in a bribery case, then Prime Minister Victor Ponta made the following and extraordinary public accusation on national television:¹

*“Traian Băsescu [the President of Romania] is one of the main beneficiaries of Mr Adamescu’s media support. Mr Adamescu publishes a newspaper [România Liberă] that strongly campaigns against corruption. I think that this man, who has himself led a network of corruption to such great effect over a period of many years, presents himself as a publisher who speaks about the fight against corruption [...]. **I am convinced that we will shortly be hearing even more things about this from the state prosecutor’s office.**”*

Sure enough, “more things” followed. Within less than 24 months of Victor Ponta’s televised statement:

- a) the Romanian National Anti-Corruption Directorate, or “DNA”, won the conviction of Dan Adamescu, causing him to be sentenced to more than four years in Romanian prison on charges of corruption;
- b) the DNA triggered the issuance of a request for the extradition of Dan Adamescu’s son, Alexander Adamescu, from the United Kingdom, so as to prosecute him for the

¹ <http://www.antena3.ro/politica/ponta-s-au-facut-presiuni-uriase-asupra-mea-pentru-adamescu-254501.html>

- same charges as his father, and to prevent him from effectively instructing TNG's counsel to conduct of international arbitration case against Romania;
- c) Astra's liquidator demanded the immediate repayment of intra-group loans by Astra to *România Liberă's* holding company, Medien Holding, and – on instructions – rejected repayment proposals before pressing for the insolvency and winding up of *România Liberă* and Medien Holding, and;
- d) the DNA froze TNG's shares in the majority of the group's other Romanian assets in purported support of further bogus criminal proceedings launched against the Adamescu as a result of Astra's bankruptcy (for which the ASF was actually responsible).

The aim of this memo is to lay bare the abuse and violations against Alexander Adamescu committed when his Romanian arrest warrant was issued between March and May 2016. For only a detailed analysis of these flawed procedures and events can shine a sufficient light on the unlawful practices used by Romania in their attempt to arrest and extradite Alexander Adamescu.

Romania's various state actors have sought to disguise their actions under a cloak of respectability by operating under the pretext of regulatory and criminal oversight of TNG's investments and its officers - all dressed up to look as if it is part of a wider, national, anti-corruption drive. In reality, this veneer has been used to obfuscate and divert attention away from the financial destruction of the Adamescu family, the ruining of their reputations and the muzzling of *România Liberă*. From the outset, this has been the real driver and purpose of the measures Romania has taken against TNG.

The bribery allegations

The charges against the Adamescus centre on allegations that they sanctioned the payment of bribes to a judicial insolvency administrator and two insolvency judges responsible for determining the liquidation of two Romanian companies within The Nova Group.²

On 18 November 2013, allegations were made to the DNA that two individuals employed by TNG, Mr Daniel Onute (an in-house lawyer) and Ms Daniela Firestain (a finance manager), had conspired with an external lawyer, Mr. George Dumitru, to channel funds from accounts held by two companies within The Nova Group, SC Baumeister Utilaje Echipamente SRL (“SCBUE”) and SC Baumeister Prestari Servicii SRL (“SCBPS”), to a judicial administrator, Ms. Monica-Angela Borza, who was to keep part of the monies and use the remainder to bribe two judges presiding over two insolvency proceedings.

More particularly, it was alleged that the monies were transferred from the account of an external lawyer, Mr Dumitru, a personal friend of Mr Onute, to Ms Borza. Ms Borza allegedly used part of these funds to bribe two insolvency judges, Judges Elena Roventa and Ion Stanciu, before whom the insolvencies of two companies within TNG were to be determined, and kept the remainder for herself. The allegations did not implicate Dan or Alexander Adamescu and there was no suggestion by the person making the allegations (the husband of the judicial insolvency administrator) that either Dan or Alexander Adamescu was involved or in any way aware of the alleged scheme. None of the allegations or evidence presented to the DNA concerned them.

Mr Onute has admitted enriching himself with the help of Ms Firestain to the order of €100,000 by embezzling assets belonging to The Nova Group’s subsidiaries.³ The bribery of which they were accused appeared designed to prevent their embezzlement from being discovered through the liquidation of the two subsidiaries of TNG. Although he confessed to the crime, Mr Onute was never charged or prosecuted by the DNA and is still a free man living off the stolen proceeds from TNG’s companies.

Instead of following the evidence in the case, the DNA sought to artificially implicate Dan and Alexander Adamescu by alleging that the bribery had been undertaken at their instigation. The DNA did so on the sole basis of the testimony given by Mr Onute. As confirmed by Mr Onute himself in oral

² DNA Indictment, case no. 316/P/2013, 20 June 2014

³ See; Witness Statements by Daniel Onute, 13 June 2015, 15 May 2014, 2 June 2014, 12 June 2014, 9 January 2015; Witness Statement by Daniela Firestain, 11 June 2014

evidence at the trial on 9 January 2015, the DNA and Mr Onute agreed that he would serve as a DNA informant, gather “evidence” through covert surveillance of conversations initiated at the DNA’s request, and testify against Dan and Alexander Adamescu.⁴ As a result, Mr Onute was never prosecuted. Instead, and without any basis for doing so under Romanian law, the DNA treated him as a “witness” (he was never an “accused”) ignoring the obvious incentive that Mr Onute had to lay the blame on someone else.

In his testimony, Mr Onute claimed that Dan Adamescu gave his consent to the bribes and authorized the transfer of monies to Ms Borza via Mr Dumitru, Ms Firestain, and his own wife Mrs Onute. Throughout this process, Mr Onute’s statements have been inconsistent, offering changing accounts of the amounts and circumstances of the alleged bribes. Mr Onute has not been able to give any consistent explanation as to when, why or how Dan Adamescu is said to have orchestrated these events or otherwise given his consent to the bribes.

On 5 June 2014, twelve days after Prime Minister Victor Ponta’s extraordinary announcement of a forthcoming prosecution on national television, Dan Adamescu was indeed arrested and charged with two acts of bribery to the sum of €20,000. The charges were formally set out in an indictment released on 20 June 2014, authored by the Chief Prosecutor, Mr Danut Volintiru, and Prosecutor Ms Carmen Tundrea of the DNA.

