Translated from Romanian

BUCHAREST COURT OF APPEAL

2ND CRIMINAL DIVISION

CASE FILE #4153/2/2014

Trial date:

CONCLUSIONS

put for the defendant ADAMESCU DAN GRIGORE

By the indictment no. 316/P/2013 of 20.06.2014, the National Anticorruption Directorate, Anticorruption Unit, ordered the arraignment, in detention, pf the defendant ADAMESCU DAN GRIGORE (detained and arrested, first pre-trial detention then home detention, starting with 05.06.2014) for 2 cases of bribery, as set forth by art. 290(1) Criminal Code, in the light of art. 6 of Law 78/2000, with the application of art. 38 (1) Criminal Code.

A. ISSUE IN FACT, LEGAL CLASSIFICATION AND EVIDENCE ADDUCED BY THE PROSECUTOR'S OFFICE

On 13.05.2014 the delator ONUTE DANIEL brought before the National Anticorruption Directorate the following matter: "On request of the said BORZA MONICA-ANGELA, in December 2013, he gave the latter the amount of EUR 20,000 – 30,000, after having talked both to ADAMESCU GRIGORE-DAN and to ADAMESCU BOGDAN ALEXANDER about the need to pay the "fees". The two agreed to the BORZA MONICA-ANGELA, the insolvency practitioner's request and told the delator that FIRESTAIN ELENA-DANIELA should make the payment to the lawyer DUMITRU GEORGE-CLAUDIU, without him knowing concretely what it was about, and the lawyer had to transfer the money in his wife's account.

Lawyer DUMITRU GEORGE-CLAUDIU in order to justify the withdrawal of the money out of the company issued an invoice for ‚legal services', and the transfer was made in an account open at Banca Transilvania, the amount transferred in that account was of approximately RON 100,000 later given to the said BORZA MONICA-ANGELA.

Further, the delator ONUTE DANIEL claimed that BORZA MONICA-ANGELA justified the pressure to make the payment by the fact that she had already given to the judge ROVENTA ELENA the amount of EUR 5,000 (page 27 of the indictment).

Later, on 14.05.2014, BORZA MONICA-ANGELA filed a denunciation bringing to the same criminal investigation authority that 'on opening the insolvency procedure S.C. BAUMEISTER S.A., the debtor's representative, ONUTE DANIEL gave to the defendant first the amount of EUR 5,000 and then 10,000 that she delivered in person to the

magistrate STANCIU ION, in the car belonging to ACTIV LICHIDATOR IPURL, immediately after the opening of the procedure, i.e. in December 2013.

The phone conversations with ONUTE DANIEL made BORZA MONICA ANGELA understand that the money were coming from ADAMESCU GRIGORE-DAN and ADAMESCU BOGDAN ALEXANDER, who were informed that such amount would be delivered to judge STANCIU ION.

The delator BORZA MONICAANGELA showed that ONUTE DANIEL gave her the amount of EUR 15,000 in two installments, at different intervals, i.e. EUR 5,000 in the parking lot of Royal Hotel, located behind Bucharest Court of Law, which were given the same day to judge STANCIU ION, and EUR 10,000 in the area of the Treatrul Evreiesc (the Jewish Theatre) located near Bucharest Court of Law, an amount which was delivereds to judge STANCIU ION the same day.

In the case file concerning S.C. ACTIV CONSTRUCTII INDUSTRIALE SRL judged by ROVENTA ELENA was contested the debt of S.C. BAUMEISTER S.A. by the other creditors. In this context, ONUTE DANIEL offered to the defendant the amount of EUR 5,000 to be delivered to the judge ROVENTA ELENA, to the purpose of rendering a favorable judgment, i.e. in the sense of rejecting the appeals of the other creditors.

The amount of EUR 5,000 were handed over by the delator BORZA MONICA-ANGELA, to the magistrate ROVENTA ELENA, in the parking lot behind Bucharest Court of Law, in an envelope, and the envelope was inserted in a magazine, for the purpose of designating another liquidator agreed by ONUTE DANIEL, instead of the liquidator appointed by the court, as an effect of settling the appeals (page 28 of the indictment).

The issues in fact related to the defendant ADAMESCU DAN GRIGORE is described at page 148-185 of the indictment, while the evidence is listed at pages 359-387.

B. CONCLUSIONS OF THE DEFENSE

1. First offense of bribery, as provided by art. 290(1) Criminal Code, in the light of art. 6 of Law 78/2000.

According to the indictment, 'The deed of the defendant ADAMESCU GRIGORE-DAN (presented in the issues in fact at point 1.2.1 of the indictment) which, together with the suspect ADAMESCU BOGDAN ALEXANDER, during the month of June 2013 and December 2013 (11.12.2013) by means and with the help of witness ONUTE DANIEL and of the defendant BORZA MONICA-ANGELA gave to the defendant STANCIU ION, judge at Bucharest Court of Law, 7th Civil Division, the amount of EUR 15,000 (EUR 10,000 in June 2013 and EUR 5,000 in December 2013) to render a favorable judgment in the case file 33293/3/2012, i.e. to accept the opening of the insolvency procedure for the debtor S.C. SIGUR INDUSTRIAL CONSTRUCT SRL (former BAUMEISTER S.A.) in order to designate ACTIVI LICHIDATOR IPURL the trustee and to admit the debts of S.C EAST BUCHAREST COMMERCIAL PARK S.R.L and S.C. ASIGURARE REASIGURARE ASTRA S.A. meets all the constitutive elements of the case of bribery, as set forth by art. 290(1) Criminal Code, in the light of art. 6 of Law 78/2000' (page 393).

