

TO THE ATTORNEY GENERAL

I, the undersigned DUMITRU MADALINA, with the chosen residence during the trial case in Bucharest, 136 Mihail Sebastian Str., bl. V 90, sc.1, ap. 20, district 5,

Being the victim of serious abuses of the prosecutors from the Prosecutor's Office of the Appeal Court of Bucharest, on 19.03.2004, I have filed two complaints describing the torture I have suffered for 14 hours during the house search on 18.03.2004 in Bucharest, district 5, 2 Vasile Grozavu Str, **complaints that were solved by the General Prosecutors' Office in an illegal way, through the Decision no. 977/VIII-I/2004, violating at the same time my free access to justice.**

I submit the following

PENAL COMPLAINT

Against the prosecutor **BALAN GEORGE**, for the offenses provided for and punished by the following articles of the Penal Code:

- art. 261¹ P.C.: prevention to participate at the trial
- art. 263, par. 2 P.C.: failure to refer the matter to the judicial authorities
- art. 246 P.C.: in service abuses against the interests of person
- art. 247 P.C.: in service abuse through the limitation of rights
- art. 248¹ P.C.: in service aggravated abuse
- art. 264 P.C.: protection given to the offender
- art. 289 P.C.: intellectual fraud, with application of art. 41 par 2 P.C.

In fact, these consist of the fact that, in his capacity of General Prosecutor of the Prosecutors' Office of Bucharest Appeal Court, after having received the complaints of the undersigned - a minor -, through the same illegal Decision,

- he omitted to attach at least copies of those complaints to the dossier no. 720/P/2003, thus preventing the inclusion of the stated facts in the material evidence and therefore the participation of the undersigned to the trial as a witness; the justification of the "decision": "*the facts stated in the complaints have no legal grounds, thus can not be considered as a proof.*"
- He omitted to refer immediately to the judicial authorities, according to the provisions of art. 29 (1) (f) of the Penal Procedure Code, the fact that offenses have been committed related to the institution he is responsible for.
- He abusively gave a wrong interpretation to the nature of the complaints, which proves at least that he does not know the law, by considering the complaints are made against the deeds of the prosecutor although the undersigned claimed "offenses" and not "deeds", and he abusively claimed he solved the complaints himself, although he had no material competence, invoking the legal grounds stated by the plaintiff, a 17 years old.
- He decided upon the complaints through the Decision no. 977/VIII-I/2004 on 29.03.2004, Decision made: a) without producing proofs, thus violating art. 202 of the Penal Procedure Code, which requests that *the prosecution authorities are bound to collect the evidence*

needed for finding the truth and b) without the justification purposely requested by art. 203 of the Penal Procedure Code regarding the obligation to state the legal grounds of the Decision.

- While abusively exercising his legal duties, he stated untrue facts and circumstances in the official Decision, and he purposely omitted to include certain facts and circumstances, as follows: a) he wrongly gives to the undersigned the capacity of a **witness**, although the penal investigation authorities officially considered me, even if against my will, as **injured party**; b) he justifies the prosecutor' s forcefully break into the searched building with false arguments related to the burning of other written documents during other searches, the ascertainment of video-chat activities (while the building had no internet connection), the existence of vulnerant means of resistance when the search took place (not written down in the search report).
- Reproaches to the undersigned the lateness of the claims of having been physically and psychically molested, saying that "*these exceptions should have been raised*" at the time the declarations were taken in order for them to be considered, contrary to the provisions of the penal law.
- Violating the provisions of Law 51/1995 regarding the organization and exercise of the profession of lawyer, Mr. George Balan states that there was no need to admit the undersigned request - a minor at that moment - to be assisted by a lawyer given the capacity of a witness. **It is very conclusive the fact that, when it comes to violating my legal rights by the penal authorities, the undersigned is considered to be a witness, while when it comes to use my declarations against Bivolaru Gregorian, they are considered to belong to an injured party.**
- Cynically, Mr. Balan considers as sufficient the food I was provided, consisting in some chocolate and a glass of water, during the 18 hours of retention while I suffered mistreatment.
- Through the measure taken, namely the dismissal as ungrounded of the undersigned's complaints, Mr. George Balan is as well guilty of favoring the criminals who committed the facts to be detailed below.

