

Annex

Right to a fair trial: Case study on MISA yoga school – ROMANIA

VIOLATION OF THE ARTICLE 6 OF THE EUROPEAN CONVENTION – RIGHT TO A FAIR TRIAL

As to a fair and public trial within a reasonable time, by an independent and impartial court established by law, with all the other guarantees, as provided for in article 6 of the Convention, these provisions were violated in 6 different situations.

I. The violation of the Article 6 by not observing the presumption of innocence

First of all it must be said that in the Romanian judicial system the presumption of innocence, stipulated by the Romanian Penal Procedure Code in article 52, by the Romanian Constitution in article 23, but especially by the European Convention for Human Rights, remains an empty concept that the courts do not take into account. The entire theory according to which *in dubio pro reo* must be applied every time when there is not enough evidence showing the guilt of the charged, especially in penal matters, remains a beautiful speech of the lawyers with no impact or relevance in a penal trial whatsoever.

In this context, after the violent actions of the Romanian authorities, which were meant to “*stem the criminal potential represented by Bivolaru*”, there were also numerous official persons who publicly and shamelessly stated that Gregorian Bivolaru was guilty of the offenses attributed to him by the Prosecutors' Office of the Bucharest Court of Appeal.

As a first example, Raj Tunaru, deputy of the ruling party, requested in the session of the Chamber of Deputies on the 23rd of March 2004: “*I insistently ask the investigation authorities, especially the General Prosecutor of Romania, to issue urgently a warrant of arrest according to the legislation in force, and this to be prolonged by the judges, according to the law, until evidence will be produced in order to arrest the bastard [Gregorian Bivolaru]*”.

After the Bucharest Court of Appeal had to decide the release of Gregorian Bivolaru on the 1st of April 2004, due to the fact that the prosecutors had wrongly appreciated the norms related to competence and invested the Bucharest Tribunal instead of the 5th District Court of Law with the solving of the request of pre-trial incarceration, **numerous officials found it proper to come out and express their disapproval towards the release, clearly passing the message according to which simultaneously with the cause re-judging by the 5th District Court of Law, the measure of pre-trial incarceration should be also ruled.**

Ioan Rus, the minister of Administration and Internal Affairs, was quoted by several newspapers:

- Ziua – the 5th of April 2004 – “*I consider as strange the release of Gregorian Bivolaru on procedure reasons.*”
- National – the 5th of April 2004 – “*I consider as strange the release of Gregorian Bivolaru on procedure reasons.*”
- Realitatea Românească – the 5th of April 2004 – “*Ioan Rus wants Grieg in jail.*”

- National – the 2nd of April 2004 – *“Ioan Rus [declared that] M.I.S.A. has been watched since 1995, but the specialists within MAI (the Ministry of Administration and Internal Affairs) decided it is time to intervene.”*

Bogdan Drăghici, the president of the National Federation of Civil Servants, quoted by the newspaper Jurnalul National on the 1st of April 2004, the same day when the Bucharest Court of Appeal decided the release of Bivolaru and his judging by the competent instance: *“In Romania there are over 100 important civil servants, especially within the structures of the Ministry of Administration and Internal Affairs and even in the Government’ General Secretariat, who protect M.I.S.A. or are M.I.S.A. members. At the level of the central administration, in Bucharest there are tens of such employees.”* The same Bogdan Drăghici declared for the Ziua newspaper on the 31st of April 2004: *“There are tens of employees in the whole country. Not only in this ministry did M.I.S.A. members infiltrate, but also in others such as the Government’ General Secretariat. We now gather information from all our branches and we will release them to the press as soon as possible. [...] as persons from the central state institution, the Government, have been the main protection suppliers of Gregorian Bivolaru. [...] The companies of important members or followers of the Bivolaru's organization were doing illegal economic activities. For these services, including the protection and information from the state institution, the employees have received material benefits [...] and sexual favors.”*

