



# Justice Romanian Style

**Corrupt, Politicised, Unreformed**

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Gary Cartwright - January 22nd 2018

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# Introduction

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It has often been said of the collapse of the Soviet Union that “when the wall fell, it fell west”. Nowhere was this geopolitical earthquake greeted with more joy than in the European Union: the failure of one political project would open doors for another, and Moscow’s former client states were greeted in Brussels with open arms. The same could be said of NATO, and of the individual western nations that were keen to restore relations with the east.

The EU appears reliant upon enlargement in order to maintain its political momentum, and as a result of this there has been widespread criticism that it will bring new members into the club at seemingly any cost.

In this paper we discuss the issue of the judicial and penal reforms that were required of Romania prior to accession but which have never in reality happened. As a result that the country is still blighted with a corrupt and partisan system which is largely the domain of an intelligence service that maintains the networks and practices of the Soviet era, as well as a corrupt judiciary, and prison conditions that defy comparison with those of any other developed nation in the 21st century.

We will present case studies, based on the available facts, that will serve to illustrate the politicised nature of the Romanian justice system. Whilst there is some evidence of an increase in the number of individuals involved in investigations lobbying to present their arguments, this paper is not pleading for any individual. It simply reports on a number of cases. Many cases are ongoing, and the studies chosen for commentary have been selected on the basis of ease of access to information.

We will also highlight the situation in Romanian prisons. During the writing of this paper news came in of a Romanian prisoner, suffering severe mental health issues and physical disabilities, who was extradited from the UK to Romania, and who died in custody on January 2nd 2018.

In 1995 Romania, which had been the first of the post-Soviet states to engage with the EU, formally submitted its application for membership, and the process of accession began.

As with any aspiring member state, Romania was obliged to meet required EU standards in a number of areas, particularly in judicial and penal reforms, areas that were highlighted as being of particular concern.

However, as the process developed, it became evident that little was changing. In 2004, with accession looming, concerns were being raised in the European Parliament, and the European Commission, with, as we will show, the European Court of Auditors in 2006 actually opposing the accession of both Bulgaria and Romania.

The problems raised in 2004 were still evident in both the Parliament and the Commission in 2006 as we will show from working documents from both institutions.

Accession, however, was to go ahead on January 1st 2007 for reasons of political expediency, and we will show that since that date the penal system has come under strong and continual criticism from the European Court of Human Rights, and more recently, the High Court of England and Wales.

# Passage through Parliament: high expectations, low returns

02

The author (rapporteur in EU parlance) for the European Parliament's report on the accession of Romania to the European Union (EP) was Pierre Moscovici, formerly French Minister for European Affairs, vice-president of the European Parliament, Minister for Finance and Economy, and currently European Commissioner for Economic and Financial Affairs, Taxation and Customs. The report passed through the EP under the auspices of the Committee on Foreign Affairs, on which Moscovici sat.

As the report passed through the EP's committees, and was debated during plenary sessions, it became apparent that amongst the many complex issues facing Romania one stood out: that of the state of Romania's justice system.

On December 3rd 2004 the report stated that "further efforts are needed, especially in the sphere of justice and home affairs with a view to combatting corruption and organised crime".<sup>1</sup>

The impartiality of the courts was also highlighted, as Moscovici expressed "disquiet at the Commission finding referring to official surveys which confirm that the executive continues to influence the outcome of judicial proceedings".

On April 12th 2005, the day before the EP voted on the accession of Romania, German MEP Markus Ferber stated "Am I supposed to call to mind what this House has said, year in and year out, in the progress reports, particularly with regard to the situation in Romania? I can find no evidence of progress having been made."

On November 27th 2006, a little over a month before Romania's accession, alongside Bulgaria, on January 1st 2007, the same concerns were still being raised.

Moscovici stressed that "the finalisation of the reform of the justice system and the fight against corruption are essential and should therefore be the focus of special attention from the Romanian authorities".<sup>2</sup>



This concern was echoed more strongly in an opinion given in the report by the EP's Committee on Civil Liberties, Justice and Home Affairs which stated that "despite the serious efforts undertaken by Romania in recent months to meet the EU accession criteria, progress in some areas has still not been completely satisfactory and urges Romania to take immediate steps to overcome the shortcomings; considers that the mere adoption of a legislative framework is insufficient".