The documents of the file show that on the list of Bucharest Court of Law, 7th Civil Division was registered at 15.11.2013 the case no. 33293/3/2012/a8, having as object 'the appeal againt the report no. 1, parties S.C. SIGUR INDUSTRIAL CONSTRUCT S.R.L.

- debtor S.C. HEIBL ISOLIER TECHNIK SRL and S.C. BAUDER S.R.L.

-appellants, with trial date at 17.12.2013. To this file was also attached file no. 33293/3/2012/a9.

By the judgment no. 11042/2013 passed at the trial date of 17.12.2013, the C3 panel, judge STANCIU ION dismissed as inadmissible the appeals filed by S.C. HEIBL ISOLIER TECHNIK S.R.L. and S.C. BAUDER S.R.L.'

At 03.01.2013 the legal assistance contract no. 717263 was signed between DUMITRU GEORGE Legal Office (represented by witness DUMITRU GEORGE – deceased during the criminal investigation) and S.C. BAUMEISTER PRESTARI SERVICII SRL (represented by witness ONUTE DANIEL). The object of the contract is 'current legal assistance for the client's activity', with due fee of RON 10,000/month and admitted anticipated payment.

Based on the contract dated 15.05.2013 the legal office issued the invoice no. 00016B to the client S.C. BAUMEISTER PRESTARI SERVICII SRL for the amount of ROL 275,000 whch was collected by bank transfer on 16.05.2013. The second day, on 17.05.2013, the witness DUMITRU GEORGE transferred the amount of RON 203,300 in his personal account, wherefrom he transferred the amount to the account of the said ONUTE ALINA STEFANI (wife of witness ONUTE DANIEL), as 'a loan to DUMITRU GEORGE CLAUDIU'. On 20.05.2013, the witness ONUTE DANIEL collected in cash from the account of his wife the amount of RON 150,000.

2. Second case of bribery, as set forth by art. 290 (1) Criminal Code, in the light of art.6 of Law 78/2000.

According to the indictment, the 'Deed of defendant ADAMESCU GRIGORE-DAN(presented in the issues in fact at point 1.2.1 of the indictment) which together with the suspect ADAMESCU BOGDAN ALEXANDER, during the month of December 2013 (10.12.2013) by means and with the help of ONUTE DANIEL and of the defedant BORZA MONICA-ANGELA delivered to the defendant ROVENTA ELENA, judge at Bucharest Court of Law, 7th Civil Division, the amount of RON 23,000 (the equivalent of EUR 5,000), in order to render a favorable judgment in the case files no. 41848/3/2012/a1 and no. 19950/3/2013, respectively to admit the appeal of S.C. SIGUR INDUSTRIAL CONSTRUCT SRL at the preliminary table of the debtor's S.C. ACTIV CONSTRUCTII INDUSTRIALE SRL debits and to order the recording on the creditors' table of SC SIGUR INDUSTRIAL CONSTRUCT SRL and not to cancel the convention authenticated under no. 479/23.11.2012 between S.C. ACTIV CONSTRUCTII INFUDTRIALE SRL and S.C. BAUMEISTER S.A. meets the constitutive elements of the case of bribery, as set forth by art. 290 (1) Criminal Code in the light of art. 6 of Law 78/2000' (page 393).

The documents of the file show that on the list of Bucharest Court of Law, 7th Civil Division was registered the case no. 41848/3/2012/a1 having as object 'an appeal to the preliminary table of the debts, parties S.C. SIGUR INDUSTRIAL CONSTRUCT SRL (former BAUMEISTER S.A.) by ACTIV LICHIDATOR IUPRL, S.C. ACTIV CONSTRUCTII INDUSTRIALE SRL by trustee RTZ&PARTNERS FILIALA ALBA – intimate, S.C. CRAWFORD NAPA SRL, S.C. ASA CONS TOMANIA SRL and S.C. HISTRIA INTERNATIONAL SRL.

The interveners in the name of another person, with trial dates at 5, 19 and 23 December 2013. At the trial date 05.12.2013, the C8 panel, presided by judge ROVENTA ELENA, ordered to postpone the case in order to take note of the notified evidence at the trial date of 19.12.2013postponed the ruling for 23.12.2013, and at that date by judgment no. 11178/2013, it was ordered: ‘‘partially admits the appeal filed by S.C. SIGUR INDUSTRIAL CONSTRUCT SRL – in insolvency in the preliminary table of the debtor’s ACTIV CONSTRUCTII SRL debt. It is hereby ordered to register in S.C. SIGUR INDUSTRIAL CONSTRUCT SRL (former BAUMAISTER CONSTRUCTII CIVILE SRL) creditors’ table a debt to the amount of RON 32,138,094.28, consisting in RON 28,953,238.32 main debt and RON 3,184,855.96 the equivalent of penalties, that is uncontested, liquid and enforceable against the company.’

On the list of the same panel was also registered on 30.05.2013 the case no. 19950/3/2015, ‘having as object the action for annulment of the convention no. 479/23.11.2013, parties RTZ&PARTNERS – Alba SPRL branch – plaintiff, S.C. ACTIV CONSTRUCTII INDUSTRIALE SRL, by special curator S.C. AETERNITAS CONSULT&CONSTRUCT SRL, S.C. SIGUR INDUSTRIAL CONSTRUCT SRL – defendants, S.C. HISTRIA INTERNATIONAL SRL and S.C DEROM TOTAL SRL – petitioners, with trial dates during the analyzed period, on 5, 19 and 23 December 2013.