Statement of facts:

On March 18, 2004, during the house search at no. 2 Vasile Grozavu Str., district 5, Bucharest, the gendarmes troops accompanied by the prosecutor Nica Andreea identified the undersigned, the minor-plaintiff Dumitru Madalina, born in September 1986, a high-school student in the 11th grade. The prosecutors knew about my presence at the respective address from my phone conversations, intercepted under the pretext of crimes against national security.

During the violent descent at my domicile, I was filmed barely dressed, against my will, I was brutalized and threatened, being kept at gunpoint by masked men for more than 14 hours. During all this time I was completely and brutally prevented from contacting a member of my family or a lawyer.

The prosecutor that interrogated me after the psychological trauma that I suffered during the whole abusive search **forced me through blackmail and threat** to write down that Mr. Gregorian Bivolaru is my yoga **professor** and it would be best both for me and for Mr. Bivolaru to state that I have known him longer, before 2002, namely since the summer of 2001, fact which I told him to be false.

This approach of the investigating bodies was essential, since art. 198 of the Penal Code considers as an offense only the sexual act with a person under 15 years, or between 15 and 18 years if committed by a professor of the victim who took advantage of the victim's trust.

Afterwards, being pulled by the hair, threatened with battery and threatened not to be free again unless I sign the declaration the investigators needed, without a defender or anyone else to protect my rights, I took the threats seriously and I signed the respective declaration.

As a matter of fact, after more than 14 hours of abuses, during which for a certain time I was kept in my house face down on the floor at gunpoint, which 17-years old young woman would have refused to sign the declaration dictated by the investigators?

The undersigned's capacity in this case was dictated by judicial reasons of making up evidence.

The capacity in which I was interrogated was deliberately unclear. I was told to be a witness and therefore I need no lawyer, but at the end of the first declaration, taken while I was basically illegally retained, they added "*considering the above mentioned facts please take the necessary measure*", expression dictated by the investigator (which obviously a 17-years old would not be acquainted with), and which could confer to a declaration the nature of a complaint.

I state this since an injured party is a person who, prejudiced by certain criminal offenses committed against her/him, refers to the investigating bodies for justice to be made, requesting the investigation and legal measures to be taken against the defendant.

But, in the undersigned's case, I did not submit any complaint against Mr. Gregorian Bivolaru, on the contrary, I submitted later on a complaint against the investigators who abused me physically and psychically, who filmed me, took me by force to the Prosecutors' Office with a Police van, denied violently my right to legal assistance and forced me through blackmail and threat to give the declaration on 18.03.2004.

In the complaint answered by the General Prosecutor George Balan in his Decision, I specifically mentioned the fact that I was used by the investigators in order to incriminate Mr. Gregorian Bivolaru, and that the declarations obtained by force do not contain true facts. That complaint was obviously a penal complain against the investigating bodies that abused me physically and psychically, that broadcast the tapes filmed during the search, that took me by force to the Prosecutors' Office with a Police van, where they violently denied my right to get a lawyer and forced me to give untrue declarations.

The fact that I was a minor was ignored by the prosecutors, who should have ensured me a special treatment and full exercise of my civil rights, according to the internal and European legislation; but the same fact was infamously exploited in order to incriminate Mr. Gregorian Bivolaru.

When I filed the complaints, describing the terrible circumstances (policemen, masked gendarmes, threats and physical violence) under which the initial declaration was taken, I was denied the right to submit a new declaration by the investigating prosecutor himself. He did not want the truth to be found out and he sent me, basically in a state of retention, to the Forensic Medical Institute, for a gynecologic and anal expertise (!) against my will.