Moscovici's vague reference in 2004 to "organised crime" was brought into sharper focus in 2006 by another opinion, this time from the Committee On Women's Rights And Gender Equality which expressed its "concern at the serious and continuing problem of violence against women, which is having major implications in terms of trafficking in women and their sexual exploitation inside and outside the country (800 000 victims annually, according to statistics produced by the Ministry of Justice and Home Affairs)".

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Some months previously, in May 2006, a European Commission staff working document raised further concerns over the legislative process in Romania: “legislation is still sent to parliament without an assessment of all implications or of the administrative capacity needed to enforce it. As regards the legislative process, the government has continued to have recourse to ‘emergency ordinances’ to pass law. Ninety such texts were adopted during the period between 30 September and 15 March. This strengthens the power of government to the detriment of the parliament and reduces the transparency of the law-making process.”<sup>3</sup>

The same document also highlighted an attempt to create an effective immunity for parliamentarians from investigation by Romania’s National Anti-Corruption Directorate (DNA). “In February 2006, the Senate tried to prevent DNA from investigating Members of Parliament. There have been attempts in Senate to change the nomination and revocation procedures for high level prosecutors. This would have undermined the accountability of the system and decreased the operational capacity of the DNA.”

The treatment of detainees was also highlighted: “There continue to be cases of ill treatment of detainees by law enforcement staff, including the excessive use of force. Judicial review of such complaints is rare and few procedures lead to any form of sanctions.”

In September 2016 The European Court of Auditors (ECA) revealed that it had initially opposed the accession of Romania and Bulgaria to the EU stating that the two countries needed more time to prepare. ECA member Istvan Szabolcs Fazakas consulted the then Commissioner for Enlargement Olli Rehn, who told him “sorry, it’s too late, my hands are tied, the political decision for Bulgaria and Romania to join by 1 January (2007) has been taken by the member states, upon recommendation by the European Commission”.

Against this background and despite Romania making little tangible progress beyond the cosmetic, accession went ahead, and on January 1st 2007 the country became a full member of the European Union.

# Corruption of Romania's security services

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Such reforms as have been undertaken in the light of Romania's ongoing commitment to continued reform in the post-accession period might be considered questionable, where the instruments of justice and security are concerned.

Concerns raised by Moscovici (similar concerns were also raised by Van Orden in the parallel reports on accession of Bulgaria) were never fully addressed by Bucharest.

Possibly aware of the fact that the EU institutions would show what might diplomatically be described as "sympathetic flexibility" in the interests of enlargement, efforts were stepped up in 2014 in order to portray the image of Romania as a post-Soviet country that was well on the path to full reform in accordance with EU values and norms.



In December 2004, lawyer and former prosecutor Monica Macovei, was appointed to the office of Minister of Justice in the cabinet of Prime Minister Călin Popescu-Tăriceanu.

Macovei's task was to create the image of judicial reform in the way that Brussels wished to see it.

During the early part of her tenure, no less than eight parliamentarians, two ministers, and nine judges and prosecutors were indicted, mostly from the opposition parties. Most significant of all was that of Adrian Năstase, the outgoing Social Democrat Prime Minister, who was eventually to find himself in jail for the misuse of public funds.



Năstase was a threat to Romania's ambitions, and therefore by extension also a threat to those of the EU. "I will be quite honest: if Mr Năstase's party had won the elections in December last year, then it would have been quite straightforward for my group. We would be voting 'no' tomorrow against Romania's accession", Dutch MEP Joost Lagendijk told the EP on April 12th 2005.

In the European Parliament's legislative process, support of the political groups, even a minor one such as Lagendijk's Greens is essential. Năstase's elimination from the political landscape would have had the effect of calming nerves in Brussels.