On 05.12.2013, the C8 panel, presided by judge ROVENTA ELENA, postponed the case, in order for the plaintiffs to file the evidence, at 19.12.2013 postponed the ruling for 23.12.2013 to have written submission filed, and at that term, under judgment no. 111/77/2013, ordered as follows: ‘It is partially admitted the action for annulment. It is partially annulled the appeal authentication under no. 479/23.11.2012 in the sense that the provisions of art. 3 par. 2 of the convention are removed related to the amount of EUR 1,500,000, calculated at the Romanian National Bank rate of exchange of 11 December 2012, representing the calculation of the flat indemnification. It is maintained the remainder of the provisions of the convention.’ (…) In relation with the insolvency files of S.C. ACTIV CONSTRUCTII INDUSTRIALE SRL, it should be pointed out that within the mechanism devised by ADAMESCU GRIGORE DAN and ADAMESCU BOGDAN ALEXANDER, to enter fictitious credits on the statement of affairs, belonging to a company actually controlled by them, for the purpose of obtaining control over the insolvent company assets, the solutions adopted by the judge ROVENTA ELENA in the two case files had a particular importance.

Thus, an unfavorable solution, adopted in the case file no. 19950/3/2013 would have meant the annulment of the convention no. 479/23.11.2012, considered closed in deceit, by which it was admitted the existence of a debt to the amount of RON 38,946,294.28 and implicitly the case file no. 41848/3/2012/a1 concerning the registration of this debt in S.C. ACTIV CONSTRUCTII INDUSTRIALE SRL creditors’ table would be left without an object. In conclusion, by adopting favorable solutions in the two case files, the judge ROVENTA ELENA favored S.C. SIGUR INDUSTRIAL CONSTRUCT SRL with the amount of RON 32,138,094.28’.

On 07.11.2013 was signed the legal assistance contract no. 717289 between DUMITRU GEORGE CLAUDIU Law Practice (represented by witness DUMITRU GEORGE CLAUDIU) and S.C. ‘SIGUR INDUSTRIAL CONSTRUCT’ SRL by trustee S.C. ‘ACTIV LICHIDATOR IPURL’ SRL (represented by the defendant BORZA MONICA ANGELA). The object of the contract consists in ‘representation of case file no. 19950/3/2013 BEFORE Bucharest Court of Law’, the agreed fee amounting to RON 180,000 + VAT, and the parties may also decide the

payment of a success fee. Moreover, the parties agreed that the payment of the fee should be made by S.C. 'BAUMEISTER UTILAJE ECHIPAMENTE' SRL.

Based on the contract, at 10.12.2013, the law practice issued the invoice series CAB no. 00130042 for the amount of RON 223,200 (180,000 + 43,200 VAT), the document being signed at the client's by the witnesses ONUTE DANIEL and FIRESTAIN ELENA DANIELA. The amount was collected by bank transfer at 10.12.2013, and the same day was collected in cash by witness DUMITRU GEORGE CLAUDIU the amount of RON 222,040 as 'debt covering and loan'.

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Considering that the evidence adduced by the prosecution for both offenses are the same, the defense shall approach them in the same way, after prior due theoretical considerations.

Thus, according to art. 5 par. 1 Code of Criminal Procedure, 'the judicial bodies are liable to enable, against evidence, the finding out of the truth related to the facts and circumstances of the cause, and in relation with the person of the suspect or defendant'.

In order to find out the truth, the judicial bodies adduce evidence in strict compliance with art. 2 Code of Criminal Procedure under the terms of the presumption of innocence, as set forth by art. 4 Code of Criminal Procedure, according to which:

'(1) Any person is presumed innocent until proven guilty under a final criminal judgment.

(2) After taking the evidence, any doubt in forming the conviction of the judicial bodies shall be interpreted in favor of the suspect or defendant.'

'Therefore the presumption of innocence, related to the rules of evidence, shall be understood as a rule of regulation of the burden of proof and as a guarantee against judicial error.

Indeed, the accusation brought against a person about any offense brought to a person about commiting an offense does not impose upon such person any evidence in his/her defense, his/her innocence being presumed by the law until proven guilty under the laws and generates the consequence that the court of law is able to detgermine the defendant's guilt only after finding, with certainty, from the evidence adduced that the defendant is guilty as charged.

When the criminal investigation authorities made the charges and carry on an activity to prove it, the defendant is interested that his/her guilt be determined assoon as possible; therefore, the defendant may help the court to find that some evidence as charged are not well-grounded, that certain circumstances in defense should be proved, and offered to help in proving them.

This contribution of the defendant may intervene on the occasion of the hearing, when he may show arguments in his defense which must be proven, or when asked, during the prosecution or judgment, about the circumstances he wants to prove and the evidence to take.

In order to make this contribution, art. 66 and 67 of the procedure law recognizes the defendant the right to prove the lack of rationality of the evidence and to propose evidence and request evidence taking.

As highlighted in the doctrine the rule according to which the proof of culpability is incumbent to the judicial body, is substantiated on the presumption og innocence, because this culpability must be dewmonstrated, which obviously involves that the proof should have a certain concrete, effective content.

Thus in favor of the defendant operates the presumption of innocence, which can be overturned only by firm evidence of guilt. In the lack of evidence of guilt, the defendant is not obligated to proove his innocence [art. 66 par. 1 Code of Criminal procedure)], but in the case of existing proof of guilt, is entitled to proove their lack of rationality [art. 66 par. (2) Code of Criminal Procedure].

This principle, according to which any person should be presumed innocent of commiting an offense, so long as culpability was not determined under a final judgment is meant to protect the individual against public criminal action and represents an indispensable guarantee, in the sense of the European Convetion of Human Rights, for the implementation of the coercise measures required for the investigations that art. 9 of the Declaration of Human Rights is authorizing.

According to CEDO, 'any accused' should benefit from this principle, the accusation being defined as 'the official notification, deriving from a competent authority in relation with the reproach to have committed a criminal offense' (CEDO, 27 February 1980, Deweer vs Belgium and CEDO, 20 October 1997, Serves vs France, apud S. Guinchard, J. Buisson, op.cit., p. 290).

