



THE MOVEMENT FOR SPIRITUAL INTEGRATION IN ABSOLUTE **(M.I.S.A.)**

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ABUSES AGAINST MISA YOGA SCHOOL AND ITS SPIRITUAL MENTOR, GREGORIAN BIVOLARU

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1. What is MISA

The Movement for Spiritual Integration in the Absolute was created as a non-profit association in January 1990, immediately after the fall of communism in December 1989. The association has a socio-professional, philosophic, educational character, aiming to raise the spiritual level of people by promoting yoga theory and practice.

The spiritual mentor of the organization, Gregorian Bivolaru, was permanently watched by the State Security for his spiritual activities since 1971. During the communist times he was the target of several abusive searches and arrests, his books and notebooks were confiscated, he was imprisoned twice and put into a mental hospital where other opponents of the regime were “treated”, for no other crime than his spiritual beliefs. As a proof that his internment has only political and not medical grounds, he was released from the hospital a few days after the fall of the communism by a medical commission.

More details about the actions taken against him by the former *Securitate* (communist secret police) will be undoubtedly found in the archives containing personal files of all “*enemies of the state*”, archives that supposedly are now open to the public on a need to know basis, and that would most probably show that some of the old prosecutors charging Gregorian Bivolaru in the past with invented crimes are the ones prosecuting him now. Unfortunately the file of Mr. Bivolaru is not released,

although the Association for the Defense of Human Rights in Romania – Helsinki Committee has filed a request to access this information more 6 months ago, request which at that time was approved.

MISA runs yoga classes, as well as courses about naturist cures and eastern philosophies. We estimate that approximately 35,000 people have taken yoga classes with MISA, in Romania or in the 20 other countries in the world where MISA has branches. MISA yoga school is a member of International Yoga Federation and of European Yoga Alliance, and Mr. Bivolaru is an honorary member of World Yoga Council and European Yoga Council.

Since MISA foundation, the yoga school and its students have been assiduously monitored by the authorities, and in various cases they were **victims of persecutions, abuses and discriminations** because of their spiritual opinions and beliefs. As we will show below, these abuses and persecutions reached a peak with the events started in March 2004, which unfortunately continue to this date.

Following several press campaigns against MISA and its members and sympathizers, APADOR-CH (the Association for the Defense of Human Rights in Romania – Helsinki Committee) conducted independent investigations starting with 1996, and concluded in several reports that “*nothing in the activities of MISA members was in breach of the law or motivated a campaign against them.*”

Amnesty International has also reported as of 1996 human rights violations in the case of MISA yoga students, the most recent mention being in the country report for 2004.

Not only human rights organizations, but also individual persons took a position, in their capacity as EU officials, to express their concern about the legitimacy and legality of Romanian authorities’ actions against our yoga school, and about the respect for human rights in Romania.

2. Summary of the events that started in March 2004

After **10 years or surveillance** and phone interceptions, under the pretext of “threat to national security” (as admitted by the Secret Services themselves, which however could not prove the legality of all interceptions), the prosecutors started the prosecution *in rem* (i.e. authors unknown!!!), and on 18 March 2004 over 300 gendarmes, prosecutors, police and masked secret service agents raided simultaneously 16 buildings, private locations of yoga students, locations where tens of yoga practitioners lived in common and pursued their spiritual practice following the model of Indian *ashrams*. Doors and windows were smashed to pieces, although the buildings could have been entered peacefully. The people inside were brutalized, pushed to the ground, filmed barely dressed, threatened with guns – for hours in many cases, some of them handcuffed, although none opposed resistance. The search warrants were not presented to the locations’ owners, in one location the prosecutor didn’t even have a search warrant, no one was allowed to contact a lawyer, and there were no translators, although a few yoga students were foreigners. Even people passing by were stopped and interrogated.