Neither Mr Onute nor the DNA offered any cogent explanation or theory as to why Dan Adamescu would have given his consent to a scheme that would cost him vast amounts of money without giving him any benefit. As admitted by the DNA, the alleged bribery did not result in any favourable outcome for Dan Adamescu. Yet it resulted in a favourable outcome for Mr Onute and Ms Firestain.

The indictment also relies on the testimony of Ms Borza, who is the individual accused of having paid bribes to the insolvency judges. Ms Borza admits to having acquired money from Mr Onute. Neither Dan nor Alexander Adamescu have ever met Ms Borza, a fact that she expressly confirmed in her witness statements.⁵

None of the other suspects or witnesses has accused Dan and Alexander Adamescu of being involved – either directly or indirectly – in such a scheme to bribe judges or in any other crime. Three witnesses close to the companies in question had never heard the Adamescus talk about bribery

⁴ See; Witness Statement by Daniel Onute, 9 January 2015, page 7

⁵ See; Witness Statement by Monica Borza, 3 November 2013, 14 May 2014

payments.⁶ And all the accused judges confirmed to have never had any contact with Dan or Alexander Adamescu whatsoever.

The external lawyer, Mr Dumitru, who was hired by Mr Onute, did not incriminate Dan Adamescu in his testimony.⁷ No record of Mr Dumitru's second examination by the DNA is available, despite his having been interrogated for four hours. Only a few minutes after his second examination, Mr Dumitru committed suicide by throwing himself in front of a train in Bucharest.

Despite Dan and Alexander's phones having been tapped since 2013, no incriminating evidence was produced by the DNA for the trial. No written documents supported the DNA's claim of consent to bribery.⁸ Instead, the only evidence produced by the DNA was Mr Onute's multiple and contradictory statements.

All allegations against the Adamescus are either void, tainted or contradictory; no other evidence exists. All the evidence points to a straightforward case of embezzlement by a few employees acting together and trying to protect themselves from discovery. Not only is it plain to see that the criminal standard of proof cannot be met in Alexander and Dan Adamescu's cases to secure conviction against them; strong doubt remains whether even a prima facie case could genuinely be presented against them under normal circumstances.

⁶ See; Witness Statement by Mihai Ionescu, 10 June 2014; Witness Statement by Catalin Ivan, 15 May and 10 June 2014; Witness Statement by Lillica Poppa, 11 June 2014

⁷ See; Witness Statement by George Dumitru, 15 May 2014

⁸ DNA Indictment, case no. 316/P/2013, 20 June 2014

Abuse and illegalities in issuing of the arrest warrant against Alexander Adamescu in Romania

In May 2014, Alexander Adamescu was officially listed as a suspect in the bribery case initially made solely against his father. However, despite identical evidence against him as against his father, no charges were brought and his file was disjointed in relation to the main case file.⁹

On 1 September 2014, Alexander Adamescu wrote to London's Metropolitan Police informing them of his home address and his willingness to cooperate with any proceedings connected to a Romanian inspired European Arrest Warrant¹⁰.

However, the matter against Alexander Adamescu remained dormant for a number of years. No investigation was carried out and no further evidence was collected. No one made contact with him or approached him anyway. This lack of interest came to an abrupt end when on 25 August 2015, The Nova Group, on Alexander Adamescu's instructions, notified the state of Romania of its intention to commence arbitration at the International Centre for Settlement of Investment Disputes (ICSID) in the Netherlands, seeking redress for the systematic destruction of its investments through unlawful measures carried out by the Romanian Government. A few weeks later, on 22 September 2015, the DNA transferred Alexander Adamecu's file internally¹¹ and his prosecution was extended on 7 December 2015¹². Over the next months, the DNA then began assembling material to document their unsuccessful search for Alexander Adamescu.

Preparations for his arrest were further accelerated in March 2016. On 21 March 2016, the DNA engineered a change in the legal classification of the offences against Alexander Adamescu¹³ and he was hastily charged the following day, on 22 March 2016¹⁴. Three days later, on 25 March 2016, the DNA requested his remand in custody¹⁵.

The DNA report for the proposal of his arrest in absence, filed on 25 March 2016, stated that *"from the evidence submitted in the case the reasonable suspicion has emerged that the accused Adamescu Bogdan Alexander has committed the offences for which he was charged and that he's evading criminal prosecution"*¹⁶. The DNA then continues to argue that *"based on the assessment of the gravity of the corruption offences of the case, from the manner and the circumstances they were*

⁹ Case number 284/P/2014 (Alexander Adamescu)

¹⁰ Letter to New Scotland Yard, Extradition Squad, 1 September 2014

¹¹ DNA Report on the Proposal of the Remand in Custody, File No. 577/P/2014, 25 March 2016, page 1

¹² Ordonanta de extindere a urmaririi penale, dosar nr 577/P/2014, 7 December 2016

¹³ Ordonanta de schimbare a incadrarii juridice, dosar nr 577/P/2014, 21 March 2016

¹⁴ Ordonanta de punere in miscare a actiunii penale dosar nr 577/P/2014, 22 March 2016

¹⁵ DNA Report on the Proposal of the Remand in Custody, File No. 577/P/2014, 25 March 2016

¹⁶ DNA Report on the Proposal of the Remand in Custody, File No. 577/P/2014, 25 March 2016, page 45

*committed, we consider that **the arrest of the defendant Adamescu Alexander Bogdan is necessary to remove the state of threat against the public order***¹⁷.

Thus, the DNA requested that the court arrest Alexander Adamescu in order to remove a sudden state of threat against the Romanian public which had supposedly existed since May 2014 but which it didn't consider to be of any importance for almost two years. This threat against the public order in March 2016 bizarrely resulted from exactly the same evidence used in the file in May 2014 where no action was taken against Alexander Adamescu. The threat to Romanian public order in March 2016 seemed to mysteriously emanate from the United Kingdom where Alexander Adamescu was actually living. Nevertheless, Alexander Adamescu was cast by the relevant authorities as akin to a terrorist or dangerous criminal, a view which went on to permeate popular consciousness amongst those not familiar with the actual facts.

The report, which included the idea that he had absented himself from his own arrest was filed with the Bucharest District Court on 25 March 2016, forming case no. 11273/3/2016. The court hearing was listed for 04 March 2016.