The same day when the release of Gregorian Bivolaru on procedural reasons was decided, that is the 1st of April 2004, the newspaper Curierul National writes: *“Radu Timofte (chief of the Romanian Secret Services), the secret chief of M.I.S.A. Confidential sources close to the investigators declared last night [...] that there is certain evidence that the S.R.I. head belongs to the yogi movement. [...] President Ion Iliescu called urgently the Supreme Council for the Country Defense (CSAT) where they will discuss the replacement of Radu Timofte.”*

A larger number of such statements and newspaper excerpts can be found in www.gregorianbivolaru.com

Considering all these statements which came to support the accusations of the Prosecutors' Office of the Bucharest Court of Appeal, to emphasize the necessity to arrest Bivolaru and to manipulate the public opinion and instigate it to hatred and despise towards his activity and the organization he founded – the presumption of innocence cannot subsist. **Moreover, although the pre-trial incarceration was requested for the serious offenses for which the investigation is till in proffress (propaganda in favor of the totalitarian state, communication of false information, association in an organized criminal group, money laundering, tax evasion, pornography, pedophilia etc.), all the quoted officials tried to manipulate the public opinion by stating that the measure of pretrial incarceration is necessary for the committing of these offenses and not for the ones for which the preventive measure was really asked. In this way, they created antipathy, despise and even hatred towards Gregorian Bivolaru, meant to justify the disproportionate and illegal measure in relation to the evidence gathered in the dossier.**

The most serious problem is the fact that not only the public opinion has been influenced, but also the courts; they were accused of being “indulgent” towards Bivolaru due to the presumed influence he had upon them through different MISA members. Consequently they seriously ignored the fundamental rights of the defendant in order to solve as quickly as possible this controversial dossier and to satisfy the state representatives and the public opinion. The same meaning has also the motivation of the judicial decision on the measure of pre-trial incarceration: “The notorious reaction of the public (who took note of the committing of serious

penal facts against a minor) has resuscitated a certain public disorder that justify the taking of a drastic measure towards defendant Gregorian Bivolaru, without denying the presumption of innocence to which the defendant is entitled until a final sentence. The letting at large of the defendant really disturbs the public order.”

How can the judges talk about observing the presumption of innocence while disposing the most drastic preventive measure only to satisfy the public opinion intoxicated by the public statements of the Prosecutors' Office, which affirmed they took 5 trucks of hard evidence without mentioning they took the most personal belongings, which mocked a practice recognized in all the democratic countries – yoga – by releasing to the press accusations sustained by nothing, not even by the presumed victim, and which, after 10 years of careful monitoring by the Secret Services, considers investigations still need to be carried on in order to produce evidence for charging Bivolaru with such serious offenses?!

The violation of the presumption of innocence is obvious when – defying the article 202 of the Romanian Penal Procedure Code that states that *“the penal authority is obliged to produce the necessary evidence in order to find out the truth and justly judge the case. The penal authority gathers evidence both against and in favor of the charged or the defendant. The obligations provided for in the previous paragraph shall be carried on even if the charged or the defendant confess the deed”* – the prosecutors turned a statement into a complaint for an offense of sexual act with a minor in the version that incriminates the abuse of authority in order to obtain sexual favors. It must be emphasized this is the statement given after 13 hours of interrogation following the searches; this can be referred to at pages 116-117 of the cause dossier. **Moreover, the minor never accused to have had sexual relations with Gregorian Bivolaru and declared before tens of reporters that she has a fiancé whom she intends to marry; she even tried to explain this during the judging of the request of pre-trial incarceration.**

Considering all these things, the violation of article 6 paragraph 2 of the Convention is obvious.

II. Violation of article 6 by the fact that Gregorian Bivolaru was not judged by an independent and impartial instance.

Another aspect concerning the violation of article 6, paragraph 1 of the Convention concerns the composition of the panel of judges.