CEDO considers that the 'presumption innocence (...) is among the elements of the fair criminal trial elements' (CEDO, 23 April 1998, Bernard vs France, apud S. Guinchard, J. Buisson, op.cit. p. 290) and is found reckless if, without a prior determination of culpability of an accused and, especially, without the accused being able to exercise his defense rights, a judicial judgment which concerns him reflects the feeling that he is guilty (CEDO, 25 March 1983, Minelli vs Switzerland, ibidem, p. 290).

The Constitutional Court recognized the constitutional value of the presumption of innocence principle, expressly consecrated in art. 23 par. 8 of the Constitution (Constitutional Court, Judgment 99 of 1 November 1994, Official Journal 348 of 15 December 1994) which means that this principle shall be observed by all the state authorities, to the benefit of the accused of an offense' (see judgment 73 of 27.01.2014 of the High Court of Cassation and Justice, Criminal Division, p. 427).

Subject to the provisions of art. 103 par. 2 Code of Criminal Procedure 'When making the decision on the existence of the offense and of the defendant's guilt the court decides with good grounds, with reference to all the evaluated evidence. The conviction is decreed only when the court is convinced that the accusation was proved beyond any reasonable doubt' (in the same sense, also art. 396 par. 2 Code of Criminal Procedure).

'Therefore, the assessment of the evidence is the final operationm of the activity of evidence taking and determines the extent to which the evidence determines the trial court the firm belief that the facts and circumstances referred actually occurred or not.

By means of the assessment of the evidence the conclusion on the groundlessness or ungroundlessness of the accusation. thus, the assessment results in a value associated to the proof, which reflects the contribution of that proof to the elucidation of the case and which expresses by attributes which designate either its probative force, some proofs being more or less relevant, or its contributive potential to finding out the truth, some of them having the potential to contrinute to clarifying the cause in its entirety and others only of one aspect thereof.

In this respect, art. 63 par. 2 Code of Criminal Procedure, stating that the evidence have no predetermined value, dedicates the principle of free assessment of the proofs, and in the second part of this text it is provided that 'the assessment of every proof is made by the criminal

investigation authority or the trial courtfollowing the examination of all the taken evidence for the purpose of finding the truth'.

Starting from the analysis of the provisions of art. 63 par. 2 Code of Criminal Procedure the following specifications should be made:

- first, the proofs have no predetermined value. This means per a contrario that the concrete value of every proof is not given a priori, but it results a posteriori, after its examination and assessment.

In this respect, it was considered that it may be about a relative freedom in assessing the evidence, which excludes both an arbitrary selection and a hierarchy predetermined by law (Dongoroz s.a., Theoretical Explanations of the Romanian Code of Criminal Procedure, vol. I, General Part, Ed. Academiei, Bucharest, 1975, p. 196; Gr. Theodoru, L. Moldovan, Criminal Procedural Law, C.D.P., Bucharest, 1979, p. 125; M. Basarab, Criminal Procedural Kaw, Cluj, 1973, vol.I, p. 205 and next). The only criterion for the determination of the concrete probative value is the extent to which the evidence bring elements of determination of their object, which must reflect reality;

- second, the assessment of every proof is amde by the trial court, following the examination of all the evidence taken. So, the intimate conviction of the judge is no longer apparently constituted as a principle which governs the assessment of the evidence in the criminal trial, leaving no freedom of assessment of the value of the proofs to be supplied.

In this context, the need for the judicial body to motivate its decision is important in order to be controllable.

In the doctrine, it was underlined that the existence of doubt is incompatible with the conviction, which implies a full certainty in relation with the existence or inexistence of a fact, based on a logical reasoning and being the result of a psychic process, by which the proofs taken, as an objective element, fully and accurately reflect in the conscience of the magistrates.

For such purpose every proof is verified in its content, by a thorough analysis of all the proofsa taken and by investigating the source of the proof, by confronting it with other proofs, or by adducing new proofs with the result of either removing doubts, forming the conviction on the fact indicated by the object of the evidence, or maintaining doubts, which is equal to the inexistence of a valid proof, which might underlie a court judgment of conviction, according to adage in dubion pro reo (Gr. Theodoru, Treaty of Criminal Procedural Law, Ed. I. Iamangiu, Bucharest, 2007, p. 350).

The specialized doctrine pointed out that the intimate conviction is not synonymous with the arbitrary and does not mean in any way that the judges could convict without evidence, but it means thst they shall not convict unless first having assessed, according to their own conscience, the probative value of the elements submitted by the prosecution. The intimate conviction, whether motivated or not, is not, per se, contrary to the requirements of a fair tril which represents a way of assessing culpability, which far from being a subjective conviction, is a rule of judgment which combine a part of the legal reasoning with a part of spontaneous conviction.

- third, when assessing the proofs, the judge shall not act according his own conscience, but according to the law having in view public interest, of making justice in criminal causes, and the observance of the defendant’s legitimate rights and interests (Ghe. Mateut, Treaty of Criminal Procedure, General Part, vol. II, Ed. C.H. Beck, Bucharest, 2012, p. 65)’(idem.).

As pointed aut in the case-law, ‚The clues are not sufficient for ruling a conviction judgment to prove guilty a person in relation with whom there were clues about a fact provided by the criminal law, the court shall ground its judgment on evidence'(see sentence no. 678 of 25.05.2005 of Bucharest court of Law, Division I, published in the monograph 'Proofs in the criminal trial – judicial practice' by Iulia Ciolca).