After hours of terror almost 90 people were forcefully taken in police vans to the prosecutors’ office, where they were forced to **sign statements dictated by the prosecutors**, under physical and mental pressure, again without being allowed to contact any lawyer. All the statements were targeted at incriminating at all costs Gregorian Bivolaru and the activities of the yoga school. Although taken by force, the prosecutors claimed these persons were heard as witnesses, and therefore the presence of a lawyer was not needed, these being one of the justifications for rejecting the complaints the victims filed later on against the prosecutors.

Huge amounts of **personal belongings were confiscated** during the searches, some of them without being mentioned in the search reports, and the majority having no connection with the reasons stated in the warrant. 2 years later the owners got back only one third of them. The warrants mentioned “*computer data, data referring to users and to informational traffic*”, however the prosecutors seized several tons of various goods and documents: personal ID’s, official contracts, original car and house documents, accounting documents, money, jewelry, computers (with keyboards, monitors, mouse...), video recorders, photo and video cameras, clothes, watches, underwear, shoes, food even, thousands of books and magazines, video and audio tapes, even payphone cards, etc. Over 100 requests addressed to Prosecutors’ Office for restitution of the goods were denied, under the pretext that the goods “*may*

be connected to the cause”, although from the list of goods it is obvious most of them have nothing to do with computers and information technology, and at least for the official documents these could have been easily photocopied in 22 months.

The raids were filmed and broadcasted on TV for many days, without protecting the faces of people shown barely dressed. Later, personal belongings seized during searches (family pictures, personal agendas etc – abusively offered to journalists by prosecutors) were shown on TV, aiming to discredit the detainees and pretending that they were proof of crimes such as drug dealing, prostitution, guns possession, although no such accusation was ever made but on TV. No one was put on preventive arrest or detained following these raids – which raises serious question marks about the legitimacy of the huge display of force, however the lives of many yoga students became a nightmare, some of them lost their jobs, their social status, or even their families.

605 people (out of which 76% with university degrees) gave statements about the serious persecutions and discriminations they underwent following the raids and the media campaign, **for the only reason that they admitted having practiced yoga at MISA yoga school**. Many persons are mistreated at their work place (in two extreme cases people were fired from the Army and the Police, cases of Paul Ivanov and Lucian Gradinariu), a judge (Simona Lungu) was forced to resign following absurd charges of immorality and an aggressive press campaign that affected her image and credibility, many persons are rejected by their families, sometimes they are not even allowed to visit their children, neighbors are scratching their cars or proffering insults, children are marginalized at school if their parents are known yoga practitioners, and the examples could continue.

3. Breach of national and international legislation by Romanian authorities

During the abusive house searches and the events that followed, the authorities – namely the prosecutors, since they were in charge with the house searches, people hearing – manage to break a considerable amount of provisions of the national laws and international conventions.

11 magistrates committed against 108 persons **17 offenses** as provided for in the **Penal Code**: illegal deprivation of liberty; threat; disclosure of a professional secret; violation of domicile; theft; aggravated theft; robbery; destruction; in service abuse against the interests of persons; in service abuse through the limitation of rights; abusive behavior; perjury; attempt to coerce false testimony; illegal arrest and abusive investigation; bad treatment; association for the purpose of committing offenses; public incitement and excuse of offenses.

19 articles of the Penal Procedure Code were broken as well: principle of finding the truth; guarantee of person’s freedom; respect for human dignity; presumption of innocence; free access of the lawyers to hearings; prohibition of coercion for obtaining declarations; justification of reason for hearing; presentation of facts for whose clarification the persons are heard; witness hearing procedure and timing; prosecutors should identify themselves and present the search warrant; goods should have been seized in the presence of witnesses; prosecutors should have broken the doors only if the owners had refused to open them; only goods and document related to the search purpose should be seized; facts from personal life of the persons investigated should not be disclosed to public if not relevant to the case; bodily searches should be made only based on a warrant; goods and documents seized should be marked, labeled and sealed; goods that cannot be marked should be sealed in boxes; samples from substances seized for analysis should be left with the possessor; the search warrant should be detailed enough to allow identification of goods seized.

