

Romania

Bucharest Court of Appeal – 2nd Criminal Section

File no. 4153/2/2014 (2228/2014)

DECISION

Closed session from 08.08.2014

Panel of judges:

PRELIMINARY CHAMBER JUDGE: GHITA CIPRIAN ALEXANDRU

CLERK: SIRBU VIOREL VALENTIN

Public Ministry – Prosecutors’ Office with the High Court of Cassation and Justice – Romanian Anticorruption Directorate – represented by prosecutor Sorin Chiriaz.

The herein court of law is judging the file the application for replacing the preventive arrest measure filed by the defendants Roventa Elena, Viziru Ciprian and Adamescu Grigore Dan in the file no. 4153/2/2014.

The following defendants were present at the hearing: **Roventa Elena**, personally, remanded in custody, assisted by the lawyer Breazu Catalin, according to the power of attorney no. 1917199/25.06.2014, found at page 9 of the file; **Viziru Ciprian Sorin**, personally, remanded in custody, assisted by the lawyer Breazu Catalin, according to the power of attorney no. 1917199/25.06.2014, found at page 9 of the file and **Adamescu Grigore Dan**, personally, remanded in custody, assisted by the lawyer Marian Nazat, according to the power of attorney no. 1584323/24.06.2014, found at page 49 of the file.

The subpoena procedure is legally fulfilled.

The file report of the clerk states that on 05.08.2014 and 06.08.2014, the defendants Roventa Elena, Viziru Ciprian, Adamescu Grigore Dan submitted applications for replacing the preventive arrest measure with a less restrictive one.

The preliminary chamber judge, according to art. 242, par. 8 New CPC proceeds to interrogate the defendants, their statements being transcribed, signed and attached to the file, then proceeds to hear the defence.

The defender of Roventa Elena requests to replace the preventive arrest measure, stating that the provisions of art. 242, par. 2 New CPC are met, thus another preventive measure should be applied, namely the measure of judicial control or home detention. The defender shows that the evidence was already administered and is found at the criminal investigation authorities’ disposal, thus there is no reason to maintain the preventive arrest measure. The sole evidence

that the preventive measure was based on is the statement of the denouncing witness Boza Monica and an environmental tapped recording from 16.05.2014 between Borza Monica and the defendant Roventa Elena. Analyzing that recording, it can be deemed that the accusations cannot be confirmed. Moreover, also from that recording could be ascertained the uncertainty of the defendant when it comes to the receipt of an amount of money. The defender requests the judge to take into consideration that the defendant was provoked to talk about handing an amount of money, considering that Borza Monica had technical equipment mounted by DNA.

At this trial moment, the preventive arrest measure is no longer necessary since the defendant does not represent a danger for the public order. She is 60 years old, with a flawless career in Magistracy for over 40 years and by maintaining the preventive arrest measure represents more than a conviction for her. The purpose of the criminal trial can be achieved by setting the defendant free, according to the provisions of art. 202 New CPC, respectively the proportionality between the own interest and public interest. The public contempt is lowered due to the fact that the criminal investigation is finished. The New CPC does not provide the necessity of the existence of a danger for the public order, as the Old CPC provided. The provisions of art. 223, par. 2, final thesis New CPC provide that the preventive arrest measure is taken in order to remove the social danger for the public order. It is not enough to ascertain that there is a social danger but it must be ascertained that the preventive arrest measure is the only measure able to remove the danger.

Secondly, the defender requests the court to take into consideration the provisions of art. 218 and following New CPC, art. 223 par. 2 and art 202 New CPC, stating that the defendant was sent to court for a single crime of taking bribery, thus there is no multiple crime, multiple perpetrators situation that, in the prosecutor's opinion, are of a severe nature. Also, he requests the court to observe the provisions of art. 218, par. 2 New CPC, respectively the personal situation of the defendant, her age, her unhealthiness and the risk to lose a kidney.

He shows that the court was intimated through the Indictment Act, the defendant gave complete and clear statements. At this moment, there is no evidence to prove that the defendant would tamper with witnesses, since no witness had anything to do with her, the only person that could have a word to say was the defendant Borza.

The defender of Viziru Ciprian Sorin requests the court to replace the preventive arrest measure with the judicial control, stating that the evidence is indubitably. The defendant was sent to court for perpetrating a single crime of taking bribery, proved by the denunciation made by Borza Monica. She asserts that she handed the defendant the amount of lei 10.000 for maintaining the good relationship and not for helping her in a file. There is a recording between the defendant and Borza Monica in which she tried to force the defendant to create a dialogue from which to result that he would have received an amount of money. He proves that the defendant did not receive any amount of money but also the fact that there was no reference to the fact that Viziru received an amount of money, Borza Monica having mounted by DNA a technical equipment for recording.