In the same respect, we invoke the criminal decree no. 3465 of 27.06.2007 of the High Curt of Cassation and Justice, Criminal Division, which clarifying the principle in dubio pro reo, holds that 'The rule in dubio pro reo is a complement of the presumption of innocence, an institutional principle which reflects the way in which the principle of finding the truth, consecrated by art. 3 of the Code of Criminal procedure is found in the matter of the evidence. It is explained by the fact that, to the extent that thproofs taken in support of the innocence of the accused contain a doubtful information related to the doer's culpability as charged, the criminal court authorities cannot form a conviction which might constitute in a certainty and, therefore, they shall conclude in the sense of the innocence of the accused and discharge him.

Before being a legal issue, the rule in dubio pro reo is a issue in fact. Criminal justice requires the judges not to rely in their judgments on probability, but on the certainty acquired based on decisive, complete, safe evidence, able to reflect the objective reality (a fact subject to judgment).

It is the only way to form the conviction, deriving from the proofs taken in the case, that objective reality (a fact subject to judgment) is, without any doubt, that is depicted by the ideologically realityrebuiltwith the help of evidence. Even if in fact the evidence was taken in support of the accusation, and othr proofs are not foreseen or simply do not exist, and yet the doubt persists concerning the innocence, then the doubt is equivalent to a positive proof of innocence'and therefore the defendant shall be discharged'.

The reason of the presumption of innocence is based on the fact that not all the accusations are true, a proof that these processes end with the acquittal or before judgment with nonprosecution or release from criminal prosecution. (…). So,how can anyone be considered guilty based on the accusation, before knowing whether it is true, proved? Or, even the prosecution intends to prove the existence of the offense and the defendant's guilt and all the remainder of the process is the investigation and finding of such matters: and only then the criminal decree includes the conclusion in this respect. Therefore, how could the defendant be considered guilty so long as his guilt is investigated, and the judgment was not ruled yet? And a fair, unbiased judgment could not start from the criminal trial, with the preconceived idea on the defendant's guilt'(see Traian Pop, Criminal Procedural Law, vol. I, Ed. Tipografia Nationala [S.A., Cluj, 1946, pp. 346-347).

The doctrine further shows that: 'Any person in a criminal trial, irrespective of the trial stage, benefits from the observance of the right to the presumption of innocenceuntil the ruling of the final criminal judgment settling the guilt (quilibei praesumitur bonus, usque dum probatur contrarium), whether this judgment is a conviction, an acquittal (because the fact presents no social danger of offense) or of the termination of the criminal trial (for example, as a result of the intervention of the prescription of criminal liability, amnesty or existence of a case of nonpunishment). Therefore, the presumption of innocence is not an absolute presumption, but a relative one, which may be overturned by certain evidence of guilt'(see the treaty Éuropean Protection of Human Rights and the Romanian

Criminal Trial', by Mihail Udroiu and Ovidiu Predescu, published by ED. 'C.H. Beck' in 2008, pp. 632-634).

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The defendant ADAMESCU DAN GRIGORE, when examined at the trial date of 05.12.2014, said that 'in my discussion with Onute, Dumitru and Firestain no problem about money as bribery was raised', and 'in our discussions no reference was made about the judge or the name of the judges involved in the trial.'

In the same sense, the following statements:

- **The witness DUMITRU GEORGE CLAUDIU**, specified before the criminal investigation bodies at 15.05.2014 that 'in the summer of 2013, I cannot specify exactly the month, I talked about the signing of a legal assistance contract with ONUTE DANIEL, a representative of one of the companies of the S.C. BAUMEISTER S.A. group, for legal services. I collected a fee for the provided services. During the performance of the contract ONUTE DANIEL claimed from me an amount of money without specifying the details related to the reason of this claim, who amount I cannot mention at this point, but it is possible to be up to around RON 200,000. Under such circumstances, ONUTE DANIEL told me that he would transfer this amount, together with the due taxes besides the fee. After collecting said amount in full, I made the proceedings required to withdraw the money in cash. For bank reasons, I filed a loan contract signed between myself and ONUTE DANIEL, for the above-mentioned amount. I hereby point out that we signed this contract formally, but failed to monitor the money reimbursement.

Further, I would like to declare that after verifying the cash book, the legal assistance contracts and staments of account, I will be back with precise indications regarding the amounts, the withdrawal dates and other aspects important for this case.

After receiving in the office account this money, I gave to ONUTE DANIEL the claimed amount. At the present, I cannot say, not until the verification of the accounting records, whether the money delivery to ONUTE DANIEL was made by bank transfer, cash or both ways.

I would also like to specify that he did not tell me the final destination of that money and I do not know anything about it.

In December 2013 the same situation occurred, when ONUTE DANIEL told me that he needs about RON 100,000 without mentioning its destination.

In this respect, the money, approx. RON 100,000, were transferred to me as a fee, plus due taxes, from the accounts of one of the companies I am under legal assistance contract with. After the money transfer, I transferred it myself in my personal account, wherefrom upon ONUTE DANIEL's request, I transferred it in his wife's account'.

- the **defendant ROVENTA ELENA**, who, at the trial date of 17.11.2014 declared not to have received any amount of money as bribery and that 'I have never met the defendant Adamescu before the beginning of this criminal case and I have never heard anyone talking to me about this person.'
- the **defendant STANCIU ION**, who at the trial date of 03.11.2014, said that ' before the beginning of the criminal investigation in this case I have never met the defendant

Adamescu' and that ' the defendant Borza has never talked to me about the defendant Adamescu'.

- the **witness POPPA LILICA**, declared before the court at 12.12.2014 that 'Mr. ADAMESCU had a lot of problems and I do not believe that he would have requested the lawyers to intervene at the judges.
- the **witness STEFAN STEFANIA**, declared before the court at 15.05.2014 that ' I hereby declare that neither FIRESTAIN nor ONUTE told me that ADAMESCU DAN had given money to the judges'.
- the **witness IONESCU MIRCEA MIHAI**, declared before the court at 12.12.2014 that 'ONUTE DANIEL, DUMITRU or FIRESTAIN have not told me that ADAMESCU DAN had given amounts of money to the judges.'

