

To the President of the High Court of Cassation and Justice

Your Honor,

I, the undersigned, Tiberiu Barbacioru, lawyer, chosen defender of defendant Gregorian Bivolaru, legal assistance contract no.265993/17.08.2004, I formulate in the name of and for my client the following

REQUEST FOR REASSIGNMENT

Of the file no.4577/2004, currently on the roll of Bucharest Court – First Penal Section.

We also ask you to adjourn the trial of this cause on the basis of art.56 of the Penal Procedure Code.

JUSTIFICATION OF THE REQUEST:

The defendant Gregorian Bivolaru was sent to trial by the Prosecutors's Office of Bucharest Appeal Court for the crimes of sexual act with a minor, sexual perversion, sexual corruption and attempt of illegal crossing the border. In this respect the Bucharest Court, First Penal Section, was forwarded the file no. 4577/2004.

The measure of preventive detention during the prosecution was decided for the defendant, action not put into practice since the defendant could not be found.

Since the start of the penal proceedings and the decision of preventive detention of the defendant, the present matter "enjoyed" an excessive publicity, the law courts involved being all the time under the pressure of mass media, which pictured the defendant in a tendentious and unjust way, looking for the sensational instead of the truth. Therefore, Bucharest law courts had to rule upon the defendant's preventive detention under an unprecedented media "assault", which induced to the public opinion and to the magistrates the idea that Gregorian Bivolaru is an evil and immoral person and, most of all, guilty, before being condemned.

The legitimate reaction of the defendant Gregorian Bivolaru to this media "fury", orchestrated in an unacceptable way by the prosecution authorities (through biased declarations, by illegally providing the press with pieces of evidence etc), was to be concerned with his personal security, thus being represented throughout the trial by his lawyer, according to the article no.174 of Penal Procedure Code.

The objectivity of Bucharest courts, worsening progressively during the trial, has been completely destroyed during the court session on September 30th, 2004, when "by mere coincidence", and while important procedural and merit issues were debated in the court, the prosecuting authorities gave to the press the stunning piece of news that a judge from the Bucharest Court is, together with other MISA members, the protagonist of an adult movie broadcasted in Denmark.

The reaction of the press was disproportionate, as it has always been in this case, leading to **a huge scandal among the magistrates from the Bucharest Court** by tendentiously spreading the idea that both this lady judge and other Bucharest magistrates are yoga practitioners, MISA members, followers of guru Gregorian Bivolaru, etc.

In order to illustrate a small part of the media impact of this “revelation” that has been unlawfully made by **the authorities that should have ensured a climate of order, legality and trust in the state institutions**, we take the liberty to quote a few excerpts from the most important publications:

- ADEVĂRUL – “Bucharest Court judge – actress in a porno movie with MISA members”;
- EVENIMENTUL ZILEI – “Judge Lungu: porno star or victim?”
 - “Many judges practice yoga”
 - “Two inspectors of the Superior Council of the Magistrated went to the Bucharest Court in order to investigate the case”
- ZIUA – “The porno judge”
 - “The tape was part of the MISA dossier, at Bucharest Appeal Court”
 - “The prosecutors have sent a series of photographs”
- LIBERATATEA – “Judge turned out to be a MISA member”
 - “Bucharest Court magistrate – protagonist of a porno tape”
- ROMANIA LIBERA – “Bucharest Court judge – target of serious accusations”
 - **“The information has been launched within the Bivolaru case, whose trial was on the roll of Bucharest Court”**
- ZIARUL- “Judge from the Bucharest Court involved in pornography scandal”.
 - **The Prosecutor’s Office provided us with these photographs because the judge is a witness”.**

This is only a small part of the many articles on this subject published on the first page, and is dated 01.10.2004, the news being released on 30.09.2004 during the lawsuit, and being presented during the evening news journal, by all TV channels, without exception.

It is more than obvious that **the public opinion was inoculated with the idea that several magistrates from the Bucharest Court were MISA adherents and that as such, some of them have committed immoral acts.**

Due to the irresponsible approach of the authorities, **a collective suspicion was cast upon the magistrates from Bucharest Court, as to their belonging to the Association lead by Gregorian Bivolaru and, implicitly, a collective suspicion was created relative to the morality of some magistrates from the Bucharest Court and their involvement in the penal case of their spiritual leader.**

Naturally, *the reaction of the magistrates from the Bucharest Court can only be an emotional one to defend themselves against the accusations thrown upon the body of*

magistrates. In such case the objectivity of the judges, which are or will be involved in the lawsuit of Gregorian Bivolaru, is deeply affected, and any solution favorable to the defendant could be interpreted as an uncontestable proof of their adhesion to the MISA Association and at the same time as an attempt to rescue their spiritual leader.

This is why the defense considers, due to the aforementioned opinion trend, that *the magistrates from Bucharest Court will manifest the natural human tendency, but juridically unacceptable, to exculpate themselves of any accusations and suspicions, and to apply a severe sanction to the defendant Gregorian Bivolaru, "proving" this was that these suspicions are groundless.*

The connection between the case of the accused magistrate and the trial of the defendant Gregorian Bivolaru has already been inflicted into the public opinion, all media making a comparison between the disciplinary case of the magistrate and the pursuit of the penal trial. All publications describe the involvement of the heads of Bucharest Court as well as of the Bucharest Appeal Court in solving the issue, the newspapers even talking about the president of the Commercial Section of Bucharest Court, Ms. Corina Corbu, the president of the Bucharest Court, Maria Cuza, the president of the Bucharest Appeal Court, Dan Lupascu.

The arguments stated in this request lead to a unique conclusion, **that the penal trial in progress at the Bucharest Court and, generally, the activity of Bucharest Appeal Court regarding the defendant Gregorian Bivolaru cannot take place in conditions of objectivity and impartiality.**

The adjournment of the trial in the dossier whose reassignment is requested right upon the submission of the request, according to art. 56, par. 3, Penal Procedure Code, is justified by the fact that, under the pressure of the news broadcasted right during the trial, the instance has set a very short term of one week on October 7th, 2004, different from the term allowed by the terms register, term granted in the other cases during the same court session, and therefore there is the possibility that, before the resolution of the reassignment request, unjust measures be taken against the defendant.

EVIDENCE: We attach to the present request notes, articles from the Bucharest publications according to art. 56, par. 1 of Penal Procedure Code.

De jure, the request is based on the provisions of art. 55-60 of Penal Procedure Code.

We request that the procedural activities regarding the present request be undertaken at *Tiberius Barbacioru Lawyer's Office*, located in Bucharest, 16, Vlaicu Vodă street, bl. V-65, sc. 2, ap. 27, district 3, phone no. 0744380240.

Date

October 4th, 2004

Respectfully

defendant represented by lawyer