Macovei was to become very popular in Brussels, where she sits today as an MEP. Her methods, which included bypassing parliament to push through emergency ordinances allowing, for example, electronic surveillance of suspects without a warrant, were ignored, despite Moscovici's condemnation of the practice.

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In 2004, referring to the EP's request that Romania restrict the use of such an instrument, he observed that "in reality, reliance on this type of practice has not decreased; repeats its call for the Romanian Government to refrain from resorting to emergency ordinances and to employ ordinary legislative procedures; calls for a clearer and more explicit definition of what is meant by 'exceptional circumstances' in the context of emergency ordinances;"<sup>4</sup>

Two years later, in November 2006, just five weeks before accession, this position was reinforced in an opinion of The Committee on Civil Liberties, Justice, and Home Affairs which stated that "Emergency Ordinances should be limited to exceptional circumstances and replaced by laws in order to preserve the Parliament's legislative role", stated an opinion of The Committee on Civil Liberties, Justice, and Home Affairs in November 2006.<sup>5</sup>

Despite these concerns, expressed repeatedly over two years, Macovei's continued use of Emergency Ordinances, even after accession, was completely ignored, as was a recent statement by Justice Minister Raluca Pruna (March 2016) seemingly enshrining the instrument "Some clarifications are essential again for opinion makers: emergency ordinances are pieces of legislation that have the same power as laws..."

A little over three months after accession, on April 5th 2007, Macovei was removed from her job.

#### **The National Anti-corruption Directorate (DNA)**

is the Romanian agency tasked with preventing, investigating and prosecuting corruption-related offences (such as bribery, graft, patronage and embezzlement) that may cause a material damage to the Romanian state. The institution deals with the fight against serious corruption offences, which have caused damage greater than €200,000 if the object of the crime is property, or sums of money amounting to over €10,000.

The DNA was established in 2002 by the Emergency Ordinance no. 43/2002 of the Romanian Government, and is currently headed by Prosecutor General of

Romania Laura Codruța Kövesi, who was appointed to her position under somewhat controversial circumstances by Monica Macovei.

The Judicial Inspection, an institution in charge with investigating magistrate misconduct in Romania, has started a disciplinary action against the National Anticorruption Directorate's chief prosecutor Laura Codruta Kovesi and her deputy Marius Iacob.



The chief-anticorruption prosecutor is accused of three disciplinary misconduct offences that affected the honour, professional integrity and prestige of justice, according to Romanian press.<sup>11</sup>

Another accusation against Kovesi is that she knowingly assigned cases to a prosecutor who was in a conflict of interests.

#### **The Romanian Intelligence Service (SRI)**

is the country's main domestic intelligence service. Its remit is to gather information relevant to national security and hand it over to relevant institutions, such as the Romanian Government, the presidency and law enforcement departments and agencies. The service gathers intelligence by ways such as signals intelligence (SIGINT), open source intelligence (OSINT) and human intelligence (HUMINT).

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SRI was born of the Department of State Security - commonly known as Securitate - which operated until 1991 when its functions were taken over by several newly formed agencies, primarily SRI. This transition involved no process of lustration: infrastructure and personnel were simply transferred from one body to the other.

Securitate was one of the largest secret police forces in the Soviet Union, and by reputation one of the most brutal, responsible for the arrests, torture and deaths of thousands of people.

Like its predecessor, the SRI is also an unusually large organisation. Although exact figures are a state secret, in 2006 the newspaper *Adevărul* published an estimate of 12,000 agents.

This figure is double that of its French equivalent - France has three times the population of Romania - and considerably larger than that of Germany's secret services.

"Even here (in the European Parliament) we are careful what we say in front of other Romanians, as anybody may be an agent or an informer," one European Parliament official told the author of this report on condition of anonymity.<sup>6</sup>



The current Director of the SRI is Eduard Raul Hellvig, formerly Minister of Regional Development and Tourism in the cabinet of Victor Ponta, who became the first sitting Prime Minister to be indicted on corruption charges before being forced to resign in November 2015.

