
Bucharest Court of Appeal – Second Criminal Division

CASE FILE NO. 3024/2/2017/a1

Sentencing postponed: 25.09.2017

TO THE PRESIDING JUDGE OF THE COURT,

The undersigned, attorney-at-law Cătălin Breazu, chosen to represent the defendant **ADAMESCU DAN GRIGORE (DECEASED)**, hereby submit the following

WRITTEN FINDINGS

Requesting:

Mainly, pursuant to article 396 paragraph 6 of the Criminal Procedure Code, related to article 16 paragraph 1 letter f of the Criminal Procedure Code, related to article 6 paragraph 1 and article 53 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 20 and article 21, paragraph 3 of the Constitution of Romania and on the grounds of Decision no. 599/21.10.2014 and Decision no. 641/11.11.2014 of the Constitutional Court, I request the issuance of a ruling stating the

**CESSATION OF THE CRIMINAL TRIAL AGAINST THE DECEASED DEFENDANT
ADAMESCU DAN GRIGORE**

Additionally, should the court judge that the preliminary chamber procedures regarding Adamescu Dan Grigore were legally fulfilled (communication of the indictment, hearing dates, claims etc.) and that the resolution rendered by the court strictly accounts for the provisions of article 345 paragraph 3 of the Criminal Procedure Code and article 346 of the Criminal Procedure Code, we hereby request, considering that there is a valid reason hindering the fulfilment of the criminal proceedings, pursuant to article 16 paragraph 1 letter f of the Criminal Procedure Code related to article 345 paragraph 3 of the Criminal Procedure Code, to

ADMIT THE IRREGULARITY OF THE INDICTMENT

Subsequently, by observing the legal deadlines set forth by article 345 paragraph 3 of the Criminal Procedure Code, if the prosecutor does not submit a new indictment closing the case

against the deceased defendant, the provisions of article 346 paragraph 3 letter a of the Criminal Procedure Code shall be applied, and the complete case shall be returned to the Prosecutor's Office.

1. Explanatory statement on the main request to cease the criminal trial

According to Indictment no. 578/P/2016 of 19.12.2016 issued by the National Anticorruption Directorate - Central Structure, legal action was taken against the defendant Adamescu Dan Grigore for one offence of abuse of office - authorship, for two offences consisting in complicity in abuse of office and one offence of money laundering – authorship.

According to article 344 of the Criminal Procedure Code, after being presented the Indictment, the Court must pass several procedural stages in order to legally render one of the solutions stipulated by article 346 of the Criminal Procedure Code.

In the case of defendant Adamescu Dan Grigore, we hereby request the Court to find that:

- **THE INDICTMENT WAS NOT COMMUNICATED** to the defendant Adamescu Dan Grigore, although article 344 paragraph 2 of the Criminal Procedure Code stipulates that the defendant must be communicated the Indictment
- **THE OBJECT OF THE PRELIMINARY CHAMBER PROCEDURE WAS NOT COMMUNICATED**, nor the deadline by which claims can be invoked according to article 344 paragraph 2 of the Criminal Procedure Code
- **In the case of the defendant Adamescu, the TIME LIMITS set forth by article 344 paragraphs 2 and 3 of the Criminal Procedure Code DID NOT START TO RUN**
- **Only upon the expiry of the time limits set forth by article 344 paragraphs 2 and 3 of the Criminal Procedure Code may the preliminary chamber judge legally pass judgement on the requests and claims invoked by the parties or ex officio (article 344 paragraph 4 of the Criminal Procedure Code)**
- **Article 345 paragraph 1 of the Criminal Procedure Code stipulates that all requests and claims must be settled within the deadlines set forth according to article 344 paragraph 4 of the Criminal Procedure Code, deadline which does not exist for the defendant Adamescu Dan Grigore, as he was not communicated the Indictment**

- the Court cannot rule the initiation of legal proceedings against a deceased person, as this represents a valid reason preventing the exercise of the criminal proceedings (article 16 paragraph 1 letter f of the Criminal Procedure Code)
- a LEGAL solution, complying with the procedure stipulated by article 342 et seq. of the Criminal Procedure Code and with the right of defence MUST follow the procedure stipulated by articles 344 and 345 of the Criminal Procedure Code

In view of the above mentioned, the defence believes that the preliminary chamber judge cannot legally render any of the solutions stipulated by article 345/346 of the Criminal Procedure Code.