The statements of the **defendant BORZA MONICA ANGELA** and of the witnesses ONUTE DANIEL and FIRESTAIN ELENA DANIELA were filed, and they claim that the defendant ADAMESCU DAN GRIGORE knew about the delivery of some amounts of money as a bribe to the co-defendants ROVENTA ELENA and STANCIU ION.

Thus, the statements of the defendant BORZA MONICA ANGELA are a circumstancial evidence, considering her specification before the court at 03.11.2014, i.e.: ' Onute Daniel told me that said money, i.e. EUR 5,000, were given to me by agreement of Adamescu Grigore Dan and of his son, Adamescu Alexander.

I further declare that in June 2013 I received from Onute Daniel the amount of EUR 10,000, who told me that the money should be given immediately in order to expedite the opening of the procedure at S.C. BAUMEISTER S.A.. On that occasion, Onute Daniel notified that the amount was given with the consent and knowledge of the defendants Adamescu Dan and Adamescu Alexander. I took that amount and gave it to the defendant Stanciu Ion and told him that Onute Daniel wanted to expedite the procedure of receivership of S.C. BAUMEISTER S.A. I told the defendant Stanciu Ion that the money is for expediting the above-mentioned procedure and it is true that the defendant Stanciu would admit if the creditors' claims were grounded and would dismiss them otherwise. I notified Stanciu Ion on the occasion of giving him the amount of EUR 10,000 that later, the beneficiaries of those amounts would be 'thoughtful'.

In December 2013, Onute daniel called me and told me that he wanted to give to judge Stanciu an amount of EUR 5,000. In December 2013, I took that money from Onute Daniel and gave it to the defendant Stanciu Ion and on that occasion just like in the previous cases, Onute Daniel told me that the money originated from Adamescu family'.

Therefore, the reports of the latter refer to circumstances known by means of the wotness ONUTE DANIEL, and not directly. Besides, in the same statement, the defendant BORZA MONICA ANGELA also specifies ghat ' when I handed over to the defendant Stanciu Ion the amount of EUR 10,000 I told him that the amount was coming from Adamescu family. I hereby point out that I have never met in person the defendant Adamescu Grigore Dan. I further declare that I asked Onute Daniel to meet the management of S.C. BAUMEISTER because I thought it was only natural in an insolvency procedure, but I did not insist to be introduced to Adamescu Grigore Dan. I furthe declare that Onute Daniel told me that he would talk to Adamescu Grigore Dan and would settle a meeting'.

Consequently, the statements of the defendant BORZA MONICA ANGELA should not be considered in order to determine with certainty the truth, because they are affected by:

- their indirect character
- her interest, who, besides her statements, benefits from the provisions of art. 19 of OUG 43/2002 (see p. 459 of the indictment).

As concerns the witness FIRESTAIN ELENA DANIELA, they are contradictory, so that they do not provide for the necessary certainty to overturn the presumption of innocence that the defendant is entitled to.

Thus, at 12.12.2014, the witness FIRESTAIN ELENA DANIELA said that:

- following a discussion in the presence of the defendant ADAMESCU DAN GRIGORE and the witness ONUTE DANIEL she had a vague idea about some amounts of money which had to reach the judges involved in the insolvenmcy issue. This idea was confirmed later by ONUTE DANIEL who said: 'You know…'.
- 'this year in May my suspicion regarding the fact that the amounts of money transferred to lawyer GEORGE DUMITRU would have been for the judges, was confirmed. In this respect, I declare that in May 2014, DANIEL ONUTE's behaviour became strange in the sense that he was absent from the office, taking along the company's documents and personal belongings, and at some point when I met him and asked him what was going on, he confirmed my suspicions that the amounts of money transferred to the lawyer GEORGE DUMITRU would have reached the judges. DANIEL ONUTE told me how things were done, namely the money transferred to lawyer GEORGE DUMITRU were withdrawn by this lawyer from the bank, were given to DANIEL ONUTE, who gave the money to the liquidator to be delivered to the judges.'

Therefore, the circumstances referred to by the witness are known also by means of the witness ONUTE DANIEL.

Or, the witness FIRESTAIN ELENA DANIELA, during the same declaration specifies that '**from my point of view, ONUTE DANIEL told a lot of nonsense and could not rely one hundred per cent on what he said, because he used to invent things'**. (our underlining).

Also, the witness said that '**during the two discussions it was not clearly pointed out the amounts of money to be given to the judges**.' (our underlining)

Finally, the witness showed that:

- at the meeting of 15.05.2014, the lawyer GEORGE DUMITRU did not say '**concretely or explicitly that the money were transferred to the judges'** (our underlining)
- 'I did not tell DAN ADAMESCU about the fact that DANIEL ONUTE talked to me about the money given to the judges because it was not up to me to talk about these issues.'

Consequently, in the case of the reports of the witness FIRESTAIN ELENA DANIELA, we are in the presence of a simple sensation, impression made from the evasive answers and behaviour of the witness ONUTE DANIEL. Or, the witness ONUTE DANIEL was very much interested in inducing the witness the idea that he delivered the amounts of money to the two judges with the consent of the defendant ADAMESCU DAN GRIGORE.

Considering the probative force of the statement of the witness FIRESTAIN ELENA DANIELA it is also relevant **the discussion recorded in the environment by the witness ONUTE DANIEL on 14.05.2014**. Here is the dialogue:

'FIRESTAIN DANIELA ELENA: Really!So, pay attention, legally he split… [illegible] … but mind also the big discounts, those large amounst of money, they are… [illegible]…

ONUTE DANIEL: I do not know exactly.

