

**ADDENDUM TO THE REQUEST OF REASSIGNMENT SUBMITTED BY THE
DEFENDANT GREGORIAN BIVOLARU
NEW ELEMENTS**

After the submission of the relocating request in 04.10.2004 new elements appeared which confirmed the suspicion that the penal lawsuit against the defendant GREGORIAN BIVOLARU can't be ensured in proper conditions of objectivity and impartiality at the Bucharest Court of Law and generally speaking in the Appeal Court of Bucharest:

1. Following an intense press campaign and an administrative investigation made by the Superior Council of Magistrates, **Mrs. Judge Simona Lungu was forced to resign, certifying through this gesture the unacceptable pressure to which she was subjected, based on the grounds of judgment that she was strongly connected to the defendant GREGORIAN BIVOLARU and the Movement for Spiritual Integration in Absolute (MISA).**

Her resignation continues to confirm the idea inflicted by mass-media to the public opinion that the judge, as well as some other magistrates from Bucharest Law Court, is a MISA follower, and so they have committed immoral deeds. A natural reaction of the Court's magistrates would only be a strong emotional one of defending themselves against the accusations thrown upon the magistrates of Bucharest Court. This could be materialized, due to a natural human tendency, but unacceptable from a juridical point of view, into exculpating themselves of any suspicion by applying a very severe regime to the defendant, so that they will "prove" in this way the accusations were unfounded.

2. Following the same unjust press campaign regarding a magistrate of Bucharest Court, the **president of the Superior Council of Magistrates, who is at the same time the president of Bucharest Appeal Court, resigned under the burden of the accusations of having favored magistrate Simona Lungu and implicitly MISA, whose spiritual leader is defendant GREGORIAN BIVOLARU.**

The objectivity of the magistrates of Bucharest Court and of those of Bucharest Appeal Court (the court charged with solving the appeals against the judgments made by the Law Court of Bucharest) was and is seriously damaged after **involving the name of the president of Bucharest Appeal Court, Mr. Dan Lupascu, in the scandal regarding a female judge from Bucharest Court, creating in this way among the magistrates of the Law Court and the Court of Appeal of Bucharest the fear that they could be accused of having favored the defendant Gregorian Bivolaru if they wouldn't solve favorably the requests of the Prosecutor's Office in the dossier that regards defendant GREGORIAN BIVOLARU** since even the head of the Court of Appeal of Bucharest is suspected of biased behavior on this matter.

It's obvious that the **public opinion** regards the trial against the defendant GREGORIAN BIVOLARU as being judged in weird conditions, with biased magistrates having connections with, or the support of, the organization whose spiritual leader the defendant is, and so it was induced among the magistrates of the Law Court and the Court of Appeal the unacceptable tendency of confirming the accuses of the Prosecutor's Office, so that in their turn, to avoid any accuse of biased behavior in favor of the defendant.

3. The point of view of the defenders, at the origin of the present request to relocate, driven by the idea that the magistrates of the Law Court of Bucharest and of the Court of Appeal of Bucharest are subjected to mass-media pressure that affects the act of justice, was illustrated eloquently by **the following "errors" mixed in the administrative effort of the justice in GREGORIAN BIVOLARU's dossier:**

I. By the penal decision nr.1808 pronounced by the Court of Appeal of Bucharest - Penal Section II, the appeal declared by the defendant Gregorian Bivolaru against the conclusion of 19.08.2004 pronounced by the Law Court of Bucharest, Penal Section I, in the dossier no. 4577/2004, was rejected as unfounded.

Although in the grounds of judgment of the contested decision it is claimed that the defendant Gregorian Bivolaru was legally cited at his domicile, although he no longer inhabited there, the dispositions of art 177 of 4 Procedural Penal Code not being relevant, and consequently the subpoena through posting at the door of the Local Council of district 5 not being legal, yet the citation for the term of the appeal of 27.09.2004 was done through posting at the door of the Local Council of district 5 as decreed through the conclusion of 13.09.2004.

Consequently, *since the Court of Appeal decided through the disputed issue that it is illegal to cite the defendant Bivolaru Gregorian by posting at the door of the Local Council of District 5, and yet the citation of the defendant – recurrent for the term of appeal - was made through posting at the door of the Local Council of District 5, it is obvious that the **procedure of citation of the defendant Gregorian Bivolaru for the term at the Court of Appeal was not done according to the law (the clauses of the court from the decree), the chosen way of citation being in contradiction with the grounds of judgment of the Court of Appeal.***

Due to this inadmissible error, and given the unfavorable general opinion regarding the defendant Gregorian Bivolaru, inflicted into the magistrates of Bucharest Court of Appeal, we have been forced to file a dispute action for cancellation which was registered with the no. 3694/2004, dispute which was found as admissible, following the judging on its merits.