On the basis of the aforementioned conclusion and according to the provisions of article 16 paragraph 1 letter f of the Criminal Procedure Code, the defence believes that there is only one legal solution to be rendered, as stipulated by article 396 paragraph 6 of the Criminal Procedure Code, i.e. CESSATION OF THE CRIMINAL TRIAL. This solution is justified by the fact that there is a valid reason preventing the exercise of the criminal proceedings.

The preliminary chamber procedure represents a legal stage of the criminal trial, pertaining to the judicial stage.

The object of the Preliminary Chamber procedure is the examination of the lawfulness and irregularities of the criminal prosecution acts and of the act of intimation (article 342 of the Criminal Procedure Code), which is legally defined as being separate from the stage of ruling on the merits of the accusations.

The defence believes that the provisions regarding the causes preventing the exercise of the criminal proceedings are general provisions, applicable to both the criminal prosecution stage and the two trial stages.

Should the court decide that the criminal prosecution acts are legal and that the Indictment is compliant, the right of defence of Adamescu Dan Grigore, as well as the right to a fair trial would be infringed. The ruling would infringe the principle of *audi alteram partem* and, since the defendant is not present (deceased), the legality of the evidence presented and of the Indictment would be questioned in a possible civil procedure, the matter at hand becoming the subject of case law.

Likewise, the defence states that initiation of criminal trial against a deceased person is impossible, as we are faced with a valid reason preventing the exercise of the criminal

proceedings, according to article 16 paragraph 1, letter f of the Criminal Procedure Code. Please note that the initiation of the trial represents a true exercise of criminal proceedings. The fact that the law stipulates in article 346 of the Criminal Procedure Code the solutions which may be rendered by the judge on the object of the preliminary chamber – article 342 of the Criminal Procedure Code, does not exclude the possibility of a valid reason preventing the exercise of criminal proceedings, all the more so since the preliminary chamber procedure for Adamescu Dan Grigore was not duly executed, and none of the solutions stipulated by article 346 of the Criminal Procedure Code can be enforced.

European practice views criminal proceedings as a whole. On the other hand, certain conditions imposed by article 6 of the European Court of Human rights, such as reasonable time or right to a defence, are also mandatory at this stage of the procedure, in the preliminary chamber stage, the fairness of the trial being severely infringed by the initial failure to observe these mandatory requirements.

In one case, the European Court has decided that, even if the investigating judge need not rule on the merits of a criminal accusation, his/her actions bear direct influence on the development and fairness of the subsequent procedure, including on the actual trial. Therefore, article 6 paragraph 1 can be applied to the criminal prosecution procedure carried out by an investigating judge, even though certain procedural guarantees stipulated by article 6 paragraph 1 may not be applicable (Decision of 6.01.2016 in the Case Vera Fernandez – Huidobro against Spain, paragraphs 108-114).

Based on the fact that all litigations fall under the provisions of article 21 paragraph 3 of the Fundamental Law, as well as the provisions of article 20 of the Constitution and of article 53 of the Convention, the Constitutional Court finds that the provisions of article 6 of the Convention must also be observed by the lawmaker when regulating in the area of criminal proceedings not related to passing judgement on the merits, including preliminary chamber procedures (see Constitutional Court Decision no. 599/21.10.2014, Constitutional Court Decision no. 641/11.11.2014).