In order to judge the case on the 1st of April 2004 a panel of judges was formed that was held secret until entering in the judging room and, furthermore, the judge assigned to be the president of the panel was the president of the 5th District Court of Law, Mrs. Mihaela Andrei.

This violates the provision of article 6 of the Convention, which states that *“any person has the right to an equitable judgment... by an independent and impartial instance instituted by law”*. Note that, according to Law no. 92/1992 republished in 1997, **the court presidents are appointed by the Minister of Justice by direct order which is published in the Romanian Official Gazette.**

Furthermore, the first panel of judges who ruled on the 30th of March 2004 as to the warrant of arrest of Gregorian Bivolaru, at Bucharest Tribunal, was presided by judge Antonela Costache who has, like judge Mihaela Andrei, an administrative position within the instance, the Presidency of the 2nd Penal Section, to which the dossier was assigned.

The fact that after ascertaining the incompetence of the Bucharest Tribunal for solving the request of pre-trial incarceration and after sending the cause to be re-judged by the 5th District Court of Law, it was considered necessary to assign a judge with an administrative position within that instance for the presidency of the panel, and after the Bucharest Tribunal had constituted a panel of judges on the same criteria, raises big question marks about the way this dossier was managed.

The subordination to the Government is obvious in this context; if we also consider the statements of some Government members, as quoted above, the violation of article 6 paragraph 1 of the Convention becomes obvious. Moreover, **the disciplinary action against judicial bodies is exercised by the Minister of Justice, the penal action is also exercised by the Minister of Justice** (article 91 paragraph 2 of Law no. 92/1992 republished in 1997), **the Minister of Justice can give direct and compulsory orders to the prosecutors, in view of respecting and applying the law** (article 33, article 34 of Law no. 92/1992 republished in 1997), according to Regulation no. 9 for the working of the Superior Counsel of Magistracy, **the Minister of Justice can suspend by direct order any prosecutor or judge** etc.

In this respect there have been numerous debates in the press, on TV and even in the Romanian Parliament, and consequently on the 1st of October 2004 the new law of judicial organization will come into force, by which the judges are taken out of the Government's tutelage, following the requests of the European Union. This approach of the Romanian authorities proves the abovementioned and **is basically recognition of the fact that until the above-mentioned date, there were no independent and impartial instances in Romania.**

However, on the 31st of May 2004, when the measure of pre-trial incarceration of Gregorian Bivolaru was judged and decided, Law no. 92/1992 was still in force and, as already mentioned, the panel of judges was presided by the instance's president. The fact that the instance of the 5th District Court of Law was challenged had no relevance; the Bucharest Tribunal and the Bucharest Court of Appeal accomplished only a formality by denying the invoked arguments.

III. Violation of Article 6 by the fact that the haste to judge Bivolaru's case led to repeated violation of the right to defense

Article 6 paragraph 3.b states: *"Everyone charged with a criminal offence has the following minimum rights: ...b)to have adequate time and facilities for the preparation of his defense"*. However, after the Bucharest Court of Appeal released the charged, when the instances could no longer motivate their haste by their wish to solve the pre-trial incarceration request before the expiration of the detention measure, the judgment terms were set the same day for different instances in spite of the lawyers' repeated request to be given a reasonable time to prepare the defense. Thus, after the Bucharest Court of Appeal had to acknowledge on the 1st of April the prosecutors' mistake and to release the defendant due to the expiration of the detention measure, **during the same day** the dossier was sent from the Bucharest Court of Appeal to the 5th District Court of Law, where still the same day the dossier no.

3989/2004 was put together, and they tried to rule on the proposal of pre-trial incarceration in the Council Chamber. Because of the instance's refusal to respect the right to defense and because of the suspicions concerning the way they made up the panel of judges, Gregorian Bivolaru's lawyers had no other solution but to challenge the whole instance of the 5th District Court of Law.

