

TO THE PROSECUTORS' OFFICE OF THE
SUPREME COURT OF CASSATION AND OF JUSTICE
BUCHAREST, BD-L LIBERTATII, NR 14,SECTOR 5

MEMOIR

I, the undersigned **Dumitru Madalina**, Romanian citizen, resident in Romania, Constanta, 99Garii street, with a secondary residence in Bucharest, Mihail Sebastian St., no. 136, bl V90, entr.1, ap.20, district 5, daughter of Vasile and Tanta, I.D. serial no. KT 151797, issued by the Police Office from Eforie, on the September, 29 th, 2000,

On the basis of the provisions of Article 95, para. 1, from Law 317/2004 regarding the Supreme Council of Magistracy, formulate, lodge and sustain the following

MEMOIR FOR STARTING A DISCIPLINARY ACTION

AGAINST THE FOLLOWING PROSECUTORS:

1. GEORGE BALAN- General Prosecutor at the Prosecutors' Office of Bucharest Appeal Court;
2. ANTON GRIGORE CHABORSKI- Prosecutor at the Prosecutors' Office of Bucharest Appeal Court;
3. VIOREL CERBU- former prosecutor at the Prosecutors' Office of Bucharest Appeal Court;
4. ANDREEA NICA- Prosecutor at the Prosecutors' Office of Bucharest Appeal Court,

through which I require an internal investigation and, following your investigations, I ask you to decide:

1. A disciplinary action against the above-mentioned Prosecutors;
2. Disciplinary sanctions as required;
3. Their exclusion from magistracy and the civil responsibility of the sanctioned prosecutors.

I ground the present Memoir on the following facts:

Background

I was considered injured party in the Penal File no. 720/P/2003, of the Prosecutors' Office from Bucharest Appeal Court, by the above- mentioned Prosecutors.

I have been a party of this case even since March, 18th, 2004 when more than 300 gendarmes and 16 prosecutors entered by force in our houses. During the house search at our residence from Bucharest, 2 Vasile Grozavu St, district 5, I was awakened, and being barely dressed, I was physically and verbally aggressed by the gendarmes, and filmed by a camera operator from the Prosecutors' Office. Obviously, all the tapes shot during the search remained in the possession of the representatives of the Prosecutors' Office.

Both during the search and later on, during the prosecution in the File 720/P/ 2003, although I was supposed to be the so-called "victim" of the defendant Gregorian Bivolaru, I endured an unimaginable physical and psychical torture from the prosecutors, that would have been hard to endure probably even by an adult, so even more by a minor as I was at the time.

Thus :

- I had a gun pointed to my head by a gendarme for hours;
- I was practically dragged to the Prosecutors' Office where I was forced to give a statement that does not represent at all my own will.

For this I was threatened, blackmailed. I was not allowed to be legally assisted by any attorney, although I insistently asked for one, and not only once. I was not informed why I had to give the statement, about my capacity regarding these statements and about my rights.

My later complains regarding the hearing on March, 18th, 2004 were not taken into account and I have never been reheard again although I deliberately asked for it. I was forced to undergo a medical expertise, which I did not agree. For this I was physically and morally harassed and aggressed, I was put under big moral pressure that had a great traumatic effect on me. I was taken by force to another town, Constanta, where I was unwillingly placed at Iordache's (my sister an my brother in law) where I was practically confined, being continuously guarded and followed by policemen.

- I was not allowed to go to school; I was a student in Bucharest, in the 11th grade, at " Viilor" Economic Highschool.
- I fell into public contempt and disregard; my schoolmates, teachers, friends, family and relatives have repudiated, discredited and marginalized me.

All these were possible thanks to the actions of the Prosecutors in charge, who acted completely illegally and lacked any professional and ethical conduct as they handed over to the mass-media the evidence from the file no.720/P/2003: the video cassettes shot during the search, pictures of the undersigned, documents about my private, familial and school life (my school report, my registration form, etc).

The General Prosecutor of the Prosecutors' Office of the Bucharest Court of Appeal himself came in front of the cameras and declared in front of all the TVs that : " I am sure that mass-media will be more than interested " (!!!?) in the evidences that were given to it by his direct reports.