From the Romanian **Constitution 12 articles** were violated: equality of rights; free access to justice; right to life and security; individual liberty; right to defense; freedom of movement; protection of one’s private life; freedom of conscience; freedom of expression; right to education; freedom of association; protection of children and young people.

Also **15 articles of the European Convention of Human Rights** were violated: prohibition of torture; right to liberty and security; right to a fair trial; right to respect for private and family life;

freedom of thought, conscience and religion; freedom of expression; freedom of assembly and association; right to marry; right to an effective remedy; prohibition of discrimination; prohibition of abuse of rights; protection of property; right to education; freedom of movement; general prohibition of discrimination

Besides these, the provisions of various internal laws were also broken, such as the regulation of phone interception, the seizing of electronic means, etc.

Penal complaints against 11 prosecutors were filed by 55 victims of the raids. The complaints were abusively rejected in block, although no hearing of the victims took place, aspect imperatively requested by the penal procedure code.

4. Abusive actions against Gregorian Bivolaru; intoxication through mass media

Following the raids of March 2004, Gregorian Bivolaru was absurdly charged first with attempt to illegally cross the border (although he had no interdiction to leave the country, and eyewitnesses denounced that action as a set up), then with sexual act with a minor (although the minor, Madalina Dumitru, forced to sign an incriminating declaration after a 13-hour questioning at gunpoint, withdrew it the next day and lodged a complaint against the abusive conduct of the prosecutors). Put under arrest first on 30 March 2004, after a judicial ping-pong he was released by the Appeal Court (however illegally kept in custody by the police for 10 more hours!). A new warrant of arrest for sexual act with a minor was issued on his name on 31 May 2004. (It is worth mentioning that the alleged charge during communist times was pretty similar, namely pornography, showing a “continuity” in the prosecutors’ approach). Realizing he has no chance for a fair trial in Romania (considering also previous attempts on his life, which the police did not bother to investigate), in March 2005 Gregorian Bivolaru **applied for asylum** in Sweden. Early April the Romanian authorities requested his extradition.

Since the first file was inconsistent, the prosecutors manufactured meanwhile another file, bases on a more “serious” crime: persons trafficking and organized crime. They issued another arrest warrant against Mr. Bivolaru on 15 April 2004, targeting this time as well other MISA members and senior yoga students, and putting under sequester 70 (!) locations belonging to them. All these actions are solely based on declarations (not supported by hard evidence) of 8 ex-yoga practitioners, most of them excluded from the yoga courses for immoral behavior, persons who strangely “realized”, years later, when the prosecutors promised them material benefits, that they have all been exploited by their yoga teachers, and therefore claiming almost 8 million dollars (!) damages (in a country where the average income is around 150 euro/month). Needless to say neither the incriminated people were heard, nor the amount claimed was justified, but this represented no barrier to the prosecutors.

All this time, the public opinion has been constantly “intoxicated” by the authorities through mass media with films, photographs, documents presented tendentiously as incriminating MISA and Mr. Bivolaru, materials seized during the house searches and offered illegally to the media, none of them having in fact any connection with the alleged crimes. The public opinion was consistently misinformed, the media talking constantly about drugs, prostitution, organized crime, slavery, and all yoga students being considered “sectants”. The authorities by manipulating mass media **instigated** the public opinion to **hate and discrimination**, several prominent political or media figures directly contributing to this. The most desperate action is the 50 million lei (approx. 1400 euro) reward offered in February 2005 by two newspapers and advertised by four TV stations for several weeks. This is unprecedented in Romania, although hundreds of real criminals, judged and convicted, have been searched unsuccessfully by the Police. The aversion of the public opinion, induced via mass media, was afterwards used by the magistrates to justify the excessive measures taken against Mr. Bivolaru and other yoga students.