Similar to Victor Ponta's public appearance on 24 May 2014 which prepared Dan Adamescu's televised arrest, on 25 March 2016, the DNA's chief prosecutor, Laura Codruta Kovesi, appeared on live TV to announce her agency's request to arrest Alexander Adamescu stating¹⁸:

"The prosecution has started a long time ago. We have tried to summon the person but he hasn't presented himself. Then we've followed more formalities to cover the procedure to summon him given that he wasn't on Romanian territory and because it has been proved that he's evading criminal prosecution, the prosecutors have requested the preventive arrest in absence of this person; we'll see what sentence the court will hand down."

She was then asked by a journalist present if she has any information of the whereabouts of Alexander Adamescu, to which she answered: *"Yes, but I don't want to reveal this to the public."*

The statements by Ms Kovesi concerning information on the whereabouts of Alexander Adamescu, are inconsistent, at best. After stating on live TV that she in fact did know where Alexander Adamescu was, and issuing a press release stating the same and accusing Alexander Adamescu of frustrating the DNA's attempts to bring him in front of the judicial bodies and absconding from criminal investigation, she then proceeded to file an application in Court to change the date of the hearing on

¹⁷ Idem

¹⁸ http://livenews.romaniatv.net/kovesi-despre-bogdan-adamescu_41643.html

the basis that she did not know where he was, after all¹⁹. While human errors can amount to inconsistencies, it would appear that in the case of Ms Kovesi the more accurate explanation is an attempt to deliberately mislead the Court.

It is furthermore wholly improper for the prosecutor to brief the media at the stage where charges remain to be brought against the requested individual. To inform the media of the request and issue a statement accusing an individual is not only premature, it constitutes a violation of the principle of presumption of innocence.

The court insisted on a new summons procedure for the 4 May 2016 listing and requested that the DNA summon Alexander Adamescu by email and by telephone²⁰. Yet this did not happen, as is explained in detail below.

The summons for the hearing was sent to the following email: cabinet@astrasig.ro which was an email used by Astra's management board. In response, Astra, on 31 March 2016, by then in bankruptcy and legally represented by the official receiver KPMG, informed the court that Alexander Adamescu's summoning through an Astra email address was not legal, as since 03 December 2015, the Bucharest District Court had opened bankruptcy proceedings for the company and therefore Alexander Adamescu no longer served as the Vice President and as a Member of the Board²¹.

On 01 April 2016, at 2:52 p.m., the clerk of the court drafted a report in which he declared that he tried to contact Alexander Adamescu by phone. She also mentioned that "the call made no connection". Subsequently, the clerk noticed that she had not properly dialled the correct telephone number, as he had added an additional figure to the country code of Monaco. She made a further attempt to contact Alexander Adamescu on 20 April with the same result. A day later, on 21 April, she realized that she had hitherto dialled incorrect numbers. She then called another number which was allegedly Alexander Adamescu's number without speaking to him and a third number where a female answered and denied Alexander Adamescu's presence²².

Despite the obvious incomplete summons procedure under the Romanian Code of Criminal Procedure, Judge Andi Malaliu, on 4 May 2016, accepted that Alexander Adamescu had been legally summoned at e-mail addresses that were not his and by admittedly dialling incorrect phone numbers.

¹⁹ DNA Letter to the Bucharest Tribunal for Changing the Hearing Session, No. 1148/III-13/2016, 25 March 2016

²⁰ Minute according to Decision no. 515/2012 of C.S.M, 25 March 2016

²¹ Astra Letter No. 3467 to Bucharest Tribunal, 31 March 2016

²² Minutes of 1 April; 20 April and 21 April 2016 by Court Clerk Simona Otelea, File No. 11273/3/2016, Bucharest Tribunal

Worse than that, this summoning was used as “evidence” by both the DNA and the court that Alexander Adamescu was evading justice²³.

After a brief deliberation, on 4 May 2016, Judge Malaliu approved the request by the DNA to grant a warrant for the arrest of Alexander Adamescu. The Court made no genuine attempt to analyse the submission made by Alexander Adamescu’s lawyer. Instead, the Judge appears to have taken into account exclusively the arguments made by the DNA. **Starting with page 4, up to page 40 of a 45-page document, the judgement is nothing other than a straightforward copy and paste of pages 1 to 59 of the DNA Report on the Proposal of the Remand in Custody**²⁴.

On pages 41 and 42, Judge Malaliu makes it clear that his decision to grant the DNA request is grounded on his unsubstantiated and wholly premature determination that Alexander Adamescu is guilty for the offences for which he was charged, even while the criminal investigation had only just begun – stating (emphasis added)²⁵:

*“The accusations brought against the defendant Adamescu Bogdan Alexander, namely that he committed two offenses of bribery [...] **are confirmed** by the denouncement made by Mr. Onuțe Daniel [...], corroborated with the declarations of the witness Firestain Elena Daniela*

After obtaining the approval from the Defendant Adamescu Bogdan Alexander (and from his father, the defendant Adamescu Grigore Dan) the amounts of money required in order to corrupt the judges Stanciu Ion and Roventa Elena were taken off the account of S.C. Baumeister Utilaje Echipamente S.R.L. and S.C. Baumeister Prestarii Servicii S.R.L.

The involvement of the defendant Adamescu Bogdan Alexander is also proven by the contents of the record of the discussion between Onute Daniel and Firestain Elena-Daniela.”

Judge Malaliu then goes on to blame Alexander Adamescu for one and a half years of inactivity by the DNA, on page 43, stating²⁶:

“Within such context it would be completely unreasonable for the defendant to avoid the measure of preventive arrest by reason that a long time has elapsed since the start of the prosecution, given that it was precisely his bad faith that determined such delay.”

²³ Judgement; Case No. 11273/3/2016, Bucharest Tribunal, Criminal Division, 4 May 2016, pages 29-33

²⁴ Judgement; Case No. 11273/3/2016, Bucharest Tribunal, Criminal Division, 4 May 2016; DNA Report on the Proposal of the Remand in Custody, File No. 577/P/2014, 25 March 2016

²⁵ Judgement; Case No. 11273/3/2016, Bucharest Tribunal, Criminal Division, 4 May 2016, pages 36, 37

²⁶ Judgement; Case No. 11273/3/2016, Bucharest Tribunal, Criminal Division, 4 May 2016, page 38

Judge Malaliu then states that Alexander Adamescu's freedom means a danger to the Romanian public order. He never explains how Alexander Adamescu could possibly be a public danger for Romania, not least as he was residing abroad²⁷:

"The denying of the proposal for preventive arrest would create a feeling of fear and uncertainty in the civil society and the community. The denying of the proposal [of arrest] would create a feeling of encouragement for other defendants too to commit similar deeds".