The SRI is widely alleged to have undue influence over both the DNA and the judiciary. It acts in such a way that it initiates investigations on behalf of the DNA, and carries out telephone intercepts on their behalf. Phone tapping without a warrant became illegal in post-Soviet Romania, but the practice was revived for anti-corruption investigations under Monica Macovei. According to the DNA, SRI carries out as many as 20,000 tapings a year.

In February 2016, Romania's Constitutional Court declared the use of SRI phone-tapping evidence by the DNA to be unconstitutional, even with a warrant. The Government issued an emergency ordinance a month later allowing SRI phone-tapping for the DNA to continue despite the fact that the Romanian constitution states that laws concerning rights and freedoms cannot be changed by decree.

Prime Minister Dacian Cioloș (Nov 2015-Jan 2017) stated that the SRI's remit is limited to that of a criminal prosecution body for cases that concern national security and terrorism, exclusively under judicial control: "SRI cannot be a criminal prosecution body except in cases that concern national security and terrorism (in line with the SRI law) and only exclusively under judicial control, in the presence of a prosecutor. Anything else is groundless interpretation," he wrote on social media.

Against this backdrop of complicity between law enforcement agencies, the DNA boasts a conviction rate of an astonishing 92%.

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## Ongoing Romanian parliamentary investigation into the SRI

The parliamentary committee, known as the SRI Control Commission, is chaired by Claudiu Manda. Mr Manda, a Senator from the Social Democratic Party (PSD) was voted into the leadership of the committee in a plenary meeting in September 2017. The committee has been busy in recent months conducting an investigation into the conduct of the SRI.

The need to take a closer look at the Romanian intelligence services has been evident since April 2015, when General Dumitru Dumbrava, the head of SRI's legal department, stated in an interview that the SRI would not "withdraw from the tactical field once the indictment was presented to the court" and that the SRI maintained its "interest/attention until the final resolution of every case is reached". He also stated the SRI was profiling judges to detect patterns of criminal behaviour, regardless of reported suspicion. Given that the SRI is prohibited by law to interfere with courts and prosecutions, these comments caused alarm, both inside and outside the country. This raised serious concerns about the independence of the whole Romanian judiciary as the SRI is prohibited by law to interfere with courts and prosecution. Fears were hardly allayed when, at the SRI's 25th anniversary, Eduard Hellvig, the current SRI Director, made matters worse, by explaining that magistrates had to be monitored "to avoid situations like in the past when the judges and prosecutors forgot on the road that they serve the Romanian State and had other preoccupations than to serve the Romanian State". The respected judge Dana Girbovan, president of the National Union of the Romanian Judges (UNJR), has been vocal on behalf of Romanian judges campaigning against the covert involvement of the SRI in the judiciary.

Former intelligence officer Daniel Dragomir also testified at the parliamentary commission. He presented them with a list of 65 people he believed should also testify, so that the commission could better understand what he calls "the parallel state", trying to control the state's

official power structures. The list included active and retired intelligence officers, politicians, as well as business people and journalists. Mr Dragomir also asserted that the National Anticorruption Directorate (DNA)'s indictments are actually drafted by SRI employees. He told the commission that DNA employees only sign the indictments and send them to court. Mr Dragomir has also faced charges and was acquitted on 21 December 2016.

Ovidiu Putura, former state secretary at the Ministry of Justice and the former head of security in that institution, testified to the parliamentary committee about the SRI's role in his own case. Mr Putura claimed that a High Court Judge took a break for tea, claiming he was not feeling well, just before deciding Mr Putura's case. Mr Putura asserted that during this break the judge met with a senior figure from the SRI.

Mr Manda and Mr Putura went on to discuss whether this SRI manager was in fact the same person who used the term "tactical field" to refer to the way the SRI sees the judiciary and prosecution process, meaning General Dumitru Dumbrava. Whether or not it was actually General Dumbrava, the parliamentary committee heard that a High Court judge in a very high profile case was taking instructions from the SRI regarding what the verdict should be. The parliamentary committee also heard that it is not only the judiciary that the SRI has sought to interfere with. Adrian Sarbu, the former head of CME Media International, testified and gave the committee several examples.