To summarize the situation of Mr. Bivolaru, **the first arrest warrant was issued at political order**, statement supported also by the transcripts of a discussion between the ex-prime minister and other

officials during the Social Democratic Party (PSD) meeting on 27 March, the very day before the border set-up - transcripts published by several newspapers, and representing for the public opinion a revelation about the true face of the previous political power. **The second warrant was needed as an “insurance”**, since the Romanian authorities must have realized the Swedish judiciary will soon figure out the truth about the first one.

Refusing to admit their mistakes, to apologize for the harm caused and to repair the damage, the prosecutors continue to harass innocent yoga practitioners, to intoxicate the public opinion through mass media, and to manufacture evidence and victims, with the obvious scope of **covering their previous abuses and mistakes** and finding at any costs someone to blame. **Otherwise it would be probably quite hard for the authorities to justify the amount of almost 2 million euros that have been spent – according to some sources, from the taxpayers’ money, within the past two years of “witch hunting”.**

In September 2004 the lawyers of Mr. Bivolaru filed an Application with the European Court for Human Rights, complaining against the 19 violations of 4 Articles of the European Convention that the authorities committed only while issuing the first warrant of arrest.

In November 2004 the High Court of Cassation and Justice admitted implicitly the **high media and political pressure** in this case, and approved the reassignment of Mr. Bivolaru’s file to Sibiu Court.

In October 2005 the Supreme Court of Sweden **denied the extradition requests**, considering that Mr. Bivolaru is persecuted in Romania for his spiritual beliefs, and that he cannot enjoy a fair trial. End December 2005 the Swedish Authority for Foreigners granted Mr. Bivolaru **permanent residence and refugee status**. These extremely serious signals have not been taken seriously by the Romanian authorities, so far there has been no investigation of the abuses and no one was found guilty.

5. A case of sequestration and psychiatric abuse

Among the terrible experiences that many yoga students underwent following the mass hysteria created by the authorities with the media support, one stands out. Dana Craescu, 20, a passionate of poetry, coming from a small Romanian town, was sequestered by her own family and forcefully kept in a psychiatric hospital and later at her family’s house for almost 9 months (January – October 2005), with no contact with outsiders, with the purpose of *“removing yoga of her mind”*. A similar event had happen in 2003, but after 3 days spent in the hospital the doctor released her considering she was the victim of an *“emotional abuse of her parents”*.

During the 8 weeks spent in the hospital in 2005, with the complicity of a local doctor, she was given extremely strong medication, normally used for schizophrenia, medication that affected her mind, her weight (she gained 15 kilos), her overall physical condition, including her capacity to procreate. The complaints made to authorities by her fiancée, friends, by herself to a local police officer, were ignored, and a prosecutor abusively approved the treatment inflicted upon Dana Craescu, allowing her family and her doctor to continue to abuse and mistreat her. She managed to escape in October 2005 by deceiving those who were watching her, and she came back to Bucharest where she married her fiancée.

She has started legal actions against the prosecutor who allowed the abuses to continue and refused to take actions against those who mistreated a young girl instead of protecting her.

6. Various intimidation attempts

High officials, magistrates, ministers, members of the parliament etc. took a stand and publicly accused MISA yoga school, Gregorian Bivolaru, yoga students, requesting drastic punishments, the shut down of the yoga school, completely ignoring the presumption of innocence and the lack of any serious evidence, thus **instigating the public opinion to hate and discrimination**. Moreover, a

“witch hunt” was started among the civil servants in order to identify the “dangerous” yogis, at the very request of the president of Civil Servants Federation, made through the biggest daily newspapers.

In April 2005, 70 buildings belonging to yoga teachers, yoga students, or the organization itself, were put under **sequester** following the request for material damages of 8 ex-yoga students claiming to have been exploited in the past, and the sequesters were decided without even hearing the incriminated persons or running an evaluation of the value of the locations.