Alexander Adamescu's lawyer filed an appeal against Judge Malaliu's decision. The hearing was fixed for 9am on 12 May 2016. The matter was assigned to Judge Ghita at the Bucharest Court of Appeal, the same Judge who had found Dan Adamescu guilty of the same crimes that Alexander Adamescu was now being accused.

On 11 May 2016, Judge Ghita filed a declaration to abstain from the judgement on the grounds that he had been involved in the arrest and sentencing of Dan Adamescu and was therefore conflicted²⁸. However, his request to withdraw from the case was rejected by Judge Morosainu of the Bucharest Court of Appeal²⁹. Judge Morosainu ruled on 11 May that Judge Ghita had no grounds to excuse himself from the case of Alexander Adamescu as the case was separate from that of the father. Judge Ghita was thus forced to judge a case that was almost identical to a case he had already given his verdict on. While it would have been right and proper for Judge Ghita to be allowed to excuse himself from the bench, due to his previous involvement, sadly this option was closed to him.

On the day of the hearing, on 12 May 2016, Alexander Adamescu's lawyer filed an urgent request to excuse Judge Ghita from the case. This was granted by a different Judge sitting in the same Bucharest Court of Appeal.

The case was then re-assigned to Judge Nita, who listed the hearing on 16 May 2016. On 19 May 2016, Judge Nita admitted the appeal on procedural grounds, cancelled the decision of Bucharest District Court and ordered that the re-trial of the preventive remand in custody by the Court of Appeal, as being the competent first instance court³⁰. Judge Nita's judgement entirely upholds Judge Malaliu's. Her judgement is a repetition of the DNA report and she makes no attempt to hide her opinion that Alexander Adamescu is guilty. But she does concede that the DNA made a mistake by addressing its request to the Bucharest Tribunal Court instead of the Bucharest Court of Appeal which, in her opinion, was the only competent court for the matter.

²⁷ Judgement; Case No. 11273/3/2016, Bucharest Tribunal, Criminal Division, 4 May 2016, page 39

²⁸ Letter by Judge Ghita to President of the Bucharest Appellate Court to abstain in File No. 11273/3/2016, 11 May 2016

²⁹ Decision; Case No. 11273/3/2016, Bucharest Court of Appeal, First Criminal Division, 11 May 2016

³⁰ Decision No. 232/C; Case No. 11273/3/2016, Bucharest Court of Appeal, First Criminal Division, 19 May 2016

What then happened on 19 May 2016 is an unprecedented attempt to illegally issue an arrest warrant for Alexander Adamescu. It constitutes a series of intended breaches of due process to ensure that Alexander Adamescu would not remain at liberty.

On the very same day, 19 May 2016, in an alarmingly rapid turn of events, the DNA request regarding the proposal for the preventive arrest was sent anew to the Registry of the Bucharest Court of Appeal, and registered there under no. 3576/2/2016 and assigned to Judge Matei at 1pm, who listed the hearing at 1.30 pm³¹. This in itself is an unheard of short notice for any listing and a breach of the principle to the right of proper defence. Moreover, in doing so, the DNA and the Bucharest Court of Appeal breached a number of Romanian Criminal Procedural Law provisions.

Firstly, no new hearing could have been listed before Judge Nita had written and published her judgement to the defendant. According to fundamental principles of law, a new judge may only be allocated to a case that must be re-judged after the reasons are known why the case had come to be re-judged. **But the Minutes of the decision no. 232 / C by Judge Nita³² appear to have been published in the afternoon of 19 May 2016 and were sent to the General Directorate of the Bucharest Municipal Police (DGPMB) only at 3.39 pm³³ - only one minute before the new arrest warrant was issued by Judge Matei and sent off to the DGPMB at 3.40 pm³⁴.** Indeed, Judge Matei had been assigned and had listed his hearing for 1.30pm, well before Judge Nita had published her verdict. The DNA and the court thus gravely violated a basic principle of law in order to grant the DNA its much-wanted arrest warrant.

Secondly, there is no trace of random allocation to Judge Matei in case file no. 3576/2/2016. Such evidence is absolutely mandatory according to Romanian law because it is proof of the random distribution of case files to judges and acts as a safeguard against discriminatory judgements. Art. 281 alin. 1 lit. of the New Romanian Criminal Procedural Code voids any decision taken without evidence of such aleatory allocation. This article was introduced in 2006 and forms the bedrock of Romania's endeavour to break with its Communist past and provide for the guarantee of an independent judiciary for any defendant. It is conspicuous that such evidence is missing only from the case file formed in front of Judge Matei. Random allocation was duly observed in all of Alexander Adamescu's other arrest warrant hearings: in front of Judge Malaliu, Judge Ghita and later on at the appeal to Judge Matei's decision before the High Court of Cassation and Justice before Judge Ghena³⁵. Thus, the

³¹ Summons; Case No. 3576/2/2016

³² Decision No. 232/C; Case No. 11273/3/2016, Bucharest Court of Appeal, First Criminal Division, 19 May 2016

³³ Fax from Bucharest Court of Appeal to DGPMB annexing Nita's decision, 19 May 2016

³⁴ Fax from Bucharest Court of Appeal to DGPMB annexing Matei's decision, 19 May 2016

³⁵ Fisa de repartizare aleatorie a dosarelor 3576/2/2016, 11273/3/2016

most basic safeguard implemented in Romanian law was circumvented to allow for Alexander Adamescu's arrest.

Thirdly, Judge Matei summoned Alexander Adamescu by posting the notification on the courtroom door³⁶. This was another fundamental violation of Romanian criminal procedure. The extraordinarily short notice for Alexander Adamescu to appear in court within half an hour would have been impossible even if had he been elsewhere in Bucharest at that time.

Fourthly, the minutes for the summons were pre-dated by a procedural agent of the Bucharest Court of Appeal, Mr Popa, who filled out a document declaring that he hereby posted the summons on the door of the courtroom, on 19 May 2016, at 11 am for the hearing listed at 1.30 pm. But the document was printed at 12.59 pm proving the length to which the Court went to give a semblance of due process to an utterly rigged procedure³⁷.