II The same suspicion regarding the objectivity of the magistrates of Bucharest Court of Law is confirmed by the **measures - extremely disputable -** and obviously influenced by the unfavorable climate existing in this court, made by **Bucharest Court in the dossier 4577/2004** as follows:

On page 2 of the decision from 07.10.2004, the defense lawyer argued that the procedure of citing his client was illegal, claiming citation through posting at the door of the Local Council. And this because all existing data shown the defendant no longer lived at the addresses where he was cited, being under general pursuit, and therefore the clauses of the art. 177 of Penal Procedure Code were relevant.

On the same page, deciding upon the legality of the citation, *the court considered the procedure legally accomplished by citation at the known addresses and through posting at the door of the Local Council of District 5 Bucharest. So there is a flagrant contradiction between the preambles of the decision, which included the solution regarding the illegality of the citation - raised by the defense - and the decision itself;*

By the decision of 30.09.2004 and also of 07.10.2004 it was decided the citation of the first 3 witnesses in the indictment, namely Dumitru Elena Cristina, Miclus Mihaela and Campeanu Ioana.

Examining the summary of the indictment one can notice on page 62 that the first 3 witnesses are Stamenkovska Radmila, Csipar Iarko and Biris Emil Cornel Doru, and even more, Dumitru Elena Cristina is not even mentioned in the summary of the indictment.

Also, in the indictment's section covering the means of evidence, other 3 names appear as the first 3 witnesses: Nicula Gabriela, Flesaru Claudiu Daniel, and Barjovanu Catalin Constantin, not the 3 "witnesses" mentioned in the decision.

In this strange situation when *the first 3 witnesses were cited without being mentioned in the indictment as having this capacity and in this order, and without the court having decided any change in the witness hearing, we consider that the provisions of art. 302 paragraph 2, and art. 321 paragraph 3, Penal Procedural Code were seriously violated,*

harming severely the defendant's right to defense by not discussing this unreasonable measure in the court.

On 30.09.2004 Dumitru Ionela Cristina was cited as witness and on 07.10.2004 the same person was heard as witness.

Regarding Dumitru Ionela Cristina, along with the reasons above, which show the illegality of the citation of "the first 3 witnesses", another unexpected issue was risen. Although she was not heard during the penal proceedings as a witness, she was not listed among the witnesses on page 41 of the indictment, or among the witnesses in the citation list on page 62-64, inexplicably she is cited as witness, while in fact she was a defendant throughout the whole penal proceedings. After the disjunction of the case she is investigated in the same quality in another dossier.

Consequently, noticing the illegal hearing of a possible defendant – a participant in a crime for which GREGORIAN BIVOLARU is prosecuted – as a witness, while this capacity was not stated either during the entire penal pursuit, or in the indictment, or during the judicial proceedings, we request, on the basis of art 64 paragraph 2 Penal Procedural Code, that the declaration of Dumitru Ionela Cristina is ignored as evidence illegally obtained.

Relevant to the totally inappropriate atmosphere within the Bucharest Law Court regarding the dossier GREGORIAN BIVOLARU was the fact that the hearing of this "witness" Dumitru Ionela Cristina was made under enormous pressure in the court. While there was no warrant to bring her to court, she was brought in the courtroom by special police forces, being permanently surrounded by armed policemen and by the prosecutor, in an unnecessary display of force (three special police vehicles, the life of this person has never been under threat). Moreover, although there was a petition of the incapacity to appear in front of the Court of the defendant Farkas Ferenc Szoltan, since he had a broken leg (fact proven by the medical certificate submitted), the Court, in contempt of the right to defense, and overlooking the legal opposition of the defenders, carried on illegally and hastily the hearing of this made-up witness, before verifying the legality of the objections of the defense, and prorogated the discussion of this aspect until after the witness hearing, fact which needs no further comment.

All these random examples regarding the practices of the Bucharest Law Court and the Bucharest Court of Appeal certify the fact that **the suspicion of lack of impartiality and of inequity of these Courts became a reality, and the proper pursuit of GREGORIAN BIVOLARU's trial became an illusion.** *Without questioning the professionalism of the magistrates of these two Courts, it is obvious that **the only possible explanation** of the series of **major procedural errors** is that the act of justice of these Courts is a distorted one, spoiled by the pressure of the mass-media on the magistrates of these Courts, pressure which was and is generated by the events that constituted the reason for the present request for reassignment.*

Consequently, **in order to guarantee a proper proceeding of the law suit against Mr. GREGORIAN BIVOLARU, and to ensure the respect of his rights, eliminating any doubt of the objectivity of the judging of the present dossier, we consider that it is vital to relocate the dossier to any Court in the country with similar status, which, by its neutral position to the "scandals" that shake the Magistrate Corps of Bucharest, can ensure a fair judgement.**

DATE 22.11.2004

DEFENDANT,
through Dan Apostol and Tiberius Barbacioru,
lawyers