The first was that in 2010 the SRI was interested in controlling the leadership of Realitatea TV via Sebastian Ghita. Another was that people from the SRI leadership got involved with the Intact Group. The third was that former SRI Deputy Director Florian Coldea told Mr Sarbu he had a solution for Dan Voiculescu, before the court passed its sentence against Mr Voiculescu. Mr Sarbu also claimed that the SRI attempted to get involved in the editorial control of media institutions, via people close to the Service.

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He referred to an article in which former SRI Director George Maior allegedly confirmed that there are undercover officers in the media. When Dumitru Iliescu, the former head of SPP (Romanian's Protection and Guard Service) testified, Mr Manda reported that Mr Iliescu also referred to "the parallel state" and an attack on the fundamental institutions of the state. Mr Iliescu testified to the committee and later to journalists, that the SRI was involved in several files against politicians, including Catalin Voicu (PSD) and Dan Voiculescu, the former CCR judge Toni Rake and the labour minister Lia Olguța Vasilescu. Mr Iliescu commented that the common thread running through each of these cases was that those accused were deemed awkward for the SRI. In the case of Catalin Voicu, he said the SRI's Florian Coldea demanded Daniel Morar arrest Mr Voicu. When Mr Morar refused, Mr Coldea is said to have gone to the National Anticorruption Directorate (DNA)'s head Laura Kovesi to find a way to arrest Mr Voicu. Horia Georgescu, the former president of the ANI, testified to the committee about further overreach of the SRI. He said that in 2011 he had signed a protocol between the ANI and the SRI.

The SRI has denied the existence of such a protocol. He indicated to the committee that this protocol is in the ANI archives, in the classified section. Mr Manda said that the Committee is also examining protocols signed between the SRI and other institutions. The parliamentary committee has not yet concluded their investigation but they have already taken some votes. The committee voted 5-3 in favour of demoting General Dumbrava. They also voted 4-2 in favour of asking the SRI to declassify General Dumbrava's testimony to the committee, so that the public may hear it.

## Case studies



### Alina Bica

DNA head Laura Kövesi was herself to become involved in a controversial case involving Romania's former chief prosecutor for organised crime Alina Bica, who was arrested in November 2014 on charges including "abuse of power". The arrest of a prosecutor in Romania requires the permission of the Supreme Council of Magistrates, which in this case was initially refused. Kövesi intervened personally to have the arrest authorised.

Bica, pictured, was arrested in the glare of the media, and endured over eight months in jail before being brought to trial. Subsequently her husband was also arrested on charges of tax evasion. The charges came to nothing, and it transpired that the fiscal authorities had never filed any allegations against him.

Bica's lawyer, one Laura Vicol, was also arrested, she believes that this was because she had appeared on television on a number of occasions to defend her client.

It is widely suspected that Bica's arrest may owe something to the fact that in 2012 she had opened a case against Kövesi's brother, Sergiu Lascu, unaware of the family connection.

Concerns have also been expressed that the SRI had a hand in the prosecution, as they had found Bica to be uncooperative. She had refused to concede to their demands to order the arrests of specific persons at specific times. She reported that Lieutenant-General Florian Coldea, then head of Romanian intelligence services, told her: "You are not right for the position you are in. You should change, or you will not end well."



### Gabriel Popoviciu

At the time of writing, Romanian businessman Gabriel Popoviciu is living in London facing extradition to Romania having been sentenced to nine years imprisonment for "being an accomplice to abuse of position and active bribery in violation of Articles 248 and 255 in Article 26 of the Romanian Penal Code".

Popoviciu, pictured, had been involved in land development in the Baneasa area in the north of Bucharest. The DNA alleged that an agreement in 2000 between the accused and his co-defendant, Ioan Nicolae Alecu, led to land ownership being improperly transferred from the state to a private company in which Popoviciu had an interest. Also, it was alleged that he behaved in such a way that he was able to secure the land at an undervalued price.