Fifthly, Judge Matei thus had no more than half an hour to read the case file, deliberate on the arguments of the parties, write down his sentence and have it sent to the Bucharest Police. At 3:40 pm., the Court sent a fax of the arrest order to the Municipal Police of Bucharest³⁸.

Alexander Adamescu's lawyer was called on the phone by a court assistant at around 1.00 pm and rushed to the Bucharest Court of Appeal. He confirmed his presence in the courtroom at 2.00 pm. Judge Matei was still sitting in another hearing. After he finished he began Alexander Adamescu's hearing without any delay at around 2.40 pm. After a brief debate of around 30-40 minutes he retired to deliver its decision at around 3.10-3.20pm.

It is obvious that it was impossible to do all of this in such a short amount of time and inevitable to not conclude that the issuance of Alexander Adamescu's arrest warrant was a *fait accompli* on 19 May 2016.

It is clear that there was no physical time for Judge Matei to read the documents in Alexander Adamescu's file as it consisted of:

- the first instance case file of the Bucharest District Court - 146 pages;
- the appeal case file of the Bucharest Court of Appeal - 66 pages;

³⁶ Summons; Case No. 3576/2/2016, Bucharest Court of Appeal, 19 May 2016

³⁷ Handover minute; Case No. 3576/2/2016; Bucharest Court of Appeal, 19 May 2016

³⁸ Fax from Bucharest Court of Appeal to DGPMB annexing Matei's decision, 19 May 2016

- 37 volumes of the criminal investigation case file no. 577 / P / 2015 – several thousands of pages.

While Judge Matei’s judgement is itself a mere seven pages,³⁹ most of it is again a familiar pattern of the copy and paste of the DNA’s accusations and report. Like his predecessors, the judge did not abstain from pre-judging Alexander Adamescu’s guilt (emphasis added)⁴⁰:

*There are not mere indications, but **converging evidence** to this end, from the statements of the witnesses Onuțe Daniel and Firestain Elena – page 120 of vol. 12, resulting that the defendant, together with his father, were the people who would have approved the remittance of the money to the judges.*

*The witnesses Onuțe Daniel, Firestain Elena and Dumitru George **had the approval** of the defendants Adamescu Alexander and his father, Adamescu Grigore, for taking amounts of money out of SC. Baumeister Utilaje Echipamente S.R.L. and S.C. Baumeister Prestari Servicii S.R.L., money which was subsequently transferred into the account of the law office Dumitru George Claudiu as payment of fees and which in reality was money to be paid as bribery to certain judges through the intermediary Borza Monica.*

*The witness Onuțe Daniel describes in great detail in his statement of 12.06.2014 this mechanism for corrupt payment, expressly **showing the involvement of the Defendant Adamescu Alexander.***

Judge Matei then goes on to draw a straight link between the (suspicions of) guilt of Alexander Adamescu’s and his mandatory arrest⁴¹:

Therefore, there is evidence to create the reasonable suspicion that the defendant is guilty of the deeds he is accused of, thus his arrest is mandatory.

Lastly, Judge Matei’s sentence was immediately leaked to the media by the Romanian authorities. At 5.06 pm the Adevarul website posted news that Alexander Adamescu had a new arrest warrant against him. His lawyer wasn’t officially informed about the decision until the next day.

³⁹ Judgement F/DL; Case No. 3576/2/2016, Bucharest Court of Appeal, First Criminal Division, 19 May 2016

⁴⁰ Judgement F/DL; Case No. 3576/2/2016, Bucharest Court of Appeal, First Criminal Division, 19 May 2016, page 5

⁴¹ Idem

On 14 October 2016, Alexander Adamescu's lawyer asked the Court of Appeal to release the records of the hearing of 19 May 2016. The Bucharest Court of Appeal refused to release the records of the hearing on the grounds that the session was not public.

Alexander Adamescu's lawyer appealed against Judge Matei's decision. Despite the haste that the court showed in issuing the decision on 19 May 2016, it took it five full days to submit it to the High Court of Cassation and Justice, on 24 May 2016⁴². This constitutes another breach of the Romanian Criminal Procedure Code, namely article 204, paragraph 1, according to which the appeal has to be sent, together with the case file to the higher court within 48 hours of its registration. Alexander Adamescu's appeal did not have the same urgency as the appeal made by the DNA on 19 May 2016.

On 25 May 2016, the High Court of Cassation and Justice set a hearing for 26 May 2016 at 9am and summoned Alexander Adamescu again at the door of the courtroom and in Monaco.⁴³ The Assistant Magistrate of the appeal panel, Ms Simona Danaila, then drafted a report in which she mentioned that she tried to summon Alexander Adamescu by phone, but that the call generated the message "non-existent number".⁴⁴ She also summoned Alexander Adamescu at two different email addresses, writing in the report that she obtained confirmation of receipt. But the attachments to her report show the exact opposite of her statement. Both emails had bounced back⁴⁵.

This did not perturb Judge Ghena who ruled that Alexander Adamescu had legally been summoned. Through Judgement no. 794 of 26 May 2016 she rejected Alexander Adamescu's appeal.⁴⁶ Again, no attempt was made to take into consideration Alexander Adamescu's defence. Judge Ghena justifies Alexander Adamecu's arrest and the impossibility of imposing a more lenient measure by referring to public expectations about his arrest:

Analyzing the possibility of taking into consideration an easier preventive measure, the court remarks that the defendant is being investigated for the alleged committing of two severe corruption offences, so that to establish another preventive measure might determine a strong negative reaction among public opinion, create a feeling of insecurity and lack of trust towards

⁴² Fisa de repartizare aleatorie a dosarului; Case No. 3576/2/2016, High Court of Cassation and Justice, 24 May 2016

⁴³ Summons; Case No. 3576/2/2016, High Court of Cassation and Justice, 25 May 2016

⁴⁴ Report by assistant magistrate Simona Danaila; Case No. 3576/2/2016, 25 May 2016

⁴⁵ Idem

⁴⁶ Judgement 794; Case No. 3576/2/2016, High Court of Cessation and Justice, Criminal Section Council Chamber Session, 26 May 2016

*the state's institutions and the manner in which it is understood to discourage and fight against the phenomenon of corruption.*⁴⁷

She then goes on to give a fuller appreciation of Alexander Adamescu and orders his arrest to prevent him from further criminal activities (emphasis added):

*Concerning the condition for the assessment of the severity of the acts, the manner, the means, the circumstances, the entourage, the environment of the defendant, the judge of rights and liberties finds that the privation of liberty of the defendant is necessary, **as the risk exists that the Defendant continues to be in criminal activities like the ones recorded for him**, the social reaction being affected in the light of the offence of offering bribes for magistrate judges, for obtaining favourable solutions in liquidation files for which the defendant is investigated and the commencement of the criminal prosecution against him has been ordered.*⁴⁸

Nowhere in her judgement does Judge Ghena deem it necessary to explain why Alexander Adamescu's circumstances, entourage and environment impose his arrest. She also fails to spell out her reasoning why Alexander Adamescu is at risk of continuing to commit bribery, when precisely no such accusation has been levelled against him in the two years that elapsed since he had first become a suspect.