The defender shows that the defendant cannot be remanded in custody anymore for these assertions made by Borza. He requests the court to take into consideration, for removing the

social danger for the public order, that there is a single crime and not multiple crime/defendants situation or criminal perseverance. No interrogated person did refer to the defendant, but only the defendant Borza Monica.

He asserts that the application is grounded, therefore requests to replace the preventive arrest measure with a less restrictive one.

The defender of Adamescu Grigore Dan stated that for the replacement of the preventive arrest measure, two legal requirements occur: the fulfillment of the legal conditions for taking the preventive measure, measure taken two months and three days ago and the purpose of the trial, according to art. 202 New CPC, could be achieved by taking a less restrictive measure, too. From this point of view, he asserts that the purpose of the criminal trial can be achieved also by no maintaining the preventive arrest measure against the defendant, since there is no evidence that the defendant, being set free, would have avoid the criminal investigation. In order to have this judgment, the judge, according to art. 223 par. 2, shall perform an analysis of the file's circumstances and the behavior of the defendant. After 22nd of May 2014, when the defendants was informed about his capacity of suspect in the file, he did not conduct any illicit action to obstruct the good performance of the criminal trial. There are 2 telephone conversations with the witness Firenstein related to him, but they were held prior to 22.05.2014.

He requests the Court to take into account the fact that on 22.05.2014, the criminal investigation authorities decided that there was not enough evidence to start the indictment proceedings and to take preventive measures. On 05.06.2014, considering the same evidence, the Prosecutor's Office, after a reassessment, decided that there are grounds for defendant's detention and for the start of the criminal investigation. Shows that, solely on the basis of the two conversations dated 19.05.2014 and 21.05.2014, the continuation "sine die" of defendant's preventive detention is not justified. Shows that, at the moment, the trial is in another phase, in which the Prosecutor's Office has concluded the criminal investigation and has rendered the indictment. The grounds for the preventive arrest measure are no longer present; therefore this new context would entail the replacement of the preventive arrest measure.

He requests the Court to take into consideration the personal circumstances concerning the defendant, the fact that he is 66 years old, he has no criminal record, he is integrated socially and professionally, he has 3600 employees, being one of the biggest taxpayers. Shows that the defendant has a precarious health that is worsening during detention, this imposing the measure of judicial control, in order for the defendant to be treated properly. He requests the Court to consider the fact that witness Firenstein never stated that the defendant attempted to influence the statements in the file, the conversations between the two occurring as a matter of course, given the defendant's position as owner of the company, showing interest in the documents that were seized during the search.

Concurrently, files written conclusions.

The representative of the Public Ministry files conclusions to reject the requests as ungrounded, considering the existence of evidence towards the necessity of maintaining the measure of preventive detention. The defendants chose to request the replacement of the measure instead of its repeal, because of the lack of evidence. Shows that the evidence cannot be taken into

account. It is not appropriate to replace the preventive measure with a less restrictive one, given the seriousness of the crimes and the defendants' person. Since the defendants are remanded in custody for 2 and a half months, there should not be deemed a reasonable term of the preventive arrest. It should be taken into consideration the complexity of the file and the activity of the legal authorities up to this moment.

Concerning the defendant Roventa, shows that her age and experience as a magistrate have been invoked, although these particular facts should have created a normal conduct when resolving a case. Regarding the health status, shows that the legislators did not provide this aspect as a ground for the replacement of the measure of preventive arrest.

The fact that the defendants Viziru and Roventa are both magistrates, he states that, above all, they were supposed to know and comply with the law.

Regarding defendant Adamescu, shows that his precarious health cannot impose the replacement of the measure of preventive detention, given the fact that his disorders can be treated in the penitentiary. The prosecutor proves that the defendant attempted to persuade witness Firestain.

The provisions of art 223 para 2 New Criminal Procedure Code are applicable to all the defendants. Concerning the public opinion, the impact of the crimes is not very likely to have decreased in less than two months since the crimes were reported. The requests for the replacement of the preventive measure are ungrounded, showing that on 23.07.2014, similar requests filed by the defendants were rejected.

Defendant Adamescu Grigore Dan states that he has already given his statements during the previous hearings.

Defendant Viziru Ciprian Sorin requests the court to admit his request and to replace the preventive arrest measure with a less restrictive one, considering his statements and his attorney's assertions.

Defendant Roventa Elena states the fact that she accepts her lawyer's conclusions.