Since March 2004, hundreds of yoga students (especially young women) throughout Romania were visited by police officers or invited to **hearings** by prosecutors, without being told in what capacity they are heard, and asked tendentious questions about their yoga practice and possible relationships with Gregorian Bivolaru. Many of them were suggested that if they gave up yoga practice the harassment would stop. Some of these so called “witnesses” were forcefully taken by the police from the street (ex. Erika Tusa), and tens of them were taken from the airport (ex. Alina Bichescu, Adelina Matei, Eleonora Cucos) or from the border, when returning from trips abroad.

In the case of two doctors (Cristian Boerescu, Otilia Craciun), yoga practitioners, their neighbors were questioned by authorities (but wearing plain clothes), who were insistently **urging the neighbors** to give incriminatory statements about the behavior of the doctors.

Over 20 companies belonging to yoga students were **repeatedly controlled** by the Financial Guard, both before and after the events of March 2004. The controls after March 2004 were heavily mediatized, inducing to the public the idea that any yoga practitioner with a private business is by default a criminal (ex. Costica Cojocar, Andrei Gamulea, Catalin Visterneanu). Some of these companies could not present the official documents requested, including fiscal reports, since they had been seized during the searches. Interestingly, most of the questions asked during these controls were about the yoga practice and MISA yoga school, and in some cases the owners were requested even **written statements about their relations with MISA and Gregorian Bivolaru** (ex. Elisabeta Ionescu), although none were connected in any way to the activity of the company. The activity of these companies was prejudiced not only by the confiscation of legal documents, or the fines they had to pay, but the owners lost during the searches the results of years of scientific researches, such as files with studies, pictures, descriptions and properties of hundreds of medicinal herbs, loss which affects the existence even of such companies (case of Andrei Gamulea). Even relatives of some yoga practitioners, who had no connection to yoga themselves, were visited by Financial Guard and other relevant controlling authorities, and asked questions about yoga, not about the activity of their own firm! Despite all these “efforts”, nothing illegal was ever found in the activity of all these firms.

The lawyers involved in Gregorian Bivolaru’s files were also the subject of **intimidation** measures or **discrediting** attempts in the media. Adina Solomon, the lawyer of the minor that the prosecutors claimed to have been abused by Gregorian Bivolaru – accusation that the minor denied, even in front of the Swedish Supreme Court – was brutalized by the gendarmes and prevented from contacting her client, and has got a medical certificate to prove the injuries suffered. Several other lawyers were cited as witnesses, case in which they are forced to give up defending their clients, due to incompatibility; two of them (Adina Solomon, Mihai Rapcea) have now criminal files under absurd charges, and letters have been sent to the Bar Association requesting their exclusion. In January 2006, after the decision of the Swedish authorities to grant Mr. Bivolaru the refugee status and permanent residence, a few newspapers implied that a lawyer cannot represent both the president of Romania and a suspect of several crimes who escaped the Romanian justice, trying therefore to determine a reputed lawyer (Dan Apostol) to drop this case.

The whole file about organized crime and persons trafficking was based on **intimidation and manipulation** of the so called injured parties. By promising material benefits (almost 8 million dollars that are now claimed by the “injured parties” as damages), the prosecutors determined 8 ex-yoga practitioners, out of the hundreds that throughout the years spent time in the locations known as *ashrams*, to file complaints for allegedly having been exploited years ago. The prosecutors are viciously turning into crimes usual practices that are common in all yoga communities throughout the world, all freely assumed by the yoga practitioners who chose to do so, practices that moreover do not generate any material benefit whatsoever to the yoga school or its leaders.

7. Latest manufactured accusations

On top of abusively charging Gregorian Bivolaru with absurd crimes, in their attempt to completely discredit and terminate the yoga school that he created, the authorities involved in the file concerning the alleged persons trafficking another 32 yoga teachers and yoga students, “chosen” from the old practitioners and the persons close to Gregorian Bivolaru.