FIRESTAIN DANIELA ELENA: Sixty thousand RON … [illegible]…

ONUTE DANIEL: What? I don't know any longer.

FIRESTAIN DANIELA ELENA: They are in your name.

ONUTE DANIEL: I closed some of them.

FIRESTAIN DANIELA ELENA:…[illegible]… I don't know how to verify … [illegible]….

ONUTE DANIEL: Yeah!

FIRESTAIN DANIELA ELENA: Plus these ones that I made with those people. Which are on me…

ONUTE DANIEL: Yes. Protocols.

FIRESTAIN DANIELA ELENA: Ah?

ONUTE DANIEL: Protocols.

FIRESTAIN DANIELA ELENA: Oh, yeah! I know…[illegible]… shall I talk to BORZA too?

Or, as shown by the documents filed in the stage of legal investigation, at the trial date of … the witness ONUTE DANIEL collected important amounts of money from S.C. 'BAUMEISTER' SRL as down payment for discount – RON 153,129 – that he has not yet returned. So, his interest is to tell to the witness FIRESTAIN DANIELA ELENA that a part of the amounts were delivered as bibe to the judges ROVENTA ELENA and STANCIU ION.

In the same discussion of 14.05.2014, the following replicas exchange occurs:

'ONUTE DANIEL: Around one thousand? And it was more for the other one, for ROVENTA. Did you have approvals from ALEXANDER for those payments? Or from the Boss?

FIRESTAIN DANIELA ELENA: Yes.

ONUTE DANIEL: Yeah!

FIRESTAIN DANIELA ELENA: **Well, he didn't say yes** (our underlining).

ONUTE DANIEL: And…

FIRESTAIN DANIELA ELENA: They were discussed.

ONUTE DANIEL: They were discusses, but when you made the payments, did he agree then? He might change his mind, you know!

FIRESTAIN DANIELA ELENA: **Well, I couldn't talk to him on the phone something like that.** (our underlining).

ONUTE DANIEL: Yeah! Right' (the Minutes of 16.05.2014, p. 116 of the criminal investigation file).

As for the witness ONUTE DANIEL, it was ordered by the mention page 461 of the indictment the closing of the case, considering his complaint of 13.05.2014.

Considering the above-mentioned, it is obvious the interest of the witness ONUTE DANIEL to file the complaint to obtain the solution of re-trial.

In relation with the statements of this witness, we specify the following:

- The **first statement was given on 13.05.2014**. In this deposition, the witness specifies that in June 2013 he gave the defendant BORZA MONICA ANGELA 'the amount of approximately EUR 30,000, 40,000 or 45,000, unable to specify the exact amount.'

On the hearing, the defendant BORZA MONICA ANGELA declared that in June 2013 she received from the witness the amount of EUR 40,000 which proves the insincerity of the latter.

Moreover, the witness also said that POPPA LILICA recommended to her the defendant BORZA MONICA ANGELA, 'with the motivation that she had influence in court and concretely over judge Stanciu', an assertion which does not comply with any evidence of the file.

In the same declaration, the witness, after showing that 'it was not Mr. Adamescu Dan Grigore and Adamescu Alexander who had the idea of the payment of such fees' (…) that the claim and the coercion came initially from Mrs. Poppa Lilica and Mrs. Borza Monica, later. I have always talked with Mr. Adamescu Dan Grigore and Adamescu Alexander in terms of 'fees' , because such amounts should have been justified in the accounts, and their purpose was to influence the court. Concretely, I knew that such 'fees' were amounts claimed by Mrs. Poppa Lilica and Borza Monica to be given to the judges. I and Mr. Adamescu are convinced that there is the possibility that the two ladies withdrew fromthese amounts to put aside for themselves'.

Or, such an assertion is not corroborated either with the statements of the defendant ADAMESCU DAN GRIGORE or or the witness POPPA LILICA, which proves the insincerity of the witness ONUTE DANIEL.

At the end of the statement, the witness specifies that: 'My life and body integrity and my family's are threatened', but he fails to detail in this respect. **The fact that there never was such a threat is shown by the circumstance that the witness failed to request the status of 'threatened witness'.**

After this hearing, the witness accepted to collaborate with the criminal prosecution bodies, acting as a government agent and in this sense is made the recording of 14.05.2014;

- **The second statement was given on 15.05.2014**, when the witness says, in **contradiction with the first hearing**, that following the discussion with POPPA LILICA in September 2012, 'she informed me that she claimed a representation fee in the above-mentioned file of EUR 30,000, justifying the fact that the amount of EUR 20,000 is required to deliver it further, to reach judge STANCIU ION, and EUR 5,000 were for her, as a fee.'

Or, this assertion is not supported by any evidence, which proves once again the insincerity of the witness.

Further, the witness says for the first time that ' I informed about these aspect ADAMESCU ALEXANDER and ADAMESCU DAN GRIGORE attended one of these discussions and agreed to pay the 'fees', which were supposed to reach finally BORZA MONICA-ANGELA to be given by her to judge STANCIU ION. At the same time, BORZA MONICA-ANGELA told me that it is necessary that during the procedure, to pay 'fees' to be given to judge STANCIU ION.'

Like in the previous case, here such assertions do not corroborate with the other evidence.

The witness also declares that 'I talked to ADAMESCU DAN GRIGORE and ADAMESCU ALEXANDER in terms of 'fees', because these amounts should have been justified in the accounts, their purpose was to influence the court. Concretely, they knew that said 'fees' were amounts claimed by POPPA LILICA and BORZA MONICA-ANGELA to be given to the judges in charge with the insolvency files.'