PRELIMINARY CHAMBER JUDGE

Deliberating over the requests filed by defendants Roventa Elena, Viziru Ciprian Sorin and Adamescu Grigore-Dan for the replacement of the preventive arrest measure with the judicial control measure or with the home arrest measure, states the following:

Through the Indictment Act no. 316/P/2013 dated 20.06.2014 issued by the Prosecutors' Office with the High Court of Cassation and Justice, the Romanian National Anticorruption Directorate decided that the following defendants shall be sent for trial, and also that they shall be remanded in custody:

ROVENTA ELENA, for perpetrating the crime of bribery, provided by art 289 para 1 Criminal Code in relation to art 6 and 7 para b Law no. 78/2000;

VIZIRU CIPRIAN-SORIN, for perpetrating the crime of bribery, provided by art 289 para 1 Criminal Code in relation to art 6 and 7 para b Law no. 78/2000;

ADAMESCU GRIGORE-DAN, for perpetrating the crime of bribery, provided by art 290 para 1 Criminal Code in relation to art 6 Law no. 78/2000 conjoined with art 38 para 1 Criminal Code.

In the Indictment Act was stated that, in order to exert influence in the file no. 9582/3/2013 regarding the insolvency of S.C. ROSEGUR S.A. (panel of Judges C8 – Judge ROVENTA ELENA), the liquidator Borza Monica Angela asked the clerk MOROSANU MARIA to help her appoint a meeting with Judge ROVENTA ELENA.

On 22.07.2013, MOROSANU MARIA contacted BORZA MONICA ANGELA and told her that the Judge awaits her.

Subsequently, BORZA MONICA ANGELA asked her driver DUMITRU to go to the bank and withdraw “big money”, which to give them to her on the way to the Bucharest Tribunal and to liquidate the deposit of Lei 28,000, and after that to put them in an envelope and in a magazine.

The same day, BORZA MONICA ANGELA and Judge ROVENTA ELENA met in the parking lot of Hotel Royal, located near the Bucharest Tribunal, handing her over an envelope. After she received the envelope, ROVENTA ELENA went to the BCR Unirii branch and performed a bank transaction.

On 31.07.2013, GHIDAU RADU, former vice-president of the Authority for Developing the State Assets (Romanian - AVAS), requested a fee of Eur 174,000 from BORZA MONICA ANGELA, regarding the file no. 9582/3/2013 concerning the insolvency of S.C. ROSEGUR S.A, in this context, BORZA MONICA ANGELA asking him to remit a part of the money to Judge ROVENTA ELENA, also.

On 03.09.2013, BORZA MONICA ANGELA agreed with clerk MOROSANU MARIA to schedule for the next day a meeting with Judge BUMBULUT ANCA-STELEA and Judge ROVENTA ELENA, in the surroundings of the Bucharest Tribunal.

Given the circumstances, the representative of ACTIV LICHIDATOR IPURL asked an employee to make another bank transaction, to withdraw “two of 5, from the 800,000 deposits”, the employee confirming that DORU already left for the bank. Subsequently, BORZA MONICA ANGELA contacted DORU and asked him to buy a “Cavalli” perfume valued Lei 330 and to wrap it up as a gift, explaining that she needed it on 04.09.2013. On 04.09.2013, BORZA MONICA ANGELA asked CONSTANTIN ZLATAN, employee of ACTIV LICHIDATOR IPURL, to give her “the package left by Doru”, as well as a magazine, “a bit bigger, but not very big”, after that, she went to the Bucharest Tribunal.

At the exit of Bucharest Tribunal, BORZA MONICA ANGELA was accompanied by Judge ROVENTA ELENA, who was holding the magazine wherewith BORZA MONICA ANGELA came to the Tribunal, the two of them taking a Nissan X-TRAIL vehicle, with the registration plate B-

61-ABG, to Calea Victoriei, near the intersection with Mihai Voda Street, where the Judge got out of the car and went to Lipscani Street.

With the purpose of unlawfully opening the insolvency procedures for S.C. FC Otelul S.A., in the file no. 23900/3/2013, on 02.09.2013, Judge MOLDOVAN MIRCEA told BORZA MONICA ANGELA that he did not leave the file at the Court's archives, forasmuch as the information from the documents would show that in 2012 the company recorded a profit of old Lei 27 billion, which would start a serious scandal involving the press, regarding the fact that he allowed the beginning of the bankruptcy procedure for a company that was still making profit. Therefore, Judge MOLDOVAN MIRCEA asked the insolvency practitioner to file "written conclusions, not dated, as if they were at the hearing", including aspects that would support the decision of entering insolvency regarding the aforementioned company.

BORZA MONICA-ANGELA requested POPPA LILICA, lawyer member of the Bucharest Bar, to draft those written conclusions which she submitted, from which it resulted that the existing balance sheet from the file was erroneously drafted by the accountants from FC OTELUL SA.

BORZA MONICA-ANGELA in her approach to obtain mutual advantages alongside judge STANCIU ION, who had on trial the file no. 33293/3/2012 regarding the insolvency procedure of SC BAUMAISTER SA, on 05.07.2013 pointed out the "Azara" fashion house led by the designer MIRELA PELLEGRINI in order to see some garments for her wife. In this respect BORZA MONICA-ANGELA told MIRELA PELLEGRINI that judge STANCIU ION will visit her store and she asked her not to allow him to pay the item he will choose, because she will pay it for him.