The Romanian Public Prosecutor's Office had initially investigated the case in 2006, and closed the file in February 2008 without bringing charges. There are a number of concerns about why the DNA subsequently chose to re-open the case. These include the fact that a key witness in the case was George Becali, a former politician. Becali's testimony was unreliable, and showed signs of coaching. Credible witnesses, including a land registry judge and university officials, testified that the land transfer had been properly conducted. The DNA's valuation of the land - key to their case against Popoviciu - was shown to be significantly higher than all valuations provided by qualified professionals. DNA specialists have no certification to make such valuations. On October 8th 2002, the court issued a final and irrevocable decision that the land in question had never been under state ownership. Given that both transfer and price were

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correct, there was no basis for the DNA to reopen the case. The DNA claimed, in their evidence against Popoviciu, that he had been present at a meeting in Romania, when in fact it was shown that he had been in the USA on the day in question. The DNA alleged that the accused had made a loan of \$700,000 to the company IBTC when in fact it was shown that he had transparently made a loan of that amount to a different entity, Business Trading SRL. Finally, the Romanian Constitutional Court, eight days before Popoviciu's conviction made it clear that an individual must violate the law in order to "abuse his position". The co-accused Alecu, was convicted of violations of the University charter, and not the law. As such, he did not break the law, and therefore Popoviciu cannot have been an "accomplice" to a crime that never happened.

Along with two former police officers, Petru Daniel Pitcovici and Ilie Cornel Serban, Popoviciu was convicted of bribery of DNA Judicial Officer Ion Motoc. The allegation concerned gifts of alcohol

and promotional materials to Motoc, an alleged offer by Serban of employment with the General Directorate for Intelligence and Internal Security (GDIPI), and an alleged offer of support from Popoviciu in obtaining an unspecified job in the future. Again, there are concerns, including the fact that all contact with Popoviciu was instigated by Motoc himself. Serban, suspicious of Motoc's behaviour, reported his contacts with the official at the time to the Minister of the Interior. Motoc's testimony was largely based on supposition. Covert recordings made by Motoc during meetings with the accused contradict his own evidence. Motoc has admitted that Popoviciu never bribed him. There is no evidence to suggest that Popoviciu discussed a promotion or job for the official with anyone.

On March 1st 2016, the ECHR ruled that Popoviciu's eight and a half hour detention at NAP headquarters on March 24th 2009 meant that he was deprived of his liberty as defined by Article 5, para 1, of the Convention.



### **Dan Voiculescu**

Dan Voiculescu, businessman and former politician, was the founder of the highly successful group Intact Media. His business interests also include TV and radio stations, as well as newspapers.

He was the founder of the Romanian Humanist Party (now known as the Conservative party), and a Senator from 2004 to 2012. He was known for his opposition to President Basescu.

In April 2007 the DNA announced that it had launched an investigation into Voiculescu, his daughter, and a number of his business associates for money laundering, a charge he flatly denied, claiming that the action was politically motivated.

He was also accused of involvement in a scheme whereby a company he owned, Grivco, had bought energy from the state-owned Rovinari complex, which was then sold back to the state at an inflated price.

In 2009 Voiculescu was audited by Romania's National Agency for Fiscal Administration, which established that the charges against him had no basis. However, despite this, he was found guilty on both charges. In the Grivco case he was sentenced in September 2013 to five years in prison, and in August 2014 he received a ten year sentence for the money laundering charges.



### **Ioan Niculae**

Ioan Niculae is the owner of the Inter Agro Group, which became the largest agribusiness company in Romania with farms totalling 50,000 hectares, two vegetable oil plants, a network of grain silos, meat processing plants, and fertiliser plants.

In 2012, The Romanian National Tax Administration accused Niculae of defrauding the national budget due to accusations that his tobacco company, Galaxy Tobacco, had failed to pay its taxes, amounting to an excess of €120 million. Niculae fought the charges in Court and won.

In 2013, he found himself the target of negative press coverage after state prosecutors alleged that two Romanian politicians had given his company favourable gas discounts from 2006 to 2010.

On 2 April 2015 he was jailed for two-and-a-half years for "illegally financing" the Social Democratic Party (PSD) electoral campaign in 2009.