At the Forensic Medical Institute I was taken by the Special Intervention Police Forces from the arms of my fiance, Remus Lomos. Having been initially separated from my lawyer, after my repeated requests the lawyer was allowed to enter the building, where we were practically violently detained over 4 hours despite our repeated requests to be released.

Since I opposed the gynecological and anal examination, and I claimed in front of journalists from all TV stations and newspapers that I had no sexual intercourse with Gregorian Bivolaru, statement that destroyed the weak Machiavellian set-up of the prosecutors, as of that moment the investigating

prosecutor started to put into practice his initial threats, **that I will be aggressed and I will not be free any more.**

The aggressions and the deprivations of liberty became a cruel reality as of that moment. After 4 hours of illegal retention we were taken by force, both myself and my lawyer, into a Police van. Afterwards I was separated also from my lawyer, brutalized, taken by force by masked members of Special Intervention Police Forces, who falsely told my lawyer that “*Madalina’s family has come to take her*”.

Later on, on Friday 23 of April 2004, the authorities announces that the undersigned, taking advantage of a moment of distraction of the guards (!) I ran away from home and consequently I am pursued through the country and confined to the border!!! This is a world wide premiere: in Romania, an alleged “injured party” is nationally pursued and confined to the border.

I specify hereafter the facts that Mr. George Balan should have considered and taken proper action following the complaints I submitted:

I) The following provisions of the European legislation have been violated:

- 1) RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE, HOME AND CORRESPONDENCE – art. 8 from the European Convention for the Protection of Human Rights and Fundamental Freedoms (called hereafter the Convention)
- 2) RIGHT TO LIBERTY AND SECURITY AND RIGHT TO A FAIR TRIAL – guaranteed both by art. 3 of the Penal Procedure Code and by art. 5 and 6 par. 3 from the Convention
- 3) FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION – art 9 from the Convention

II) The following articles from the Constitution of Romania have been violated:

- 1) Art 16 – EQUALITY OF RIGHTS
 - (2) *Citizens are equal before the law and public authorities, without any privilege or discrimination.*
- 2) Art. 21 – FREE ACCESS TO JUSTICE
 - (2) *Every person is entitled to bring cases before the courts for the defense of his legitimate rights, liberties and interests.*
 - (3) *The parties have the right to a fair trial and to a solution within a reasonable time.*

The prosecutors refused to take note of the revised declaration of the undersigned, declaration that stated the truth and modified the one obtained by force and terror by the prosecutors
- 3) Art. 22 – RIGHT TO LIFE, TO PHYSICAL AD MENTAL INTEGRITY
 - (2) *The right to life, as well as the right to physical and mental integrity of person are guaranteed.*
 - (3) *No one may be subjected to torture or to any kind of inhuman or degrading punishment or treatment.*
- 4) Art. 23 – PERSONAL FREEDOM
 - (2) *Individual freedom and security of person are inviolable.*

(3) *Search, detainment or arrest of a person shall be permitted only in the cases and under the procedure provided by law.*

5) Art. 24 – RIGHT TO DEFENSE

(2) *The right to defense is guaranteed.*

(3) *All throughout the trial, the parties shall have the right to be assisted by a lawyer of their own choosing or appointed «ex officio».*

On March 18, 2004, during the hearings that took place at the Prosecutors' Office, I repeatedly requested the assistance of a lawyer, which was denied to me, but I was heard in the presence of a psychologist who suggested to the prosecutor clever means to manipulate me, in order to make up an incriminating declaration.

The denial of the right to defense, purposely and premeditated, continued at the Forensic Medical Institute where I was again separated by force from my lawyer. Despite all her efforts, the lawyer was not allowed to contact me later on.