On 10.07.2013 BORZA MONICA-ANGELA was called by MIRELA PELLEGRINI who told her that judge STANCIU ION and her wife had chosen a dress and that she told him that the garment will be paid by the insolvency practitioner.

On 17.07.2013 established with the designer MIRELA PELLEGRINI that her wife BRANDUSA STANCIU will pay her a visit in order to take measures for the dress. After two days, BORZA MONICA-ANGELA had another conversation regarding the payment of judge STANCIU ION wife's dress, and afterwards, on 24.07.2013, STANCIU ION called MIRELA PELLEGRINI asking about the price of the dress and he was informed that the dress was already paid for by BORZA MONICA-ANGELA. During the same day STANCIU ION thanked BORZA MONICA-ANGELA for paying the dress which her wife had chosen from the designer MIRELA PELLEGRINI. On 26.07.2013 BORZA MONICA-ANGELA was called by MIRELA PELLEGRINI who told her that the price of the dress is 690 lei and that she will send her driver in order to collect the money.

After a short period of time, BORZA MONICA-ANGELA called CONSTANTIN ZLATAN in order to inform him that she will receive a visit from MIRELA PELLEGRINI's driver and that she needs the amount of 1000 lei.

Also in order to obtain mutual advantages alongside judge STANCIU ION, on 09.08.2013 ONUTE DANIEL told the judicial liquidator BORZA MONICA-ANGELA that she must give an

amount of money representing the “holiday rate” to judge STANCIU ION, BORZA MONICA-ANGELA asking him to leave the money in a sealed envelope.

On 08.08.2013, in order to obtain mutual advantages with the UNPIR representatives and in order to take the exam for obtaining the status of judicial liquidator, BORZA MONICA-ANGELA called CORINA MARIANA FRUMOSU telling her that she would be visited by RADU GHIDAU who wishes to talk “especially with her”. Later on, RADU GHIDAU told BORZA MONICA-ANGELA that he met with CORINA MARIANA FRUMOSU but she “did not receive the envelope”, in which context the judicial liquidator affirmed that she was afraid to receive the envelope, assuring RADU GHIDAU that she will give the envelope herself, or that she will send DORU.

With the same purpose of influencing the decisions in some insolvency files (file no. 6099/3/2012, having as object the insolvency procedure of SC GEA INTERNATIONAL DEVELOPMENT SRL, file no. 6099/3/2012 having as object the insolvency procedure of SC GEMPAT PROPRIETATI SRL), and in order to obtain mutual advantages with judge VIZIRU CIPRIAN-SORIN, on 18.06.2013 BORZA MONICA-ANGELA went with the judge VIZIRU CIPRIAN-SORIN, in a Nissan with the number plates B-61-ABG, over the passage from Marasesti. There, they both got down to a more secluded place, at the edge of the parking lot, where they have discussed approximately 10 minutes after which they got back to the vehicle and then at the Royal hotel where VIZIRU CIPRIAN-SORIN got down from the car.

On 26.06.2013, VIZIRU CIPRIAN-SORIN entered a BMW X5 vehicle belonging to ACTIV LICHIDATOR IPURL, having the number plates B-08-NRJ in which it was BORZA MONICA-ANGELA the two of them going from Sf. Vineri street – Clucerul Udrincani street – Strehaia street – Cauzasi street, stopping in the end near the judge’s car, made by Ford, having the number plates BC-77-SID. After talking about 3-4 minutes in the vehicle BORZA MONICA-ANGELA handed VIZIRU CIPRIAN SORIN a plastic bag, with an unknown content, which he stored in his personal vehicle, later on the two of them going in different directions.

On 13.05.2014, the denouncing witness ONUTE DANIEL informed RNAD about the fact that during June 2013 he met with the representative of ACTIV LICHIDATOR IPURL, BORZA MONICA-ANGELA to which she gave 30.000-45.000 EUR in order to be given to STANCIU ION, in order for the latter to give a favourable decision for SC BAUMEISTER SA in the insolvency file no. 33293/3/2012.

Regarding the origin of the money, the denouncing witness ONUTE DANIEL asserted that it was issued to him via bank transfer from one of the companies from the group, and that he exchanged it in Euro at an exchange house, without having any documents for the transaction.

At the same time, on the Bucharest Tribunal’s docket it was also registered the file no. 41848/3/2012, regarding the insolvency procedure of SC ACTIV CONSTRUCTII INDUSTRIALE SRL (named before SC BAUMEISTER CONSTRUCTII CIVILE SRL), file in which there were submitted appeals by SC BAUMEISTER SA at the receivables table, the assigned judge for solving the case being judge ROVENTA ELENA.