On 6 June 2016 the Bucharest Court of Appeal issued a European Arrest Warrant for Alexander Adamescu⁴⁹. He was arrested on 13 June 2016 at the Frontline Club in London where he was due to speak at a conference about the abuses of the European Arrest Warrant system. The Metropolitan Police had been sent to the location by the Romanian Embassy in London to arrest Alexander Adamescu before the event. He was depicted as a dangerous fugitive. He was brought before the Westminster Magistrates Court the next day where he was granted bail. Alexander Adamescu's main extradition hearing is listed for 24 April 2017.

It remains a mystery how abuses of due process on this scale could have received so little attention amongst Romania's international partners. None of these unlawful measures have been carried out in secret; the prosecutors, the DNA, the Judges and other officials have denigrated the Constitution of Romania, the Romanian Code of Criminal Procedure and the European Convention on Human Rights in broad daylight. It is clear that there was no effort or intention to lawfully summon Alexander Adamescu; there was no intention to allow him to take part in proceedings against him in

⁴⁷ See; Judgement 794; Case No. 3576/2/2016, High Court of Cession and Justice, Criminal Section Council Chamber Session, 26 May 2016, page 11

⁴⁸ idem

⁴⁹ Bucharest Court of Appeal, European Arrest Warrant No. 1, 6 June 2016



any meaningful manner; and there was never any doubt about the outcome of the DNA arrest warrant request. The Courts in Romania disregarded all procedural law to ensure that Alexander Adamescu's liberty was removed.

Summary of violations of the European Convention on Human Rights by Romania



In light of the case law of the European Court of Human Rights, it is apparent that in the case of Alexander Adamescu there have been numerous violations of the European Convention on Human Rights. It is plain to see that the State of Romania has manifestly not only failed to secure Alexander Adamescu and his family the enjoyment of the rights contained in the Convention; it is the State of Romania that is the perpetrator of the violations through a deliberate and orchestrated attempt to persecute Alexander Adamescu without regard to its obligations under international law.

In particular, the evidence points to a severe violation of the European Convention on Human Rights (ECHR) specifically (i) Article 5⁵⁰ which prohibits arbitrary detention; (ii) Article 6⁵¹ which protects the right to a fair trial; and (iii) Article 18⁵² which protects individuals against politically motivated actions by the State.

Indeed, the Romanian State and its judicial and investigative institutions acted unlawfully and arbitrarily in opening the investigation, conducting the investigation, opening the proceedings, and issuing the warrant against Alexander Adamescu. They furthermore failed to act independently and

⁵⁰ ARTICLE 5; Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

⁵¹ ARTICLE 6; Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

...

⁵² ARTICLE 18; Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

preserve Alexander Adamescu's right to be presumed innocent until proven guilty. As a result, his life, liberty and personal safety are in danger.

The European Court of Human Rights (ECtHR) has stated on several occasions that the right to liberty and security is of the highest importance in a "democratic society".⁵³ The principal aim of Article 5 is to prevent arbitrary or unjustified deprivations of liberty⁵⁴ and guard against abuse of power.⁵⁵ The jurisprudence of the ECtHR emphasises that any exception to this right is strictly limited to the sphere of Article 5. Each of the exceptions allowed to the right protected by Article 5 are to be interpreted narrowly.⁵⁶ Deprivation of liberty, under the European Convention on Human Rights, is effectively allowed where it is done in accordance with a procedure proscribed by law and where the detention, or in this case the order of detention, is lawful.⁵⁷ However, Article 5 not only prohibits arbitrary detention, it also imposes a positive obligation on the State to refrain from violations of this nature and take steps to protect against unlawful interference with those rights.⁵⁸

Article 6 of the ECHR requires the Court to be independent from the other branches of power and the parties in the matter.⁵⁹ In assessing impartiality, the Court has, amongst others, sought to ascertain whether a judge has displayed hostility or has reserved a case to himself for personal reasons.⁶⁰ The Court has expressed unequivocally that the higher demands of justice and the elevated nature of judicial office impose a duty upon judicial authorities, to the effect that they are required to exercise maximum discretion with regard to the cases with which they deal, and that discretion should dissuade them from making use of the press.⁶¹ The Court has furthermore decided that the presumption of innocence may be infringed not only by a judge or court but also by other public authorities.⁶² Indeed, Article 6 § 2 prohibits statements by public officials about pending criminal

⁵³ *Medvedyev and Others v. France* [GC], Application number 3394/03 (29 March 2010); *Ladent v. Poland*, Application number 11036/03 (18 March 2008)

⁵⁴ *McKay v. the United Kingdom* [GC], Application number 543/03 (3 October 2006)

⁵⁵ *El-Masri v. Former Yugoslav Republic of Macedonia*, Application number 39630/09 (13 December 2012)

⁵⁶ *Winterwerp v. Netherlands*, Application number 6301/73 (24 October 1979), Series A, No.33, 2.E.H.R.R. 387

⁵⁷ See *Voskuil v. Netherlands*, Application number 64752/01 (22 November 2007); The authorities omitted to inform the Applicant in writing of the detention order within the required time limit.