6) Art. 26 - PERSONAL AND FAMILY PRIVACY

(2) *The public authorities shall respect and protect the intimate, family and private life.*

(3) *Any natural person has the right to freely dispose of himself unless by this he causes an infringement upon the rights and freedoms of others, on public order or morals.*

The investigators coordinated in an abject way the exposure of very intimate and private aspects, in this respect they providing the mass media with:

- my full name and address
- excerpts from a notebook that they falsely sustained to be my diary
- excerpts from notes and letters found at my home
- photos and films with my face and my almost naked body

7) Art. 33 – ACCESS TO CULTURE

(2) *One's freedom to enhance his spirituality and to access the values of national and universal culture can not be restrained.*

8) Art. 49 – PROTECTION OF CHILDREN AND THE YOUTH

(1) *Children and the young shall enjoy special protection and assistance in the pursuit of their rights.*

(5) *The public authorities are bound to contribute to secure the conditions towards the free participation of young people in the political, social, economic, cultural and sporting life of the country.*

III) Most serious violations of the PENAL PROCEDURE CODE

1) Art. 3 – THE PRINCIPLE OF FINDING THE TRUTH

The fact that I was intimidated, pulled by the hair, threatened, and so a declaration was obtained by force to incriminate Mr. Bivolaru, shows that it was not the truth that mattered to the prosecutors, but the incrimination of an innocent man by all means, even at the cost of torturing a minor.

2) Art. 5 – GUARANTEE OF PERSONAL LIBERTIES

I was held for more than 14 hours on March 18, 2004, without any warrant in this respect. Moreover, I was retained again on April 1, 2004, and taken by force to Constanta on April 7, 2004, being sequestered by relatives in complicity with the authorities and the Prosecutors' Office, any contact with the outside world, even by phone, being forbidden.

3) Art 5¹ – RESPECT FOR HUMAN DIGNITY

The threats, the violence, the terror under which the investigation took place, the sequestration, the battery and the sexual harassment that I endured led to the serious injury, probably irremediable, of my dignity.

The prosecutors treated me like a dangerous criminal because I did not sustain anymore the declaration that I was forced to sign, declaration needed for the indictment of Mr. Gregorian Bivolaru. For this reason I was exposed to degrading treatments that affected badly my dignity.

Still the prosecutors made public, intentionally and irresponsibly, the most intimate aspects of my life, this lowness affecting badly again my dignity, particularly considering that the exposed person is a female minor.

My forceful sending, with a warrant, for a gynecologic and anal examination, against my will, represents an unqualifiable violation of the human dignity.

4) Art. 6 – RIGHT TO DEFENSE

During the hearings on March 28, 2004, I was not allowed the assistance of a lawyer, although this is COMPULSORY in the case of a minor, and later on, both myself and my lawyer were forbidden by the prosecutors to get in contact.

5) Art. 68 – PROHIBITION OF MEANS OF CONSTRAINT

In the light of the universally valid principle of truth finding, irrespective of the interests and emotional involvement of the investigators, the Romanian legislation prohibits the use of any means of constraint, as the use of such means is hurtful both for the person against they are used, and for the efficiency and credibility of the justice act.

The magistrates in charge with investigating the undersigned use a whole arsenal of means of constraint in order to reach their goal of incriminating Mr. Gregorian Bivolaru, as per the Machiavellian saying “THE END JUSTIFIES THE MEANS” of constraint. The investigators had no problem in intimidating me, humiliating me, pulling my hair, depriving me of liberty unlawfully, taking me away from my friends, spoiling me of my personal belongings, and exposing to the public the most intimate aspects of my life, in order to reach their goal of deceiving the justice and the public opinion.

6) Art. 105 par. 3 – THE HOUSE SEARCH

In order to traumatize me even more, the authorities diffused through mass-media images with myself barely dressed and UNDER GUNPOINT, afterwards made public excerpts of personal documents. The fact that the so-called “injured party”, barely dressed, is threatened with a gun, and the fact that those images were provided to mass-media shows the serious abuses of the authorities, who no matter their behaviour will not be held responsible.