Regarding the above-mentioned facts, I consider that the prosecutors in charge with the file no. 720/P/2004 have committed serious disciplinary offences.

Disciplinary Offenses Committed

The deed of the prosecutors George Balan, Grigore Anton Chaborschi, Viorel Cerbu and Andreea Nica to hand over to TV channels and newspapers the video cassettes shot during the hous search on March, 18th, 2004 and part of the penal prosecution evidences having the undersigned as a subject, is a very serious disciplinary offense that disqualify these prosecutors and their status of magistrates.

Thus:

- a) They have handed over to the TVs and press the videocassettes shot by an operator who was given orders by the prosecutor Andreea Nicu during the search on March, 18th, 2004 in the location at 2 Vasile Grozavu St. All the audience could watch images with the undersigned scantily dressed and my face was not covered. Thus, these images have been shown on all TV channels tens of times during May-September 2004. They were shown at the news journal on TVR1 at prime time: 20:00; 22:00, 23:00. They were shown on "Observator" and PRO TV as well for many times, after being highly advertised. They were also shown on Prima TV and B1 TV.
- b) Prosecutors George Balan, Gr. Anton Chaborsky, Viorel Cerbu and Andreea Nica through their disciplinary offenses, have evidently proven that they were completely ignorant and careless regarding the need for protection and special care for youth. They proved to be totally uninterested in the values and democratic ideals proclaimed by the United Nations Chart and the European Convention of Human Rights regarding the raise and education of the child. Thus, the above-mentioned prosecutors with an obvious nonchalance and infringing the principle of confidentiality handed over to the newspapermen and the TV reporters audio and video cassettes containing images with the undersigned, and also personal notes and handwritten texts, all taken during the search on march 18th 2004. Obviously, they have been broadcasted in an

obsessive manner on all news journals of the TV channels. This could be watched tens of times, being continuously advertised as “shocking” news and replayed during night editions. Thus, they were shown at the news at 17:00, 18:00, 19:00, 20:00, 22:00, 23:00 at TVR1, “Observator” from Antena 1, “Focus” from Prima TV, at OTV, at PRO TV, at National TV, and so on. Thus, all the Romanians could watch images with the undersigned that showed aspects of my private life, violating thus all the rights and freedoms provided by the national and international laws.

I felt deeply humiliated, insecure, with my intimacy violated, a victim of the prosecutors, journalists and TV reporters. Practically they were accomplices to the commission of the crimes provided for in and punished by the decisions of the National Council of Broadcasting that, among other things, obviously and imperatively state that *“the broadcasting of the images, pictures, interviews and statements of the infants who are (...) victims of crimes without their agreement is forbidden.”* Not only that this prosecutors let me to be devoured by the Romanian audience but it is also them who, instead of being good defenders of justice and obey their oaths and the Deontological Code, have violated all my rights and freedoms. I wonder, aren't these prosecutors parents? Don't they have grandsons? Have they thought at least for one second what a moral crime they had committed by the way they treated and exposed me? Have they tried at least for one second to put themselves in my place and imagine what they children or grandsons would have felt if they had lived all the events that this prosecutors made me go through?

- c) Have they thought of all these when they handed over to the journalists and TV reporters all the information regarding my school activity and life? Thus, as a consequence of the approaches made as prosecutors, they have got the data about the high school I was attending, about my school activity, my registration form, about my relations with my colleagues and teachers. Although all these data should have been considered as “ professional secret”, the above-mentioned magistrates, proving a lack of morality and professionalism that is hard to imagine, have handed it them over to mass-media.

Whose defenders were in fact these prosecutors because, as they prove to have nothing in common with defending the justice, the fundamental rights and freedoms of the citizens, the rights and interests of children! In the meanwhile, these prosecutors have practically contributed to my annihilation of my school, professional and social life through the decision they have taken while in service and which led to my moving by force to Constanta. It is because of them that I have stopped attending my high school courses and thus missing an entire school year. Have these prosecutors taken into consideration how I will be able to integrate in society? How will I be able to go back to school? How will my colleagues and teachers look at me? Have the prosecutors thought of the fact that practically I will never be treated like the others young people in Romania? Have they thought that through their deeds, they have denied all the chances that my child should have for his social, cultural,

educational and moral development? I wonder who are in fact the ones who truly infringed the law in this case?