⁵⁸ *El-Masri v. Former Yugoslav Republic of Macedonia*, Application number 39630/09 (13 December 2012)

⁵⁹ *Ninn-Hansen v. Denmark*, Application number 28972/95 (18 May 1999)

⁶⁰ *De Cubber v. Belgium*, Application number 9186/80 (26 October 1984)

⁶¹ *Lavents v. Latvia*, Application number 58442/00 (28 November 2002); *Buscemi v. Italy*, Application number 29569/95 (16/09/1999)

⁶² *Allenet de Ribemont v. France*, Application number 15175/89 (7 August 1996); *Daktaras v. Lithuania*, Application number 42095/98 (10 October 2000); *Petyo Petkov v. Bulgaria*, Application number 32130/03 (7 January 2010)

investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority.⁶³

The Court has also stated that the existence of reasonable suspicion means the existence of facts or clues which due to their nature can convince a neutral and objective observer that the person in the case has committed a crime.⁶⁴ However, in the case of Alexander Adamescu, the Courts in Romania have unconditionally, and in full, accepted the account of the Prosecutor, in the absence of any evidence.

Indeed, the haste with which the Court of Appeals, on 19 May 2016 turned the matters around would appear to show that the whole purpose of the exercise was to reverse the victory Alexander Adamescu had had on technical grounds. In one day the Court of Appeal upheld the appeal by Alexander Adamescu; drafted the decision to approve the appeal (37 pages); sent the file to the registry of the Court; officially had it recorded on its merits under no. 3576/2/2016;⁶⁵ established the term of the hearing; decided to summon Alexander Adamescu by way of a writ on the courtroom door half an hour before the time set for the trial; ruled over the remand in custody proposal at 2.40 pm and at 3.40 pm sent the warrant for his arrest to the police.

The European Court of Human Rights (ECtHR) has defined “charge” as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence.⁶⁶ Thus, the allegation of evading a criminal investigation cannot be invoked in the abstract, to justify the issuance of a warrant, without summoning the individual first. The ECtHR has also stated that in addition to the fact that the individual must be effectively summoned, "The fear that the accused can evade the trial is not enough, and that the situation should be analysed in relation to the personal data of the accused".⁶⁷ But the Romanian courts didn't analyse any personal data of Alexander Adamescu. Indeed, it is the case that the Romanian state ordered his arrest on the basis of the speculations of the prosecutor's proposal for his remand in custody, namely that "*based on the assessment of the gravity of the corruption offences of the case, from the manner and the circumstances they were committed, we consider that the imprisonment of the defendant Adamescu Alexander Bogdan is necessary to remove the state of threat against the public order*"⁶⁸.

⁶³ *Ismoilov and Others v. Russia*, Application number 2947/06 (24 April 2008); *Butkevičius v. Lithuania*, Application number 48297/99 (26 March 2002)

⁶⁴ *Murray v. United Kingdom*, Application number 14310/88 (28 April 1994)

⁶⁵ The file that forms also the object of the preventive remand in custody.

⁶⁶ *Deweert v. Belgium*, Application number 6903/75 (27 February 1980); *Eckle v. Germany*, Application number 8130/78 (15 June 1982)

⁶⁷ *Neumeister v. Austria*, Application number 1936/63 (27 June 1968)

⁶⁸ DNA Report on the Proposal of the Remand in Custody, File No. 577/P/2014, 25 March 2016, page 45

The ECtHR has discussed the issue of public order, noting that the authorities must indicate, in clear terms, how the person's freedom can represent a real threat to the public rather than make a simple statement to this effect.⁶⁹ As it was stated in *Adolf Simon vs. Romania*, the systematic reference to the seriousness of the facts and to the manner of how the offences were committed cannot compensate for the lack of concrete reasoning founded on relevant facts in relation to the plaintiff. This is, of course, exactly what did happen in Alexander Adamescu's case.

The presumption of innocence will be violated where the burden of proof is shifted from the prosecution to the defence.⁷⁰ The ECtHR has defined the concept of presumption of innocence in the case *Minelli vs. Switzerland*, stating that "*till the guilt of a person is established according to law and if the person did not have the opportunity to exercise its rights to defence, such person cannot be considered guilty.*"

In the case *Nolkenbockhoff vs. Germany*, the ECtHR wanted to underline the fact that "*the presumption of innocence guaranteed by the Convention, aimed at first to protect "the accused" against a verdict of guilt without legally establishing it*". This presumption requires that, in carrying out their functions, the judges must not have the preconceived idea that the accused has committed the offence charged against him. In Alexander Adamescu's case the judge, due to the manner he justified the measure of his remand in custody and the fact that he described Alexander Adamescu as guilty before the issuance of the final decision, in this regard grossly violated the presumption of innocence.⁷¹

With regards Article 18⁷², the Court has accepted that an abuse of power motivated by political aims may well lead to a violation of the Convention.⁷³

⁶⁹ Tiron v. Romania, Application number 17689/03 (7 April 2009)

⁷⁰ Telfner v. Austria, Application number 33501/96 (20 March 2001)

⁷¹ Fatullayev v. Azerbaijan, Application number 40984/07 (22 April 2010); *Alenet de Ribemont v. France*, Application number 15175/89 (10 February 1995); *Garycki v. Poland*, Application number 14348/02 (6 February 2007)

⁷² ARTICLE 18; Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

⁷³ Tymoshenko v. Ukraine, Application number 49872/11 (30 April 2013); *Gusinskiy v. Russia*, Application number 70276/01 (19 May 2004)

Short summary of abuses in the trial of Dan Adamescu

To gain a full understanding of the Alexander Adamescu case, it is worth referring to some examples of the abuses and breaches of law that his father, Dan Adamescu, was exposed to in his trial as they bear similar hallmarks.

On 22 May 2014, Dan Adamescu was charged with two accounts of bribery in the total amount of 20.000 Euro and questioned by the DNA. Two days later Prime Minister Ponta appeared on TV and stated that Dan Adamescu had led a network of corruption.⁷⁴ Dan Adamescu's arrest at his home on 5 June 2014 was carried out by armed police, including masked members of the special forces. His arrest was filmed and broadcast on a public television channel. The broadcast included a frame in which the words "bribery" were stamped over an image of Dan Adamescu in handcuffs, with the caption "Billionaire Adamescu detained" in Romanian:



The same day, the Romanian authorities leaked documents from the criminal file to the public⁷⁵.