All these 32 persons are in the range of 30-45 years, university graduates (doctors, engineers, teachers), with at least 10 years of practical yoga experience. Seven of them (Nicolae Catrina – MISA president, Claudiu Trandafir – MISA vice-president, Dan Bozaru, Angela Mayer, Camelia Rosu, Viorel Rosu, Carmen Enache) are old yoga practitioners that have been prosecuted or even imprisoned and tortured – together with Gregorian Bivolaru – also during the communist regime, who considered yoga practice as “dangerous”. Out of these 32, 17 persons are currently yoga teachers. The president and vice-president of MISA have as well lectured abroad on yoga subjects, and nine of the accused persons have written or translated yoga books or have published articles in specialized magazines.

By targeting these people, who are some of the most senior practitioners and the most qualified teachers, it is obvious that the prosecutors aim at the “decapitation” of the yoga school.

Despite all the efforts of the prosecutors, nothing illegal could be found in the activity of MISA yoga school, all the charges being supported only by questionable declarations and manufactured proofs. That is why the prosecutors periodically try their chances with new accusations, the most recent one, from January 2006, being that Gregorian Bivolaru and a few other yoga students have an anti-semitic attitude! The absurdity of such allegations could be easily proved by the big number of Israeli people attending the yoga courses, some of them having actually moved to Bucharest – where they were welcomed by their Romanian colleagues, they learnt Romanian, found jobs or pursue university studies, and all fell like home here. There were several TV interviews in which they expressed their appreciation for the quality of the yoga teachings and for the warmth and hospitality they found here. One of the Israeli persons living in Bucharest is also a correspondent to the biggest centrist Israeli daily newspaper (Maariv), where he regularly writes articles about yoga theory and practice. In fact, the only Israeli person who had anything to suffer during her stay to Romania is a young lady, Anna Weinstein, who was living in an *ashram* at the time of the brutal police raids, and therefore she endured with all the others the “treatment” of the masked troops supervised by an irresponsible prosecutor.

Considering all these, the ridiculousness of such charges should be obvious for the prosecutors as well if they would be really interested in finding the truth, and not in accusing innocent people at all cost.

8. Indifference of Romanian authorities

Since March 2004 we have used **all the possible legal means** to determine the Romanian authorities to stop the abuses, and furthermore to investigate those responsible for these illegal and discriminatory acts against thousands of peaceful yoga students.

Approximately **100 memorandums**, accompanied by declarations, images, statistics, were submitted to all institutions that have responsibilities in such situations: Prosecutors’ Office of Bucharest Appeal Court, General Prosecutor’s Office, Ministry of Justice, Ministry of Internal Affairs and Administration, Senate and Chamber of Deputies (both to individual members of the Parliament, and to Parliamentary commissions, such as Commission for Human Rights, for Justice, for National Defense etc), Presidency, Prime Minister, Superior Council of Magistracy, Romanian Secret Service. None of these institutions took any measure, or at least decided to start a proper investigation. In the great majority of the cases we didn’t even receive an official answer (although the authorities are bound by law to answer within 30 days to any petition), and in the few cases when we received replies the respective institutions declined their competence and redirected the memorandums to the Superior

Council of Magistracy or to the General Prosecutor's Office. The interesting part is that even these two institutions redirected the memorandums between themselves.

Over **100 street demonstrations** were also organized since March 2004, most of them taking place in front of the institutions mentioned above. Although audiences were requested every time, to allow the representatives of our school to expose the problems we have been facing, we were granted no more than 10-12 audiences in total, none of them leading to any concrete result. Only during the last month we have organized daily protests in front of the Superior Council of Magistracy, the only result being that they moved their internal meeting in other locations, not to be bothered by the noise.