Legal grounds

Given the above mentioned facts, please ascertain as absolutely obvious that prosecutors George Balan, Grigore Anton Chaborsky, Viorel Cerbu and Andreea Nica have blatantly and indubitably violated the law. Thus, from:

1. Law no. 92/1992 (republished) regarding the judicial organisation, in force at the time the infringements were committed, the following clauses:
 - art. 4 “ No one is above the law. Justice is the same for all persons, regardless of the race, nationality, origin, language, religion, sex, opinion, political adherence, wealth or social origin.”
 - Art. 27, para. I, “ The defense of the rights and interests of minors and persons placed under interdiction. ”
 - Art. 115: “ The magistrates can not offer written or oral assistance in debatable matters even if those cases are on the roll of others law courts and neither express publicly their opinion on the suits on the roll.”
 - Art. 117:” Magistrates must respect the working schedule, solve matters in the established intervals, keep the secret of the consultation of the judges and accomplish all their tasks according to the law and regulations.”
 - Art.118: ” The magistrates are obliged to abstain from any acts or deeds that could discredit their dignity in service or in society.”
 - Art.121: “magistrates are disciplinarily sanctioned for misbehaviours and for behaviours that damage the interest of the office or the prestige of the justice.”
 - Art.122, letters e, g and i provide that “the following deeds are considered misbehaviour:
 - e) non-observance of the secret of the consultation or of the confidentiality of the deeds with such a character;
 - g) the deeds that detract the honor or the professional probity/integrity;
 - a) repeated negligence in solving the matters.
 - Art.123:” the sanctions for misbehaviour that can be applied to magistrates according to the seriousness of their misbehaviour are:

- a) warning;
- b) pay cut of 15 % for 1 to 3 months;
- c) a disciplinary reassignment for a period of one to three months to a court or to a Prosecutor's Office placed on a same area as a Appeal Court or Prosecutor's Office;
- d) the dismissal from their function for maximum 6 months;
- e) the removal from magistracy.

Magistrates does not receive pay during their dismissal from function. This time is not added to the pension rights and to the security in the function of magistrate.

2. From prosecutors' Deontological Code of the adopted at the meeting on October 24th, 1996 of the Council of the Public Ministry, the following rules have not been observed:

- a) Prosecutors must respect the supremacy of the law.
- b) Prosecutors must defend the accomplishment of the judicial power, discouraging by their entire behaviour any interference in the judicial activity.
- c) Prosecutors must promote impartiality in all their activity.
- d) Prosecutors must defend the equality of citizens in front of the law.
- e) Prosecutors must defend the freedom of the persons involved in the judicial proceedings.
- f) Prosecutors must assure the exercise of the rights of defense of the persons involved in the judicial proceedings.
- g) Prosecutors must promote the quick reestablishment of the violated regulation.

3. There have also been violated the provisions of the Law no. 303/2004 on the status of the magistrates, Law no. 304/2004 for the judicial organization and the new Deontological Code of the magistrates. Thus:

- a) From Law no. 303/2004 : art.5, par.1; art.9, par.1 and 2; art.32, par.1; art.89; art.90, par.2; art.95, par.1; art.97 (b, e, g, j, m);

b) From the Deontological Code of the magistrates : art.11, par.2 and art. 18.

Evidence

In order to prove the above-mentioned deeds and in order to support the disciplinary action against the above-mentioned prosecutors please consider the following evidences: handwritten notes, audio-video materials, witnesses, hearings of the prosecutors and any other evidence that you will consider useful for solving the case fairly and fast.

As a conclusion I ask you to consider the present memoir and after the needed investigations to decide:

1. The start of a disciplinary actions against the above-mentioned prosecutors.
2. Disciplinary sanctions.
3. Their exclusion from magistracy and civil responsibility.

Respectfully,

Date

Signature