IV) Violations of the PENAL CODE

1) Art 193 – THREATS

Consists of the way in which the undersigned, injured party, was threatened with a gun, which appears clearly even in the images broadcasted on TV, and of the other verbal threats that I undergone during the hearing and the investigation. Crime committed in continuous form.

2) Art. 196 – DISCLOSURE OF A PROFESSIONAL SECRET

Consists of disclosure with no right of the tapes recorded by the investigators during the house search, exposing me barely dressed, and the diffusion of excerpts from my correspondence and personal notebooks, aspects producing obvious and incalculable prejudices to the image, dignity and harmonious development of a minor.

3) Art. 246 – IN SERVICE ABUSES AGAINST THE INTERESTS OF PERSONS

Consist of the abusive manner in which the search on 18.03.2004 was conducted, the violation of several penal procedure provisions showing the purposely incorrect pursuance of the search, as well as the illegal interception of private phone conversations.

4) Art. 247 – IN SERVICE ABUSE THROUGH LIMITATIONS OF RIGHTS

Consist in prevention of contacting the lawyer both during the search and during the hearing. Also, later on, after April 1, 2004, the contact with my lawyer was strictly forbidden. At the same time the access to justice was violated, being prevented from participating to the trial, since my real declaration was not considered. I mention that all the limitations I suffered are due to my philosophical convictions, namely due to the fact that I practice yoga.

5) Art. 248¹ – IN SERVICE AGGRAVATED ABUSE

Consists of the very serious outcomes, irreversible, that led to the infringement of the inviolable rights of the human being, preventing my harmonious future evolution

6) Art. 250 – ABUSIVE BEHAVIOUR, connected to art. 267¹ – TORTURE

The outrageous way I was spoken to, the violence I endured during the search and the hearing on 18.03.2004, at the Forensic Medical Institute on 1.04.2004, and afterwards, the intense sufferings, both physical and psychical, the fact that I was treated like a criminal who needs to be punished, the pressure and intimidations cover all the material elements of this offense in a cumulative way. The offense was committed in continuous form.

7) Art. 266 par. 1 – ILLEGAL ARREST

Retained for the first time on 18.03.2004 for more than 14 hours, I was afterwards retained again for more than 4 hours at the Forensic Medical Institute on 1.04.2004, and later on taken by car to Constanta, by force and against my will, where after some time I was taken to my family. The offense was committed in continuous form.

According to the judicial practice – The Supreme Court, Penal Section, Military Judges, Decision 42/1973 – it was decided that ***“the confinement of a person without serious indications that he/she committed criminal offenses and without having an ordinance for confinement constitute a crime provided for and punished by art. 266 par. 1 of the Penal Code. It is not relevant that the person was not confined for more than 24 hours since the measure was taken without observing the legal provisions.”***

8) Art. 266 par. 3 – ABUSIVE INVESTIGATION

Consists in the cynical and degrading treatment that a defenseless minor endured through violence and threats in order to declare untrue facts leading to the incrimination of an innocent person.

The induction of the respective state of terror was pursued intentionally by the investigators starting with the house search, when for over 10 hours I was tortured and threatened specifically with the purpose of simplifying the mission of the investigator at the Prosecutors' Office. Therefore, by continuing to use the methods described as well as other violence, such as pulling my hair, the investigator made me give in and declare what he wanted. In order to ensure the full success of this action I was denied legal assistance, although I was a minor and I repeatedly requested this.

This acts of the investigating authorities disqualify irremediably those who committed them, showing how far the political obedience can go, as well as the complicity between part of the authorities and the mass-media, proving their incapacity to stand to the requirements of a modern justice by European standards.

In order to sustain this complaint I request the permission to bring as evidence audio and video tapes, documents and witnesses.

Considering the above, I request the prosecution of those guilty of the criminal offenses described, persons who should not consider themselves and act as if they were above the law.

February 23, 2005

Signature,

DUMITRU MADALINA