After he informed BORZA MONICA-ANGELA about this file, the insolvency practitioner told him that she can obtain a favourable decision, namely to register SC BAUMEISTER SA as major creditor of SC ACTIV CONSTRUCTII INDUSTRIALE SLR, but in order to do so it must be paid an amount of money.

At the request of BORZA MONICA-ANGELA, from December 2013, he gave her 20.000-30.000 EUR, after previously talking to ADAMESCU DAN GRIGORE and also with ADAMESCU ALEXANDER about the necessity of paying the “fee”. They agree with the practitioner BORZA MONICA-ANGELA’s request and told the denouncing witness that FIRESTEIN DANIELA will make the payment to the lawyer GEORGE DUMITRU, without knowing what they were in fact for, following that the lawyer will transfer the money in one of his wife’s accounts.

For justifying the remission of the money from the company, the lawyer George Dumitru issued an invoice for “Juridical services” the transfer being made in an account opened at Banca Transilvania, the amount submitted in this account being of about 100.000 lei, given, later on, to BORZA MONICA-ANGELA.

Also, the denouncing witness ONUTE DANIEL asserted that BORZA MONICA-ANGELA justified the pressure for giving the payment by the fact that she already gave the judge ROVENTA ELENA 5.000 EUR.

After giving the amount 100.000 lei, equivalent in EUR, BORZA MONICA-ANGELA informed the denouncing witness ONUTE DANIEL that she gave after all 10.000 EUR to judge STANCIU ION and the same amount to ROVENTA ELENA, the purpose of giving these amounts of money being the issuance of favourable solutions to ASTRA ASIGURARI and EAST BUCHAREST COMMERCIAL PARK appeals.

Also, ONUTE DANIEL stated that after giving the money, in the file solved by ROVENTA ELENA two decisions were issued: one regarding SC BAUMEISTER SA appeal at the receivables table of the debtor ACTIV CONSTRUCTII INDUSTRIALE and the other one in the file which had as object the annulment of some documents, and that these decisions were mainly favourable to SC BAUMEISTER SA.

At the beginning of 2014, BORZA MONICA-ANGELA told him that two requests for completing the decisions must be submitted, because the Court was going to put the files again on trial and to solve the intervention requests from these files in order to avoid an eventual remand issued by the higher court.

Regarding the money given by STANCIU ION and ROVENTA ELENA, the denouncing witness ONUTE DANIEL stated that he did not participate at their effective remission, but BORZA MONICA-ANGELA confirmed that this thing happened; he also said that FIRESTAIN DANIELA is the one who ordered the remission from the group of companies NOVA knows about this fact; that ADAMESCU DAN GRIGORE and ADAMESCU ALEXANDER agreed to POPPA LILICA and the insolvency practitioner BORZA MONICA-ANGELA’s requests to pay in order to influence the judges.

On 14.05.2014, BORZA MONICA-ANGELA submitted a self denunciation by which she stated that, as sole shareholder of ACTIV LICHIDATOR IPURL got acquainted to judges STANCIU ION, ROVENTA ELENA, VIZIRU CIPRIAN-SORIN and MOLDOVAN MIRCEA.

Regarding the start of the insolvency procedure of SC BAUMEISTER SA, the debtor's representative, ONUTE DANIEL gave the suspect (BORZA), at first 5.000 EUR and then 10.000 EUR, which she personally gave to judge STANCIU ION, in the vehicle property of ACTIV LICHIDATOR IPURL, immediately after restarting the procedure, namely in December 2013.

From the phone discussions with ONUTE DANIEL, BORZA MONICA-ANGELA understood that that the money come from ADAMESCU GRIGORE-DAN and ADAMESCU BOGDAN ALEXANDER, who were informed that they were going to be given to STANCIU ION.

The denouncing witness BORZA MONICA-ANGELA stated that ONUTE DANIEL gave her 15.000 EUR, in two installments, at different periods of time, namely 5.000 EUR in the parking lot of Hotel Royal, near the Bucharest Tribunal, which were given to judge STANCIU ION on the same day and 10.000 EUR in the Hebrew Theater zone, near the Bucharest Tribunal, amount which was given to judge STANCIU ION, on the same day.

In the file regarding ACTIV CONSTRUCTII INDUSTRIALE, tried by ROVENTA ELENA was appealed SC BAUMEISTER SA's debt by other creditors. In this situation, ONUTE DANIEL gave the suspect the amount of 5.000 EUR in order to give them to judge ROVENTA ELENA, in order to issue a favourable decision namely to reject the appeals of the rest of the creditors.

The amount of 5.000 EUR were given by the defendant BORZA MONICA-ANGELA, to ROVENTA ELENA, in the parking lot from Bucharest Tribunal, being introduced in an envelope, and the envelope being introduced in a magazine, the purpose being that the appointed judicial liquidator being one approved by ONUTE DANIEL, instead of the one appointed by the Court, as an effect of solving an appeal.