Following the denial of extradition request and the asylum granted to Mr. Bivolaru by Sweden, two very strong signals that something is wrong with Mr. Bivolaru cases, the authorities realized they cannot simply hide any more, and the Minister of Justice demanded the Superior Council of Magistracy to run an investigation and identify the mistakes made and the persons responsible for them. **Although the first request of the Minister of Justice was made in November 2005, and the second early January 2006, the Superior Council of Magistracy still did not finalize the report and identify the responsible persons. What is absolutely incredible is that – according to leaks to the press – SCM considers that Mr. Bivolaru was granted asylum in Sweden not because of the abuses committed against him in his own country, but because the Minister of Justice failed to send the proper documentation to Swedish Supreme Court!!!**

What is inexplicable is that all the officials **seemed extremely surprised** by the Swedish authorities' decisions and their conclusion that Mr. Bivolaru cannot have a fair trial in Romania, although all Romanian institutions had all been informed about the abuses committed against MISA yoga school and clear evidence were included in the memorandums submitted to the authorities, memorandums that most probably were never read. By their indifference the authorities actually encouraged those committing the abuses against innocent people accused of terrible crimes, while in fact the real crimes and frauds committed by politicians or other influential people are not investigated for years.

Although at present the political forces in Romania seem to be working on establishing a new juridical system, that has at its core the interest of the justice and of the citizens, so far there has been no example of authorities' representatives being held responsible for the crimes during the Revolution of 1989, for the hundreds of victims of the miners' aggressions in 1990 and 1991, for the hundreds of persons whose rights of property were broken flagrantly and for which the European Court for Human Rights has given sentences against the Romanian Government. Therefore it becomes obvious that the system, even if it promotes nice theories and shares them with the EU partners, is not effective in enforcing these laws.

9. Major issues of the judiciary as reflected by MISA and Gregorian Bivolaru's cases

The events briefly described, unacceptable for any democratic state with a sound justice, are indications of several major issues of the current system:

- The authorities (and specifically the prosecutors) have a deep **disregard to the law** and the legal procedures. They conduct brutal house searches and investigations by breaking the legal procedure code and the human rights, ignore the tens of complaints lodged by the victims, refuse to conduct an internal investigation in order to check whether or not the abuses are real, do not even answer to the countless memorials and request for official audiences.
- The use of **violence, threats, blackmail, declarations obtained under pressure** is still common practice, together with other habits in the "good" communist tradition. The declaration taken from a minor, in the absence of her parents or a lawyer, after 13 hours of investigation at gunpoint, should be by default disregarded by any decent court, even if the minor would not have retracted this declaration herself the following day. Also, the declarations given by some so-called injured parties, strangely obtained by the prosecutors years after the events described took place, should be more carefully checked, especially when 8 such "victims" claim the fabulous amount of 8 million

dollars as damages. The respect for **property** is only a nice theory, fact proven as well by the big number of cases brought before the European Court for Human Rights regarding restitutions of properties confiscated by the old regime. Destroying individual property during house searches and seizing goods not related to the search warrant (among which money and identity documents) seems to be considered normal and to go unpunished.