The European Court of Human Rights has ruled that the equality of arms principle is inherent to a fair trial, meaning that each party must be afforded reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis his or

her opponent (Decision of 16.11.2006, issued in the Case Klimentven against Russia, paragraph 95).

Therefore, from the point of view of human rights protection, the principle of *audi alteram partem* represents an integral part of the equality of arms principle and the right to a fair trial.

Moreover, when referring to a fair trial, the European Court has ruled that one of the fundamental aspects of criminal law (including procedural elements) is represented by the right to adversarial proceedings, i.e. equality of arms between the defence and the prosecution. In a criminal case, the right to an adversarial trial means that both the prosecutor and the defendant are given the opportunity to have knowledge of and comment on all evidence adduced or observations filed by the other party with the purpose of influencing the decision of the Court (Decision of 28.08.1991 issued in the Case Brandstetter against Austria).

The judge finds that the Constitutional Court highlights the importance of the preliminary chamber procedure, having a direct influence on the development and fairness of the subsequent procedure, including on the actual trial, by means of the preliminary chamber regulations, of the solutions issued, which stipulate the criteria based on which the fairness of criminal prosecution is defined, in this case - observance of articles 344 and 345 of the Criminal Procedure Code.

Infringement on the parties' right to a fair trial, as defined by the adversarial, orality and equality of arms principles, represents the main argument supporting the Constitutional Court's decision to abrogate a series of provisions related to the preliminary chamber procedure (see Constitutional Court Decision no. 599/21.10.2014, Constitutional Court Decision no. 641/11.11.2014).

According to the provisions of article 396 paragraph 6 of the Criminal Procedure Code ***“Cessation of the criminal proceedings shall be decided in the cases stipulated under article 16 paragraph (1) letters e)-j”***.

Article 16 paragraph 1 letter f stipulates that when ***“amnesty or statute of limitations, or death of a natural person suspect or defendant or deregistration of a legal entity suspect or defendant should occur”***, this represents a valid reason preventing the initiation and exercise of criminal proceedings.

Taking both national and European applicable regulations into consideration, dismissing as inadmissible the request of CEASING THE CRIMINAL PROCEEDINGS filed during the preliminary chamber procedure due to the death of the defendant, seeing as it is impossible to

communicate the court's act of intimation, the preliminary chamber's procedural object, the time limit granted to the defendant for submitting applications and claims related to the object of the preliminary chamber, as well as the impossibility of observing the defendant's right to actual adversarial defence, would represent an infringement on the said legal provisions, which guarantee the right to a fair trial.

In view of all the above mentioned, rendering any other solution in the preliminary chamber procedure would be ILLEGAL, for the following two reasons:

- 1. The preliminary chamber procedures involving Adamescu Dan Grigore were not fulfilled, since not even the Indictment was communicated to him, nor have the other time limits and obligations stipulated by article 344 and 345 of the Criminal Procedure Code been observed.**
- 2. The initiation of criminal trial against a deceased person cannot be ruled, as this represents a valid reason preventing the exercise of the criminal proceedings.**

Therefore, seeing that there are two distinct illegal aspects related to a decision issued based on article 345/346 of the Criminal Procedure Code, we hereby state that the only legal solution that can be pronounced by the court is the CESSATION OF THE CRIMINAL PROCEEDINGS.

In conclusion, under article 396 paragraph 6 of the Criminal Procedure Code related to article 16 paragraph 1 letter f of the Criminal Procedure Code, related to article 6 paragraph 1 and article 53 of the European Convention on Human Rights, article 20 and article 21 paragraph 3 of the Constitution of Romania and considering the grounds of Constitutional Court Decision no. 599/21.10.2014 and Decision no. 641/11.11.2014, I hereby request the court to rule the CESSATION OF THE CRIMINAL PROCEEDINGS AGAINST THE DECEASED DEFENDANT ADAMESCU DAN GRIGORE.