As rejection grounds, they showed the instance the fact that all this extreme haste in the situation in which the celerity could no longer be motivated by the expiration of a preventive measure, and because within a few days an impressive number of procedures was carried on, that could not be carefully examined by the defendants' lawyers in order to prepare the defense – these were considered valid reasons to suspect there was political pressure and other kinds of pressure, so the instance could no longer rule objectively upon the case.

The dossier is forwarded to the superior instance, which is the Bucharest Tribunal; judging the challenge request in the dossier no. 1881/2004, the Bucharest Tribunal ruled by the Conclusion pronounced in the Council Chamber the same day, the 1st of April 2004, that there was no incompatibility and denied the rejection request.

The conclusion issued by the Bucharest Tribunal was appealed.

At Bucharest Court of Appeal, in the dossier no. 1177/2004, Gregorian Bivolaru's lawyers invoked the non-constitutionality of the provisions of article 52 par. 2 of the Penal Procedure Code, which states that the examination of the exception request can be done in the absence of the parties, and the instance who judges the exception request must listen to the parties only if considered necessary.

Although Gregorian Bivolaru was represented by a lawyer at the Bucharest Tribunal, that judged the exception request, the constitutional provisions are violated by the fact that the defendant was not cited and called to be heard; due to the negative consequences of the denigration in the media and the exaggerate hurry with which the procedures took place, the defendant's rights were violated, especially the right to defense.

The Bucharest Court of Appeal by the Conclusion on the 2nd of April 2004 decided the notification of the Constitutional Court and suspended the judgment of the cause until the non-constitutionality exception will be solved.

The Prosecutors' Office of the Bucharest Court of Appeal appealed, thus forming the appeal dossier no. 2196/2004 of the High Court of Cassation and Justice.

The appeal before the High Court of Cassation and Justice was established on the 27th of April 2004.

At this first term the lawyers of Gregorian Bivolaru asked for more time to prepare the defense and to consider the appeal reasons raised by the Prosecutors' Office of the Bucharest Court of Appeal; the instance admitted the request, but set the new term the following day, the 28th of April.

The High Court of Cassation and Justice admitted the appeal of the Prosecutors' Office of the Bucharest Court of Appeal (Decision no. 2283 on the 28th of April) therefore decided to send the cause to the Bucharest Court of Appeal for the continuation of the trial. This happened while at the Supreme Court Gregorian Bivolaru's lawyers invoked the non-constitutionality of the provisions of article 385² and article 362 paragraphs 1.a of the Penal Procedure Code, on which basis the prosecutor can attack with appeal or recourse the decisions. This was motivated by the fact that the mentioned texts are in contradiction with the principles governing the whole activity of the Public Ministry, which are the principles of legality, impartiality and hierarchical control, as long as exercising the appeal by the prosecutor is not subject to the confirmation of the hierarchically superior prosecutor.

The High Court of Cassation and Justice, despite the provisions of Law no. 47/1992, republished, which states that the instances before which non-constitutionality exceptions are raised are obliged to refer to the Constitutional Court, ruled in this respect and denied the exception.

At the Bucharest Court of Appeal, on the 10th of May 2004, in the dossier no. 1551/2004 Gregorian Bivolaru's lawyers claimed that judges of the Bucharest Court of Appeal could no longer be impartial, given the evolution of the dossier and the already obvious pressure; they considered that somewhere else in the country there will be less interference and pressure on the justice then in Bucharest, and consequently took exception to the whole Bucharest Court of Appeal.

The cause was sent again to the High Court of Cassation and Justice who considered that the exception request was inadmissible and denied it (Conclusion no. 96 on the 12th of May 2004 pronounced in the 22 dossier no. 2624/2004).

Gregorian Bivolaru appealed, but this was also denied as insubstantial by the High Court of Cassation and Justice by a panel of nine judges (Decision no. 170 on the 14th of May 2004 pronounced in the Council Chamber in the dossier no. 128/2004).