From 6 June 2014 to 29 August 2014, while Astra was under attack by the ASF, Dan Adamescu was placed in pre-trial detention in Rahova Prison in Romania. The European Court of Human Rights

⁷⁴ <http://www.antena3.ro/politica/ponta-s-au-facut-presiuni-uriase-asupra-mea-pentru-adamescu-254501.html>

⁷⁵ <http://www.mediafax.ro/social/dna-declaratiile-avocatului-sinucigas-ale-denuntatorilor-si-interceptarile-releva-faptele-lui-adamescu-stenograme-din-dosar-12712149>; <http://www.evz.ro/spaga-la-judecatori-stenogramele-care-l-au-infundat-pe-milionarul-dan-adamescu-e-pe-dosarul-acela.html>

has repeatedly found that the conditions in this particular prison, and lack of medical care afforded to detainees, amounts to “inhuman or degrading treatment” within the meaning of the prohibition on torture in Article 3 of the European Convention on Human Rights.

In Rahova Prison, Dan Adamescu was denied access to medical care and was kept in exceedingly poor and cramped conditions.⁷⁶ Despite his repeated requests, he was denied access to any of his medication for the first 37 days of his incarceration, although the prison authorities were well aware of his serious health conditions and the concomitant risk to his life.⁷⁷

Dan Adamescu was and remains in a fragile state both physically and mentally. Due to Romania’s continuing denial of proper medical treatment, he became wheelchair-bound during his trial. He suffers from a number of serious medical conditions, including, among others, the autoimmune disease lupus, a disturbance of the diencephalon-pituitary axis, strong cardiac insufficiency, ventricular fibrillation and a severe knee arthritis requiring the urgent and complete replacement of one of his knees⁷⁸.

In detention, on several occasions, Dan Adamescu was unable to meet with his lawyer because the only meeting room provided required him to walk up stairs, which he found impossible to accomplish due to the severe pain in his knee.

Dan Adamescu applied for bail on five occasions. The first four were unsuccessful. Each decision to incarcerate him and to deny his bail applications was based on the presumption that Dan Adamescu was guilty and to remain incarcerated given his wealth. The Court also denied bail on the basis that Dan Adamescu refused to admit guilt.⁷⁹

These court decisions against Dan Adamescu were so outrageous that the non-governmental organisation Fair Trials cited them as an example of judicial authorities treating an individual with a presumption of guilt.⁸⁰ The treatment of Dan Adamescu was key to their successful campaign to strengthen a proposed EU Directive on the presumption of innocence in criminal proceedings. In particular, it resulted in a prohibition on reference to guilt by public authorities. Members of the Parliamentary Assembly of the Council of Europe also criticised Romania for its blatant failure to observe the presumption of innocence.

⁷⁶ See; Witness Statement by Dan Adamescu, 20 September 2016

⁷⁷ See; Witness Statement by Dan Adamescu, 20 September 2016

⁷⁸ Dr Rosak medical reports, 22 August 2014 and 9 September 2014

⁷⁹ Decision; Case no. 4153/2/2014, Bucharest Court of Appeal, 8 August 2014, page 14

⁸⁰ Fair Trials International: “Defence Rights in Europe: The Road Ahead”, 2016, page 10

On 29 August 2014, Dan Adamescu was released from prison. Instead of having his liberty restored, he was placed under house arrest by a decision of the High Court of Cassation and Justice for an initial period of 30 days. The Bucharest Court of Appeal maintained this measure beyond that period until June 2015.

As a result, Dan Adamescu was never allowed to leave Romania to receive the urgent knee operation that he requires. Permission was withheld despite his doctors' repeated requests and warnings that delaying the procedure places Dan Adamescu at risk, including risk of death by embolism resulting from his other serious conditions and his confinement to a wheelchair.

Dan Adamescu made nine applications for permission to travel to Austria, only one of which was accepted, when on 13 August 2015 a substitute Judge was asked to decide the application due to the regular judges being on vacation. Dan Adamescu was briefly allowed to travel to Austria from 16 to 23 August 2015, where he underwent medical examinations and measurements to prepare for the operation which was due to take place shortly after this first visit. As all his subsequent applications for permission to travel for medical attention have been denied, he was never able to return for the operation.

Alarmed by the situation, the Embassy of the Federal Republic of Germany sent a Note Verbale to Romania on 5 April 2016 urging it to provide Dan Adamescu with the treatment required "for humanitarian reasons" and enclosing a letter from Univ. Prof. Dr. Reinhard Weinstabl explaining why the operation needed to be carried out urgently by the specialist centre in Vienna, and why delaying the operation placed Dan Adamescu at risk of death.⁸¹

Dan Adamescu was convicted of the bribery charges on 2 February 2015.⁸² The court adopted much of the DNA's case, as set out in the indictment, verbatim or close to it. The judge did not consider or engage in any meaningful way with the arguments put forward by Dan Adamescu through his counsel, including the detailed written submissions filed on 19 January 2015.

The Judge sentenced Dan Adamescu to four years and four months imprisonment, and ordered that Dan Adamescu be prohibited from "coordinating any commercial activities, both in Romania and abroad, for a term of 3 years after executing his main punishment". The Judge did not have, under Romanian law, the power to prohibit Dan Adamescu from commercial activities outside of Romania.

⁸¹ Letter by Prof. Dr. Weinstabl to Dan Adamescu, 31 March 2016

⁸² Judgement; Case no. 4153/2/2014, Bucharest Court of Appeal, 19 January 2015

On 27 May 2016, the High Court of Cassation and Justice upheld Dan Adamescu's conviction and sentence.⁸³ He was incarcerated in Rahova Prison, where he collapsed in September 2016 and was revived in an emergency hospital. Dan Adamescu has repeatedly acknowledged that he's not able to survive prison in Romania⁸⁴.

Dan Adamescu received a show trial that was intended to compensate in brutality and brazenness for the lack of evidence against him. It is hard not to conclude given the events that his conviction was a foregone conclusion even before his arrest on 6 June 2014. His mistreatment was intended to ruin his reputation and then break him physically and mentally. Given his catastrophic state of health and state of mind, Romania has succeeded in its endeavors.

Alexander Adamescu awaits a similar fate to his father. His incarceration and conviction in Romania is a generally acknowledged fact by lawyers and DNA prosecutors alike. Alexander Adamescu's extradition is the last stepping stone for the Romanian state to end all opposition to its goal of the financial destruction of the Adamescu family, the ruining of their reputations and the muzzling of *România Liberă*.



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⁸³ Judgment 234/A: Case no. 4153/2/2014, High Court of Cassation, 27 May 2016

⁸⁴ See; Witness Statement by Dan Adamescu, 20 September 2016