Finally, the witness declares that 'I talked about these fees which had to reach the judges, with Mr. ADAMESCU ALEXANDER and ADAMESCU DAN GRIGORE, in the presence of Mrs. FIRESTAIN DANIELA, under the following circumstances: during the summer of 2013, in the headquarters of NOVA GROUP INVESTMENT ROMANIA S.A., then in December 2013 at the headquarters of ASTRA ASIGURARI, in the presence of DAN GRIGORE ADAMESCU and DANIELA FIRESTAIN and a third meeting with the two chiefs and DANIELA FIRESTAIN was at INTERCONTINENTAL HOTEL in Bucharest, early 2014. We used to talk about thew stage of the insolvency files and the amounts of money that had to reach the judges by means of Mrs. BORZA MONICA ANGELA, whose existence was known by the two chiefs from me and, probably, from POPPA LILICA, but I don't think they met her in person.'

It is obvious that, from the analysis of the other proofs, the assertions of the witness are singular, his interest was to escape criminal liability, which occurred indeed.

As we may find, this last declaration was taken within a large interval of time …2^{50} p.m.-9^{10} p.m. , in the absence of any defender of the parties in the case.

Accidentally, the same day, between 9^{40}-11^{30} p.m. the witness FIRESTAIN ELENA DANIELA was examined, and the mention related to the hours is not true. As, in the statement given before the court, the witness FIRESTAIN ELENA DANIELA specified that 'on 15 May 2014I saw Onute Daniel at the National Anticorruption Agency as she was present in the room where he told the prosecutors the facts'.

Or, there is no specification in any document signed that day that the wotnesses had been examined in the same room and the same timeframe. So, the criminal investigation body violated art. 122 par. 1 Code of Criminal Procedure which sets forth that: 'Every witness is examined separately and in the absence of the other witnesses'.

Considering the above-mentioned, the principle of the lawfulness of the criminal trial was severely affected, which led to the mutual influencing of the two witnesses,

present in the same room at the time of the examination, their statements being affected by this insurmountable vice;

- **The third statement was given the 02.06.2014**, when the witness suddenly remembers that he was to pay the bribe to the other two judges in 5 instaqllments, an assertion which corroborates only partially with the deposition of the witness FIRESTAIN ELENA DANIELA, but only regarding the number of installments, and not regarding the amounts. The other evidence taken fail to confirm the assertions of the witness, which puts in question her credibility
- **the fourth statement was given on 12.06.2014**, when the witness makes another specification which has no coverage in the documents of the file – 'the major financial interets of the company, i.e. the assets of BAUMEISTER which amounts to approximately EUR 10 mil.'

Before the court, at the trial date 09.01.2015, the witness ONUTE DANIEL said that….

As shown by the statement of this witness, and from the statements of the witness FIRESTAIN ELENA DANIELA, there were discussions with the defendant ADAMESCU DAN GRIGORE only about **fees**, and not that a part of them should be given as bribe to the judges.

The two witnesses claim only that the defendant ADAMESCU DAN GRIGORE should have understood this circumstance, so and nothing more. No specification is made anywhere that in the discussions with the defendant ADAMESCU DAN GRIGORE express reference was made that the fees actually were a bribe for the judges. Therefore, we are in the presence of a simple deducation that the two witnesses make, in the absence of solid proof.

That the defendant ADAMESCU DAN GRIGORE did not know that part of the fees was used to be given as bribe to the judges, as shown also by the lack of any phone or environment recording with the two witnesses. Or, if such a criminal agreement had existed, naturally after the beginning of the investigation any of the two witnesses would have challenged the defendant ADAMESCU DAN GRIGORE to have a talk in order to bring the proof of his involvement in corrupting the judges. In this respect, the discussion between the defendant BORZA MONICA ANGELA and the witness ONUTE DANIEL is conclusive, as the first insisted to be received by the defendant ADAMESCU DAN GRIGORE and to be introduced to him, which did not happen.

On the other hand, it is relevant also the lack of any attempt of the defendant ADAMESCU DAN GRIGORE to influence the statements of the witness FIRESTAIN ELENA DANIELA, as the prosecution said. Or, in front of the court, the witness said that 'Adamescu Dan did not ask me to give improper statements in this case, or was I asked by any other person at the indications of Mr. Adamescu.'

The statement of the witness IONESCU MIRCEA MIHAI is similar, who at the trial date of 12.12.2014, specified that 'Adamescu Dan did not ask me to claim Firestain to change her statements at the Prosecutor's Office.'

In relation with the purpose of ADAMESCU DAN GRIGORE to give the two amounts of money as bribe, in the statement of 02.06.2014, the witness ONUTE DANIEL says that 'in both files, the 5 installments were related to the 5 trial stages, i.e. the first stage opening of the procedure and designation of the receiver, with the specification that in ACTIV

CONSTRUCTII INDUSTRIALE was no longer about opening the procedure in the case of the first installment, but about the change of the receiver who had already been designated by the court. The second installment was related to the trial stage of the settlement of the appeals filed against the debt table, the third installment was related to the stage of settling the actions in annulment, if such actions would be promoted by the other creditors, the fourth installment was related to the stage when the debt table would remain final, and the fifth was related to the closing of the insolvency procedure, i.e. the erasure of the company from the Trade Register.'

In this respect, before the court, the defendant ROVENTA ELENA declared that 'the defendant Borza claimed before the court to have given me the amount of money from her own funds and because Onute insisted to expedite the procedure of replacing the receiver and to prevent the company from bankruptcy. I declare that I did not comply with this interest as I had had no discussions with the defendant Borza in this respect. I declare that I did not comply with the claim of the defendant Borza, but two days after the alleged discussion I stated against their interest, namely I declared the bankruptcy of the company.

I declare that the decisions pronounced by me were lawful, the company referred to in the indictment had no further assets,'