The rush through so many proceedings in such a short time led to the effective hindrance of the defense preparation, the courts categorically refused to take into account this fundamental

right of the defendant, right that is also provided for in principle by the Romanian Penal Procedure Code in article 6.

The right to defense was seriously violated if we consider that during one single day, that is the 29th of March 2004, the Nădlac customs police decide the measure of detention, the dossier was sent to Bucharest, the dossier of the Prosecutors' Office pendant to the Arad Court of Appeal was connected to the dossier of the Prosecutors' Office pendant to the Bucharest Court of Appeal, it was decided the start of the penal proceedings for three offenses (attempt to fraudulently cross the Romanian state border, sexual act with a minor, sexual perversions), and the proposal of pre-trial incarceration was drafted by the same Prosecutors' Office pendant to the Bucharest Court of Appeal.

In the same very busy day the General Prosecutor of the Prosecutors' Office pendant to the Bucharest Court of Appeal found the time to solve the complaints of the minor Mădălina Dumitru against the way the search and the interrogation were performed, and by the Resolution no. 977/VIII-1/2004 on the 29th of March 2004, stated that her requests could not be taken into account; this time her capacity of minor didn't grant her any favor; her statements were contested and she was practically obliged to take the role of injured party, although she denied it. It is probably a national or even international premiere that a presumed injured party affirms denies this capacity while the authorities contradict her, saying that her statements cannot be taken into account.

It is very hard to believe that the prosecutors had the necessary time to study the dossier in all its complexity, as it has an impressive number of pages, in order to analyze the evidence and to draw up the above-mentioned documents, so that the rights of the accused be also observed and the proceedings be correctly conducted as provided for in the Romanian Penal Procedure Code, such as the right to defense and the personal freedom; furthermore, it is also hard to believe they also had the time to hand in the dossier to the General Prosecutor in order to study and analyze attentively whether minor Mădălina Dumitru's complaint was well-grounded or not.

It is also worth to mention that between the 29th of March 2004, when the Prosecutors' Office pendant to the Bucharest Court of Appeal requested the measure of pre-trial incarceration, and June 2004, when the Conclusion of the 5th District Court of Law by which the measure of pre-trial incarceration was decided remained final, the prosecutors continued the investigation of the merits and as various procedural documents were issued they were added to the initial dossier. In all this period, the defenders requested several times, according to article 172 Penal Procedure Code, to be called for every act of penal investigation, but the claims handed in through the registry got too late to the prosecutors, others disappeared, sometimes the prosecutors themselves "could not be found"; thus, **the judicial bodies proceeded to various investigations in the absence of the defenders.** The proving documents can be found at pages 1087-1123 of the dossier. **In this context, it is even easier to understand the instances' refusal to grant reasonable terms for the preparation and the assurance of Gregorian Bivolaru's defense.**

The flagrant violation of article 6, paragraph 3.b of the Convention is therefore more than obvious.

IV. Violation of Article 6 by the fact that the judgment was not suspended in order to allow the Constitutional Court to judge the exception of non-constitutionality

When the exception of non-constitutionality of the provisions of article 52 of the Penal Procedure Code was invoked, the judging instance was obliged, according to Law no. 47/1992 concerning the organization and working of the Constitutional Court, **to suspend the judgment and to send the**

cause to be solved by the Constitutional Court, the only one empowered to rule as to the constitutionality of the provisions of a law.

The Law of the Constitutional Court provides that an exception of non-constitutionality can be denied by judging instances only if it is considered inadmissible because it does not concern a law or an ordinance, it was not invoked by the court, the parties or the prosecutor, or it was subject to a prior constitutional check (prior to the enforcement of the law or ordinance), or the Court had already ruled on the invoked text and declared it not constitutional. **In Bivolaru cause none of these points that could have justified the denial of the non-constitutionality was applicable, and the High Court of Cassation and Justice admitted the appeal of the Prosecutors' Office against the conclusion of the Bucharest Court of Appeal by effectively pronouncing in place of the competent instance as to the constitutionality of article 52 of the Penal Procedure Code, as one can easily see in Decision no. 2283 in dossier 2196/2004 of the High Court of Cassation and Justice – Penal Section. A fortiori the High Court of Cassation and Justice flagrantly violated the legal provisions by drastically denying the non-constitutionality exception invoked.**