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2. Explanatory statement on the additional request to admit the irregularity of the Indictment

Should the court decide that the preliminary chamber procedure related to the defendant Adamescu Dan Grigore was appropriately fulfilled, we hereby request, under article 345 paragraph 3 of the Criminal Procedure Code, to admit the irregularity of the Indictment,

irregularity which prevents the court from initiating the trial. The irregularity is represented by a valid reason hindering the exercise of the criminal proceedings, as stipulated by article 16, paragraph 1, letter f of the Criminal Procedure Code: the defendant Adamescu Dan Grigore is deceased.

Therefore, the defence states that the court **cannot order the initiation of the trial against a deceased person, as trial initiation is in fact an exercise of criminal proceedings**, which is hindered by the death of the defendant.

We believe that **a deceased person cannot be the object of a trial procedure or limit**, the absurdity of this situation being obvious.

In addition, please note the issues raised by a possible summoning/communication with the deceased Adamescu Dan Grigore...where will he be sent the summons for a hearing on the merits???

Moreover, no court of law/prosecutor's office/authority can decide to initiate proceedings against Adamescu Dan Grigore, considering both the valid reason hindering the exercise of the criminal proceedings and the actual legal non-sense.

In conclusion, **under article 345 paragraph 3 of the Criminal Procedure Code, related to article 16 paragraph 1 letter f of the Criminal Procedure Code, we hereby request the court to acknowledge the irregularity of the Indictment.** The prosecutor has the possibility of remedying the irregularity by submitting a new Indictment closing the case against defendant Adamescu Dan Grigore, under article 316 paragraph 1 letter b of the Criminal Procedure Code related to article 16 paragraph 1 letter f (death of the defendant) of the Criminal Procedure Code. A new Indictment shall be submitted for the other defendants.

Should the prosecutor fail to remedy the irregularity within the time limit stipulated by article 345 paragraph 3 of the Criminal Procedure Code, the Court shall send the case back to the Prosecutor's Office, according to article 346, paragraph 3, letter a of the Criminal Procedure Code. Subsequently, the Prosecutor shall issue an order to close the case against Adamescu Dan Grigore and separate it from the other defendants.

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In view of all the above mentioned, I hereby request:

Mainly, pursuant to article 396 paragraph 6 of the Criminal Procedure Code, related to article 16 paragraph 1 letter f of the Criminal Procedure Code, related to article 6 paragraph 1 and article 53 of the European Convention on Human Rights, article 20 and article 21, paragraph 3 of the Constitution of Romania and on the grounds of Decision no. 599/21.10.2014 and Decision no. 641/11.11.2014 of the Constitutional Court, I request the issuance of a ruling stating the **CESSATION OF THE CRIMINAL TRIAL AGAINST THE DECEASED DEFENDANT ADAMESCU DAN GRIGORE**

Additionally, should the court judge that the preliminary chamber procedure regarding Adamescu Dan Grigore was legally fulfilled (communication of the indictment, hearing dates, claims etc.) and that the resolution rendered by the court strictly accounts for the provisions of article 345 paragraph 3 of the Criminal Procedure Code and article 346 of the Criminal Procedure Code, we hereby request, considering that there is a valid reason hindering the fulfilment of the criminal action, pursuant to article 16 paragraph 1 letter f of the Criminal Procedure Code related to article 345 paragraph 3 of the Criminal Procedure Code, to **ADMIT THE IRREGULARITY OF THE INDICTMENT**. Subsequently, by observing the legal deadlines set forth by article 345 paragraph 3 of the Criminal Procedure Code, if the prosecutor does not submit a new indictment closing the case against the deceased defendant, the provisions of article 346 paragraph 3 letter a of the Criminal Procedure Code shall be applied, and the complete case shall be returned to the Prosecutor's Office.

Yours faithfully,

Cătălin Breazu, Attorney-at-law

Representing the deceased defendant Adamescu Dan Grigore

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Professional Lawyer's Association*