- The professional secret as well as the right to one's own image are consistently broken by **disclosing**, through the mass media, facts and information that are evidence in the file, images taken without the agreement of the filmed persons, phone conversations illegally intercepted, with the purposes to discredit innocent people, and to **force the court** to give harsh sentences under the public opinion's pressure. As an example, this is how the decision of pre-trial incarceration was justified: *"The notorious reaction of the public (who took note of the serious crimes against a minor) has generated a certain public disorder that justifies the drastic measure against defendant Gregorian Bivolaru, without denying the presumption of innocence to which the defendant is entitled until a final sentence. The release of the defendant really disturbs the public order."*
- The **presumption of innocence** is an empty concept, the measures of deprivation of liberty – in the absence of any conviction or solid proof that the person is dangerous – are rather the rule than the exception. Representatives of authorities or opinion leaders (deputies, ministers, journalists) have no shame in publicly accusing people and expressing opinions as if they were already proven guilty. A former deputy requested in a session of the Chamber of Deputies in March 2004: *"I insistently ask the investigating authorities, especially the General Prosecutor of Romania, to issue urgently a warrant of arrest according to the legislation in force, and this to be prolonged by the judges, until evidence will be produced in order to arrest the bastard [Mr. Bivolaru]."*
- The **right to defense** is another nice theory but ignored whenever higher interests call for it. In the case of Mr. Bivolaru the judgment terms set very close to each other (even during the same day) prevented the lawyers from preparing a proper defense, especially considering the huge number of documents in the file, which also makes it difficult to believe that the court have the proper time to consider all the evidence and make the decisions accordingly. As an example, only on 29 March 2004, the customs officers from Nadlac border point decide the detention of Gregorian Bivolaru, the file is sent to Bucharest, the file from the Prosecutors' Office of Arad Appeal Court is connected to the file from the Prosecutors' Office of Bucharest Appeal Court, the start of penal proceedings is decided for 3 offenses (sexual act with a minor, sexual perversions, attempt to illegally cross the border), the proposal for pre-trial incarceration is drafted by the Prosecutors' Office of Bucharest Appeal Court, and the General Prosecutor of the Prosecutors' Office of Bucharest Appeal Court denies the complaint of the minor Madalina Dumitru against the abusive investigation. Another example, although the defenders of Mr. Bivolaru repeatedly requested to attend the criminal investigations in the file, in most cases these investigations were performed in the absence of the defenders.
- Alleged offenses and criminals are **manufactured** in order to divert the public's attention from the real problems of the Romanian society (corruption, poverty...), and from the real criminals - many of them hiding in high positions. The mediatization of Gregorian Bivolaru's case was used to cover up the case of Gabriel Bivolaru, ex-deputy of PSD (ruling party at that time), searched by the police during the same period for a bank fraud of approx. 60 mil euros (!), for which he was sentenced to only 5 years, while for example a poor man stealing a bread may get up to 2 years.
- **High political figures** are used to intervene and exercise control over all sectors of the public life, and especially the judiciary, fact broadly known but difficult to prove until recently, when the transcripts of the secret PSD meetings were published in several newspapers.

Based on our recent direct experience, and considering also countless recent examples that received extended media coverage throughout the past months, we found a few possible explanations for the crisis that the Romanian judiciary is facing:

- The prosecutors' abusive behavior and disregard towards the law is the result of **tens of years of almost absolute power**, when their direct subordination to the executive power turned the judges into pure decorative instruments. In addition, the investigation and prosecution of judges was and still is done by the prosecutors, the latter being therefore those who "pull the strings". The mentality of all prosecutors whose activity started back in the communist time is - most probably - irremediably influenced by this heavy legacy.
- The previous political power (PSD) achieved good results in **subordinating the judiciary** to themselves, by placing obedient people at the Superior Council of Magistracy, at the Constitutional Court (7 out of 9 judges being connected to PSD), even through direct appointment in many key positions (i.e. at the High Court of Cassation and Justice). Therefore the organization currently in place is **well designed to resist any change** and to serve the political interests of their former protectors, which they can do efficiently especially considering that meanwhile the legislation changes in line with European standards gave exactly to these people the "independence" from the current Government they dreamed of.

10. Conclusions and possible solutions

The steps already done in the direction of eradicating corruption of the judiciary are obviously not enough, legislation changes cannot be effective as long as the same people with the same **totalitarian mentalities** are leading all the relevant structures. A change of generations at the very top of the judiciary (Prosecutors' Offices, Superior Council of Magistracy, Law Courts) is needed and expected, justice will never prevail as long as 80% of the magistrates are "inherited" from the communist regime.

This change will not happen however without the EU pressure, the resistance of the old structures being already proven by the opposition to the reforms the new Ministry of Justice is trying to implement, and by the lack of any actions in obvious cases of corruption and traffic of influence at the highest levels.

Since Romanian citizens are discriminated, harassed and persecuted by the very institutions supposed to protect them, we have no choice but to ask for the **support of the international community**, of the democratic states, where the justice is fair and independent, and the fundamental rights and freedoms are sacred. Otherwise there is a high risk that the "original" concepts about justice, truth, respect for the law, will be successfully "exported" into the European Union with the accession of Romania.

Gabriela Ambarus

MISA Vice-president