The High Court of Cassation and Justice, by the Decision no. 2283 on the 28th of April 2004, also refused to send the dossier to the Constitutional Court after at the supreme court Gregorian Bivolaru's lawyers invoked the non-constitutionality of the provisions of articles 385² and 362 paragraph 1.a of the Penal Procedure Code, on which basis the prosecutor can attack with appeal or recourse the ruling.

This was motivated by the fact that the mentioned texts are in contradiction with the principles governing the whole activity of the Public Ministry, which are the principles of legality, impartiality and hierarchic control, as long as exercising the attack by the prosecutor is not subject to the confirmation by the hierarchically superior prosecutor.

Despite the provisions of Law no. 47/1992, republished, which states that the instances before which the non-constitutionality exceptions are raised are obliged to go to the Constitutional Court, the High Court of Cassation and Justice pronounced ruled and denied it.

V. Violation of Article 6 by the fact that the objections raised during the solving of the request of pre-trial incarceration were ignored without arguments

It is useless to comment the way in which the instances pronounced every time upon the objections formulated during the solving of the request of pre-trial incarceration; in none of the judicial decisions there were arguments on why Bivolaru's affirmations were repeatedly ignored. The argument invoked by the judging instances, that the challenge reason provided for in article 48.d of the Penal Procedure Code, which provides that "*the judge is incompatible if in the respective cause, ...d)there are circumstances showing he is interested in any form, he, the husband, or a close relative*" could not be taken into account, is a natural consequence of its subordination to the executive power, as shown above. **Consequently, acknowledging that the objection reason is valid in this case would have meant to acknowledge not only that the instances (as already notoriously known in Romania) are neither independent not impartial, but also that the "Bivolaru dossier" was truly instrumented in a such manner to give satisfaction to the certain members of the Government who had publicly expressed their opinions.**

VI. Violation of Article 6 by the fact that the authorities justified the measure of pre-trial incarceration by the so-called attempt to escape, without taking into account the submitted evidence

The 5th District Court of Law decided the measure of pre-trial incarceration claiming that Gregorian Bivolaru has been escaping, although his lawyers sustained **the defendant is hiding as he received**

threats that made him consider his life in danger. In this respect they handed in the declarations of two acquaintances of Bivolaru, certified by the lawyer, in which they testify the defendant received threats saying “*he was going to be eliminated*”. Gregorian Bivolaru had serious reasons to take such threats seriously, considering his past when he had been the victim of a criminal action and he is still alive thanks to the fact that he was not at home when the explosion took place. The lawyers continuously asked the judging instances for the defendant’s protection, taking into consideration the authorities haven’t taken any measure in this respect up to the present moment.

However, the judging instance appreciated this newly-occurred situation represented only affirmations meant to delay the trial and, without taking into account the statements in the media, the filed declarations and the simple fact that by guaranteeing his protection they could ensure Bivolaru’s presence at the trial, concluded that the affirmations are not proven and, with no other analysis, decided the measure of pre-trial incarceration concluding the defendant was escaping the prosecution.

This is another reason to ask the European Court for Human Rights to acknowledge the violation of article 6 paragraph 3.b of the Convention, which stipulates the right to defense.

Excerpt from the independent report released in 2006 by SOJUST on the juridical system of Romania

Chapter 5: Human rights

III. The M.I.S.A. case

A. The actual case

One of the cases that arose public suspicions regarding the procedural correctness and compliance with the fundamental rights is that of the Spiritual Movement for Integration into the Absolute (MISA) ²⁵. The M.I.S.A. leader, Gregorian Bivolaru and others of his disciples were prosecuted, put under arrest, beaten by the Securitate even from the 70’s. One does not rule out that the prosecution of the M.I.S.A. leader continued after 1989 as well. To these, one adds the public’s reticence towards the yoga techniques, especially in the 90’s, due to a lack of a reasonable education.