Regarding judge VIZIRU CIPRIAN, the denouncing witness BORZA MONICA-ANGELA noted that, considering the fact that he was solving several files in which ACTIV LICHIDATOR IPURL was appointed as judicial liquidator, before the Easter holydays, gave him the amount of 10.000 LEI in his vehicle, the purpose of giving the money being to "keep good business relations".

On 22.06.2014, RNAD was notified via e-mail by HASSAN AWDI regarding the judge ROVENTA ELENA.

On 26.05.2014, RNAD was notified via e-mail by HASSAN AWDI regarding the judge ROVENTA ELENA.

On 22.05.2014, RNAD was notified via e-mail by HASSAN AWDI regarding several issues from the file in which he was searched by Directorate for Investigating Organized Crime and Terrorism – Central Structure.

On 27.05.2014 RNAD received 3 complaints submitted via e-mail by HASSAN AWDI, regarding ROVENTA ELENA regarding insolvency file no. 35760/3/2006 being tried by Bucharest Tribunal.

On 05.06.2014, the Prosecutors' Office with the Court of Cassation and Justice notified RNAD regarding the complaint submitted by SCA DAGHIE & ASOCIATII from Galati, regarding the investigation made regarding judge VIZIRU CIPRIAN-SORIN, regarding the insolvency files no. 25868/3/2011, 25884/3/2011, 25875/3/2011, 25871/3/2011, 25845/3/2011 and 25864/3/2011 being solved by this judge.

On 02.06.2014, RNAD was notified by FRANCIS McDONAGH and PAT McCORMICK, Irish citizens, associates at SC GEMPAT SRL, by empowered person MEEHAN PAUL, regarding the perpetration of the crimes provided by art. 269, art. 297, art. 298, art. 326, art. 242 and art. 367 RCPC perpetrated by VIZIRU CIPRIAN-SORIN and BORZA MONICA-ANGELA.

By ordinance no. 316/P/2013 from 20.05.2014 the defendant ROVENTA ELENA was kept in custody for 24 hours, starting with 20.05.2014, 00:50 o'clock, until 21.05.2014, 00:50 o'clock.

By ordinance no. 316/P/2013 from 20.05.2014 of the defendant VIZIRU CIPRIAN-SORIN was kept in custody for 24 hours, starting with 20.05.2014, 00:20 o'clock, until 21.05.2014, 00:20 o'clock.

By the decision from 3373/2/2014 (1766/2014) from 20.05.2014, Bucharest Court of Appeal – 1st Criminal Section ordered the preventive arrest of the defendants STANCIU ION, MOLDOVAN MIRCEA, ROVENTA ELENA and VIZIRU CIPRIAN SORIN for a period of 30 days, starting with 20.05.2014 and until 18.06.2014, issuing in this respect the preventive arrest mandates nr. 11/UP, 12/UP, 13/UP and 14/UP.

By ordinance no. 316/P/2013 from 05.06.2014 it was ordered the withheld of the defendant ADAMESCU GRIGORE-DAN for 24 hours, starting with 05.06.2014 13:30 o'clock and until 06.06.2014, 13:30 o'clock.

On 06.06.2014, Bucharest Court of Appeal – 1st Criminal Section issued the preventive arrest decision for 30 days for the defendant ADAMESCU GRIGORE DAN in the file no. 3762/2/2014 (1978/2014), starting with the enforcement if the preventive arrest warrant having the nr. 15/UP.

Following the request submitted by RNAD by the decision from 13.06.2014, Bucharest Court of Appeal – 1st Criminal Section issued the extension of the preventive arrest measure for the defendants STANCIU ION, MOLDOVAN MIRCEA, ROVENTA ELENA and VIZIRU CIPRIAN SORIN for a period of 30 days, from 19.06.2014 and until 18.07.2014.

The preliminary chamber judge notes that, through the decisions from 26.06.2014 and 23.07.2014, ruled by the Bucharest Court of Appeal – Second Criminal Section, definitively confirmed by the High Court of Cassation and Justice through the decision ruled on 11.07.2014 and 1.08.2014, the legality and groundness of the preventive arrest of the defendants Roventa Elena, Viziru Ciprian-Sorin and Adamescu Grigore-Dan, maintaining this measure on the

grounds that the requirements of art. 223 are met and the measure is necessary and sufficient for attaining one of the purposes provided by art. 202 par. 1 Criminal Procedure Code (CPC), namely the ensuring the good performance of the criminal trial.

According to art. 348 par. 1 CPC, the preliminary chamber judge rules, at request or *ex officio*, regarding the taking, maintaining, replacement, cancellation or lawfully termination of preventive measure.

