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Working Session 1: Fundamental freedoms

Freedom of expression, free media and information: The case of Adamescu in Romania

Recommendations of Human Rights Without Frontiers to Romania concerning the case of Alexander Adamescu

Human Rights Without Frontiers recommends that Romania

- does not prosecute opposition newspapers because they criticize the authorities;
- ensures the rule of law and fair trials in line with EU standards and values;
- guarantees the independence of the judges;
- makes sure justice is not misused for political purposes and settlements of scores with opposition leaders and free media;
- cancel the European Arrest Warrant issued against Alexander Adamescu, the owner of *Romania Libera*.

The case of *Romania Libera* and Alexander Adamescu



In January of this year, businessman and owner of the *Romania Libera* newspaper Dan Adamescu died in a hospital in Bucharest following mistreatment in prison by the Romanian state. He was 68. His family said that the conditions in which he was held, and the lack of medical care afforded to him, contributed to his early death.

Dan Adamescu had financed *Romania Libera* after its relaunch as independent newspaper in 1990. Founded in 1877, the newspaper is one of the oldest in Romania. After the fall of communism, it had been a staunch supporter of democracy, the rule of law and had continually exposed corruption in Romanian politics and bureaucracy.

In May 2014, Dan Adamescu was imprisoned in Romania, and sentenced to four years and four months on alleged charges of bribery and corruption, which he and his family vehemently denied. The Adamescu family contends that Dan was falsely convicted on trumped up charges because the Romanian state wanted to control the newspaper and expropriate their businesses.

After Dan Adamescu's incarceration, his son **Alexander Adamescu**, who lives in the UK, began to run the family's business, including the newspaper *Romania Libera*, and to fight for justice for his father. He soon became a target for the Romanian authorities as well.

On 13th June 2016, **Alexander Adamescu**, who is a German citizen, was arrested in London on the basis of a European Arrest Warrant (EAW) issued by the Romanian government which accuses him of complicity with his father in allegedly condoning bribes to judges. Bucharest asked for his extradition.

Alexander Adamescu denies the charges. He claims that he and his family are being politically persecuted by the Romanian Government because they criticize it in their newspaper *Romania Libera*.

The arrest in London of Alexander Adamescu was the result of investigations by prosecutors of Romania's National Anti-corruption Directorate (DNA).

On 4 May 2016, a first instance court in Bucharest ruled that he should be arrested. His lawyer challenged that decision on procedural grounds on 19 May 2016 but within a couple of hours, Alexander Adamescu had a new arrest warrant issued against him. The DNA had managed to get a new judge handpicked and allocated to their request despite Romanian constitutional rules that court cases must be distributed randomly. Alexander Adamescu was summoned at the door of the court at 13:00 for a hearing at 13:30. The court then backdated the time from 13:30 to 11:00 to give the impression that Alexander Adamescu had been given sufficient time to appear. His lawyer rushed to court unprepared and made his plea as best as he could. Within thirty minutes after the end of the hearing, Alexander Adamescu's new arrest warrant was on the electronic court register. The new judge had read 37 lever arch files of prosecution material, deliberated on the arguments of both sides, taken a decision, admitted a

new arrest warrant, and also found the time to file his decision on the court electronic system within that thirty minute window!

Alexander Adamescu is a 38-year old playwright. He is now residing in London with his wife and three young children where he studies at the Royal Central School of Speech and Drama. The UK has not deported yet but his extradition could be implemented at any time.

Alexander Adamescu: breaches of human rights

Article 5(1)(c)

The European Convention, by the provisions of Article 5 paragraph 1, guarantees to any individual "his/her right to freedom and safety". It imposes the obligation on the State not to retain an individual unless "legal means were employed", limiting thus the force of the discretionary power of the State. The violation of the right to freedom and safety for Alexander Adamescu is proven by the way in which his arrest was ordered.

Alexander Adamescu's case file consists of thirty-seven volumes. The haste of the court to judge the request of the DNA against Alexander Adamescu, and the extremely short time given to deliberation and decision-making, show that it was impossible for the judge to have read the entire case file, let alone analyse the evidence and arguments that were presented to him in court. In his decision the judge almost entirely copy-pasted the reasoning of the DNA and admitted automatically the proposal of taking the measure of Alexander Adamescu's arrest.

Article 6(2)

Article 6 of the Convention for protecting human rights and fundamental freedoms, ratified by the Romanian State by Law no. 79 dated June 6, 1995, guarantees that: "any person has the right to a fair trial..." and paragraph 2 of the same article enshrines the principle of presumption of innocence. Similar to Dan Adamescu's trial, judges repeatedly verbally mentioned and wrote about the alleged illegality of Alexander Adamescu's acts before he was sent to trial. In the light of his father's treatment and conviction, Alexander Adamescu's conviction seems to be a fait accompli.

A court recommends that Romania provisionally withdraws or suspends the European Arrest Warrant against Alexander Adamescu

On 29th March 2017, the International Centre for Settlement of Investment Disputes (ICSID)* stated in a dispute opposing Alexander Adamescu's Dutch holding company Nova Group Investments, B.V. v. Romania (Case No. ARB/16/19):

a. The Tribunal recommends, pursuant to Article 47 of the ICSID Convention, that Romania withdraw (or otherwise suspend operation of) the transmission of European Arrest Warrant Ref. 3576/2/2016 by the Romanian Ministry of Justice and associated request for extradition submitted to the Home Office of the United Kingdom on 6 June 2016, and refrain from reissuing or transmitting this or any other European Arrest Warrant or other request for extradition for Alexander Adamescu related to the subject matter of this arbitration until the Final Award in this case is rendered.

b. This recommendation is conditional on Mr. Adamescu's strict compliance with the undertakings and mechanisms outlined in Section VII.E.1 of this Decision, in order to maintain the status quo which prevents his departure from England, Scotland or Wales during the pendency of this arbitration, except as necessary to attend an arbitration hearing in Washington, D.C. As one of these conditions involves the continued sequestration of Mr. Adamescu's passport in the event it is relinquished by the UK authorities, the Tribunal requests the Parties to confer promptly about the potential custodian for the passport, as well as suggestions for appropriate terms and conditions, consistent with the general framework the Tribunal has outlined herein. The Tribunal requests the Parties to report back (jointly or separately) regarding such mechanisms within two weeks of the date of this Decision.

General recommendations concerning the EAW

Considering that not all EU countries have fair legal systems and the EAW is vulnerable to abuse;

Considering that the EAW's own authority is being undermined while innocent people can be imprisoned for months, have their reputations destroyed and their lives ruined;

Considering that the EAW is sometimes operating in a legal black hole;

Human Rights Without Frontiers recommends that the EU revise the functioning regulations so that:

- the EAW system can only be used for the most serious crimes;
- "wanted person" alerts can only be circulated throughout the EU with its stamp of approval after examination of possible abuses ;
- the EU member state requested to hand over a "wanted person" keeps some margin of appreciation in its decision-making process;
- victims of abuse can have access to redress mechanisms through a fair, open and impartial process.

Human Rights Without Frontiers recommends that the Council of Europe and the OSCE bring possible cases of abuse of the EAW to the attention of the EU.

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concerning Alexander Adamescu***

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