The biggest official action directed against MISA took place in March 2004: **Operation “CHRIST”**. On the 18th of March 2004, a few hundred policemen, gendarmes and prosecutors forcefully broke into several personal property buildings belonging to yoga students, locations where tens of yoga practitioners were living together, pursuing their spiritual practice by the model of the Indian ashrams. The immersion was broadcasted by several TV stations and an entire country could see the breaking of doors by law-enforcement officers and the forceful treatment of persons who were found in the buildings (of whom some were foreign citizens): while being held at gunpoint, they were summoned to lie down on the floor, face down and hands around their necks; they were not allowed to get dressed; they were not asked for their approval to be recorded on camera. In one of the cases, it seems that there was no search warrant. Several tens of persons were carried by police vans to the Prosecutor’s Office where they were questioned. One did not allow them to contact their lawyers, for the reason that they were questioned as witnesses, and the Romanian Law provides for the possibility of allowing defense only for parties, and not for witnesses²⁷.

According to the content of the search warrants, they were supposed to concern information data, regarding information users and traffic. The people who were searched claimed that huge quantities of personal goods were confiscated²⁸, some of them without being mentioned in the search protocols and most of them having no connection to the motives specified in the warrants whatsoever; two years later, the owners were only returned one third of all these. One of the evidence, the journal of a yoga practitioner witness, was released to the press and made public, although the authorities guaranteed confidentiality.

The prosecutor now investigates organized crime and human traffic cases concerning some of the MISA members. One has instituted the measure of “insuring arrestment” on 70 buildings for covering the damages that they claimed. Officially, one has noted that, under the cover of courses for initiation in the yoga practices, the investigated persons attracted, manipulated and exploited the participants (of whom many were minor) to their own personal interest, thus endangering their psychic development²⁹. Nevertheless, from the contradictory data published by the media, there are only 8 victims. Some of the investigated persons were sent to trial. A completely unusual thing for Romania, the entire indictment was made public³⁰ by the penal prosecution body, which among violating the rights to an equitable trial and the protection of the investigated persons’ private life, may be yet another element for the manipulation of public opinion.

B. The MISA files

With all the internal investigations performed by the CSM³¹ or the judiciary ones performed as a consequence to the filed complaints, the presumptive negative aspects concerning the actual development of the investigation were not cleared up. From the 55 penal complaints that were filed in May 2004, only 9 were retained in view of solving at the Prosecutor’s Office, and those for a single offence. The rest got a non-prosecution resolution, without even questioning the victims; at present, this resolution is appealed at the Supreme Court.

At the same time, two arrest warrants were issued on the name of Gregorian Bivolaru (gone to Sweden), one for the offense of sexual act with a minor and the other for human traffic. These were the grounds for the Romanian State’s request of his extradition. But the Supreme Court of Stockholm got to the conclusion that, due to the violation of the presumption of innocence, of implicating the political scene³² and the media in this case (one even got a special mention that the authorities deliberately turned the public opinion against the defendant), the Romanian Justice cannot ensure an equitable trial to the citizen whose extradition was requested, a reason for which the Romanian State’s request was turned down³³. After two more months, the Swedish Government accepted to grant Mr. Bivolaru the statute of political refugee.

C. Possibly violated rights

On the way in which the searches, the hearings and the investigations were conducted one has questions as to the possible violation of several internal dispositions (illegal confinement; threatening; unjust repression; illegal entry; destruction; misfeasance against the person’s 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 inefficiency of the internal investigations concerning the claimed abuses is all the more serious as Bivolaru got the asylum and then the refugee status in a foreign country. From this viewpoint, the competence or the *bona fide* of the Romanian bodies is seriously questioned.

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