Also, according to art. 242 par. 2 CPC, the preventive measure is replaced, *ex officio* or at request, with a less restrictive preventive measure, if the requirements of the law are met, and, following the evaluation of the actual circumstances of the case and the procedural behavior of the defendant, it can be asserted that the less restrictive preventive measure is sufficient for the attainment of the purpose provided by art. 202 par.1 CPC.

After analyzing the documents and act of the file subject to the legal provisions above mentioned, the preliminary chamber judge asserts that the preventive measure of judicial control and the preventive measure of home arrest are not sufficient for the good progress of the criminal trial, the only efficient measure for attaining this purpose being to remand in custody the defendants Roventa Elena, Viziru Ciprian-Sorin and Adamescu Grigore-Dan.

As it was noted in the decision of the arrest measure, and in the decision for maintaining this measure, confirmed by the High Court of Cassation and Justice by rejecting the applications, the evidence administered during the criminal investigation, mentioned in the Indictment Act, still creates the reasonable suspicion, in the meaning of art. 223 par. 1 CPC, that the defendants committed the crimes they are being tried for, crimes of a great severity taking into consideration the manner in which the defendants acted, the circumstances of committing the crimes, as well as the positions they held.

As a result, the claims of the defendants Roventa Elena and Viziru Ciprian Sorin regarding the irrelevancy or insufficiency of the evidence administered until this moment in the herein file, cannot be taken into consideration because, in the matter of preventive measures, the existence of enough evidence to formulate a complete accusation (case Murray vs. The United Kingdom) is not necessary, while the existence of actions or information that could convince an objective observer that the person committed a crime are sufficient (case Fox, Campbell and Hartley vs. The United Kingdom).

According to the case law of the European Court for Human Rights: in the decisions Brogan vs. Great Britain, and Murray vs. Great Britain, it is not necessary for the actions that cause assumptions to have the same level of certainty as the ones that allow indictment, and nonetheless, with those that allow conviction.

Moreover, by analyzing the critiques of the defendants Roventa Elena, Adamescu Grigore-Dan and Viziru Ciprian-Sorin, regarding the insufficiency of the administered evidence, the preliminary chamber judge reminds the fact that, the possibility of the administered evidence to create the reasonable suspicion that the defendants committed the crimes they are accused of, was acknowledged through the Decision from 20.05.2014 of the Bucharest Court of Appeal, through which the preventive arrest was ruled and the decision from 26.06.2014 and 23.07.2014

ruled by the Bucharest Court of Appeal – 2nd Criminal Section, definitively confirmed by the High Court of Cassation and Justice, and since the aforementioned decision were ruled no evidence to eliminate the reasonable suspicion retained in the case of the defendants appeared.

The preliminary chamber judge asserts, also, that the requirements of art. 223 par. 2 CPC are met, in the meaning that the punishment provided by the law for the crimes the defendants are tried is imprisonment for a period of more than 5 years, and the investigation of the defendants in freedom represents a threat to the public order, threat derived from the manner and circumstances of the perpetrating the crimes (taking and giving bribe for ruling court sentences in commercial matter, sentences with a significant economic impact), which generate an outrage in the public opinion regarding the manner in which some judges understand to perform their occupation and regarding the manner in which some litigants or their representatives understand to interact with the legal system.

Evaluating the actual circumstances of the case and the procedural behavior of the defendants Roventa Elena, Viziru Ciprian-Sorin and Adamescu Grigore-Dan, the preliminary chamber judge asserts that the preventive measure of judicial control or home arrest would not be sufficient for the attainment of the purpose provided by art. 202 par. 1 CPC.

In this meaning, the seriousness of the crimes for which the defendants are tried has to be taken into consideration, crimes of corruption, which have a negative impact in society, considering that these alleged crimes were committed in connection with the activity of the defendants Roventa Elena and Viziru Ciprian-Sorin, in their capacity of judges of the Bucharest Tribunal and in connection with the ruling in files tried by them, the negative impact being severely amplified and creating a serious disturbance in the public opinion by doubting the credibility and authority of the legal act.

These consequences, taking into consideration the specifics and way of organization of the legal system, among the consequences on those who commit them, cast a shadow over the entire legal system which has to react firmly against such actions, therefore the investigation in freedom of the three defendants would amplify the lack of trust in the act of justice and in the firmness the legal authorities have to use against such a phenomena.

The assertions of the defendants that their investigation at liberty is not a threat to the public order as the negative resonance of the actions has diminished in time cannot be retained, because, as it results from the case law of the European Court of Human Rights, some crimes, through their severity and public reaction to their committing, can create a threat for the public order which to justify the arrest and maintaining under arrest for a while at least.

