



The right for a fair trial

On the Rule of Law – the right for a fair trial

With examples from the violation of the right for a fair trial in Romania

As a continuation of the exposed problems with division of powers in a unicultural society that were presented in the first session on this afternoons topic, Soteria wish to point out some specific problems related to the concept of fair trial.

We have to mention first that these particular problems are added to the ones mentioned previously by our distinguished introducer, Mrs Monica Macovei namely: corruption of the justice system and especially the political corruption.

As it was noticed in various situations, the freedom of speech and especially the freedom of media can come much faster into use than the freedom of the mind of the people in that society. In some cases the mind of the people involved in the justice process is still under some totalitarian tendencies while the influences from the media grow freely, expressing sometimes intolerance and hate toward the ones that are different. These two situations can work together and create severe violations of the human rights and make almost impossible a fair trial even if the laws on the paper will allow it. Thus the pressure that the prosecutors and judges have to face in their work comes sometimes not only from a corrupted system but also directly from the society. A prosecutor that tries to stay objective in his work have to face also the public pressure created by a media that is not used to reflect multilateral points of view and that serve a society which is not used to accept the ones that are different. This phenomenon is affecting different minorities and some of the most affected groups are the spiritual and religious minorities. In their cases the fact of being different then the society around might come from a fundamental difference in the set of beliefs and it cannot be easily spotted and treated as such without an awareness on this aspect.

Many OSCE participating states, especially from the eastern region, experience problems created by the mindset of prosecutors and judges that were formed and determined by cultural and professional norms that would not anymore be valid in a just and tolerant society.

The whole scale of latent and acute problems is present in the former communist countries as well as other nations in transition from a nation ruled by strong cultural dogmas to a society ruled by law and tolerance. This problem often combines with another problem arising from the new form of conformist society that emerges – the unicultural society created in close collaboration between state and media.

From this situation especially the rights for a fair trial by those whose behaviour differ from the norms are vulnerable. We will now speak from the perspective of those with a spiritual praxis that differ from that of the surrounding society. The trials in their case are per se unjust when targeting the very structure of the undomesticated spiritual praxis under guise

of the individuals' actions within this structure. A social and cultural intolerance thereby easily turns into a judicial mistake.

Since we have been starting to show in this forum the very complex and severe case of MISA yoga school in Romania, we consider necessary to give the perspective of a fair trial that in this case was violated. In the document that is made available to you in the DDC as an appendix to this statement we have given a full report on the violation of the Article 6 from the European Convention for human rights (1950) – the right for a fair trial in the case of MISA members. The number of juridical mistakes and violations upon the human rights in this case are so numerous that we needed a full annex only to mention them. This is a result of the political corruption that still exists in the Romanian juridical system (as shown also in the opening of this working session by Mrs Monica Macovei) combined with the inflamed reaction of the mass media in a society yet tributary to an attitude of intolerance.

As it was briefly shown before in other statements from SOTERIA INTERNATIONAL, one of the leading figures of this yoga movement, Mr Gregorian Bivolaru **was granted in the beginning of 2006 the status that is equivalent to political asylum in Sweden**. From the decision of the Supreme Court of Sweden we can read that: „In the matter there has been referred to several letters from individuals and from organizations, among them the Helsinki Committee for the defending of human rights in Romania, and Amnesty International, concerning harassment and crime against basic rights committed by Romanian media and institutions against MISA and Gregorian Bivolaru. In the letters it is adduced that Gregorian Bivolaru runs the risk of being pursued in Romania **and that he cannot expect to have a fair trial there**.”

As a reaction to that event the Romanian PM, Mr. Catalin Popescu Tariceanu, officially declared that "If the yoga teacher is granted asylum in Sweden because his fundamental rights are not respected here in Romania, then that is a clear proof of the fact that justice does not function here"!

Illustrating even more what we have stated before, after the decision of the Supreme Court of Sweden was published the Romanian minister of Justice at that time, Mrs Monica Macovei, our distinguished introducer today, asked for an investigation from the Supreme Council of Magistrates (SCM). The results of this investigation – in our opinion formed on the facts shown in the annexed document – are in themselves an example of how the justice process can be corrupted in a society manifesting a certain degree of intolerance.

The report from SCM concluded among other things that the images that invaded the media immediately after the severe events that took place in March 2004 were not from the prosecutors but from yoga practitioners that were dressed in policemen and filmed themselves as brutalizing other yoga practitioners and then deliver the film to the media. Also the reason for the decision of the Supreme Court in Sweden was mainly the failure of the minister of Justice to provide proper documentation to the Swedish Supreme Court. Even Mrs. Monica Macovei declared for the media at that time that: „*Actually this report is rushed and protective for the magistrates. It is large as it actually comprises a list of dates and measures, but no verification whatsoever has been made as to the legality of each measure, under the excuse of the magistrates' independence.*

I want to say that I see here a dangerous tendency and it is not the first time I see this in a Superior Council of Magistrates inspection.

Under the justified concern for the magistrates' independence, they practically refuse to undertake any responsibility check."

As one trial against Mr. Bivolaru and 21 other yoga teachers started in Bucharest in June 2007, the right for a fair trial was again trespassed by the judicial authorities by publishing the indictment – in itself a document that is violating several times the presumption of innocence – in the main stream media in the same day as the file was sent to the court. More details you will find in the appendix of this statement.

We will end with an excerpt from a report released in 2006 by SOJUST – SOciety for JUSTice. This society is made of judges, lawyers and other workers in the romanian judiciary system.

The justice system in Romania – an independent report.

In chapter 5 section 3 we find MISA case analyzed. Here is the conclusion:

„The way in which the searches, the hearings and the investigations were conducted raises the issue of the possible violation of several internal dispositions (illegal confinement; threatening; unjust repression; illegal entry; destruction; misfeasance against the persons' interests; misfeasance by restraining rights; attempt to determine false testimony; illegal arrest and abusive investigation; abusive behavior) and international ones (freedom from torture, the right to liberty, **the right to a fair trial**, freedom from arbitrary interference with one's privacy and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association; freedom from discrimination; the right to own property).”

The full text can be found in the annex to this document.

Source: <http://www.sojust.ro/sistemul-juridic-din-romania-raport-independent/5-human-rights.html>

Recommendations:

- We recommend that OSCE will support an educational program for the countries with a “young” democracy that will explain the right to be different in a modern and free society. That will remove a part of the pressure that the magistrates have to face and will ensure a fair trial for the people that are part of spiritual and religious minorities.
- We recommend Romania to review the grounds for the trial against the members of MISA yoga school and to ensure a fair trial to them. As a consequence of the above mentioned problems we recommend a public debate (maybe using the “lessons” from this particular case) in order to educate the public opinion of the dangers of intolerance regarding the fair act of justice.