This is the situation of the crimes for whose perpetration the defendants Roventa Elena, Viziru Ciprian-Sorin and Adamescu Grigore-Dan are tried, crimes that justify the assertion that the investigation in freedom is a threat for the public order, leading to an erosion of the public trust in the efficiency of the legal authorities and generating a sentiment of insecurity amongst the people that respect the social values protected by the law, in a social context in which all the state authorities undertake a great effort in order to fight the corruption phenomenon.

The assertions of the defendants that their preventive arrest breaches the presumption of innocence cannot be retained because, although it is true that until a definitive decision in a criminal case, the tried person is considered innocent, the lawmaker established that in some cases expressly provided by law, a preventive measure can be taken, regardless if the defendant admits or not to the committing of the crimes it is tried for, whether it has a criminal record or not, the internal procedural provisions being fully compliant with the provisions of art. 5 and 6 from the European Convention for Human Rights (ECHR).

Furthermore, the preliminary chamber judge asserts that, the preventive arrest ruled for the defendants approximately 70 days ago, has not exceeded a reasonable duration, and it complies with the provisions of art. 5 point 1 letter c of the ECHR and proportional with the seriousness of the accusations brought to the defendants, therefore, the preventive measure of judicial control or home arrest is not sufficient subject to the threat for public order which the setting at liberty of the defendants would represent and the procedural stage of the case (the criminal trial has not yet begun; the defendants were not yet directly questioned by the first instance court).

In this context, the preliminary chamber judge still asserts that the personal circumstances invoked by the defendants (lack of a criminal record, professional performances in the case of Roventa and Viziru, and economical performances in the case of Adamescu, their age, family status) are not able to stop the threat for public order which would be represented by their setting them free, moreover, the lack of a criminal record is an act of normality, and not a benefit that a defendant could invoke in cases like this.

Regarding the precarious health status invoked by Roventa and Adamescu, it has to be asserted that the illnesses invoked by them are prior to the remand at custody, the age and health status not impeding the two from having an active life from a professional point of view (prior to the remand at custody), although both are of retirement age.

In addition, if it would have been asserted that they suffer from a disease that cannot be treated in the medical facilities of the National Penitentiary Administration, which did not happen in the case of the defendants Roventa and Adamescu, there is the possibility of medical treatment under permanent supervision, in the medical facilities of the Ministry of Health, subject to art. 240 CPC, which is ruled by the warden of the penitentiary, and not by the judge.

Regarding the defendant Adamescu Dan, it has to be taken into consideration that he tried to influence an essential witness, relevant in this respect being the tapped recorded dialogues, the defendant carried out with more people and the witness Firenstein Elena – Daniela, from which it results that the witness, informed by the defendant, has to present herself at 10 o'clock at DNA, personally called the lawyers so that the witness will not present herself alone, he hired drivers to transport the witness and was extremely cautious regarding the conspiracy of the "help", manifesting discontent and anger when he thought his driver wanted to take the witness to DNA.

The assertions of the defendants according to which the judicial status of other defendants tried in the same file or in other criminal files, in freedom, or home arrest, have to be dismissed as in the matter of preventive measures there are no identical cases, which would require the obedience of the legal treatment equality and non-discrimination principles.

The preliminary chamber judge also retains that, in order to request the replacement of the preventive arrest with the preventive measure of home arrest the defendants have to consider themselves that the requirements for the latter measure are met, including the existence of evidence from which the reasonable presumption that they committed the crimes they are investigated for exists.

This is not the case of the defendants Roventa Elena, Viziru Ciprian-Sorin and Adamescu Grigore-Dan which are still challenging the perpetration of the crimes they are being tried for and the existence of any evidence from which such a reasonable presumption would result from.

Taking into consideration the aforementioned, the preliminary chamber judge asserted that, at this procedural moment, the general interest of public order preservation and a good execution of the criminal investigation prevails in comparison with the interest of the defendants of being set at liberty, therefore no reason for the replacement of the preventive arrest with a less restrictive measure arises, reason for which, on the grounds of art. 348 par. 1 CPC, the claims of the defendants Roventa Elena, Viziru Ciprian-Sorin and Adamescu Grigore-Dan to replace the preventive arrest with the preventive measure of judicial control or home arrest will be dismissed as ungrounded.

Taking into consideration also the provisions of art. 275 par. 2 of the CPC

FOR THESE REASONS

IN THE NAME OF THE LAW

HEREBY DECIDES:

Dismisses, as ungrounded, the claims of the defendants Roventa Elena, Viziru Ciprian-Sorin and Adamescu Grigore-Dan to replace the preventive arrest with the preventive measure of judicial control or home arrest.

Orders the defendants Roventa Elena, Viziru Ciprian-Sorin and Adamescu Grigore-Dan to pay 200 RON each for legal expenses to the state.

With right to appeal.

Settled and ruled in closed session, today, 08.08.2014.

Preliminary Chamber Judge

Ghita Ciprian Alexandru

Clerk

Sirbu Viorel Valentin