# Pre-trial detention and imprisonment in Romania: “inhumane and degrading”

# 05

“Despite reforms undertaken in 2014 with the entry into force of a new Criminal Code and Code of Criminal Procedure as well as new laws on probation and custodial and non-custodial sentences, pre-trial detention is still being applied significantly and the average pre-trial detention length is still well above the European average. In 2015, the Council of Europe’s anti-torture Committee (CPT) expressed its concerns regarding these issues.”<sup>9</sup>

Detention can often be seen as a part of the prosecution process itself, as an arrested suspect finds his or herself paraded in front of the media in scenes often reminiscent of Soviet-era show trials.

A tragic example of what a suspect can expect is that of Dan Adamescu, a wealthy Romanian businessman with interests in insurance, property and the independent Romania Libera newspaper.

The paper had fallen foul of the security establishment after its reporters had pieced together hundreds of secret files that the Securitate had dumped in a river. Former premier Victor Ponta also believed that Adamescu was a financial backer of one of his rivals.

Two weeks prior to Adamescu’s arrest, Ponta, appearing live on television, predicted the move. The suspect was handcuffed by masked security operatives, again live on TV, he was presented to the courts, refused bail, and details of the charges against him were revealed to the press before the trial even began.

Adamescu, 68, was sentenced to four years and four months in jail. He was held in a cell with eight others with excrement on the floor and with an exercise “yard” that was in effect another cell with a view of the sky. He had serious medical problems, but was not allowed the treatment he required abroad. At one point medication was withheld from him for over a month.

He died of septicaemia in custody on January 24th 2017.

113 prisoners died in Romanian prisons in 2015, 122 in 2014, according to the 2015 report of the National Administration of Penitentiaries (NAP).

The large majority of prison deaths (86,88%) are the result of disease and infections. Detainees mostly die from cardiovascular diseases and cancer (mainly lung cancer). Overcrowding means that medical care is insufficient and prison conditions are poor. Among the 113 deaths in 2015, two detainees died of HIV/AIDS, two men died following violent incidents, one inmate died following repeated self-harm and one died of tuberculosis.

A teenager died in pre-trial detention in Tichilesti on September 7th 2015, after being severely beaten by his cellmate. The incident was reported by the Helsinki Committee (APADOR-CH).

The second most common cause of death is suicide, which represent 9,73% of prison deaths. The suicide rate in detention is almost four times higher than the national suicide rate.

According to the the National Prison Administration, as at 21st November 2017, the total number of inmates in Romania’s prisons was 24,196.

The latest available figures (31st March 2017) show that 8.1% of Romania’s prison population is under pre-trial/remand detention. The number of prisoners detained in this category fluctuates on a daily basis, and so this should be seen as a snapshot of the situation on one particular day.

“(The EP) Congratulates Romania on aligning its legislation with the practice of the European Court of Human Rights regarding the prevention of ill-treatment at detention centres, but is alarmed by the continuing reports concerning cases of ill-treatment at police stations, prisons, and mental hospitals; calls on the



Romanian authorities to be vigilant in this area and to pursue those responsible for crimes against human dignity;” Moscovici (2004).

“it is also necessary to combat ill-treatment in custody and prisons, and rigorously monitor the application of the legal framework, including the new Criminal Code and new Criminal Procedure Code;” Mosovici (2006).

Gheorghe Florea, is a Romanian national who was detained from March 2002 until February 2005 in Botoşani Prison and in Târgu Ocna Prison Hospital. Suffering from an acute medical condition, Mr Florea complained about the conditions he was forced to endure. His complaints were not acted upon, and so he took recourse to the ECHR.

The ECHR, in its judgement of September 2010, noted that “The National Prisons Authority indicated that the applicant had been detained in cells ranging in size from approximately 21 sq. m – with nine beds – to approximately 55 sq. m – with 35 beds – and stated that no data were kept on the number of prisoners in each cell.”

The Court further noted that Mr Florea had been confined to his cell for 23 hours a day in deplorable hygiene conditions, with the same room being used for sleeping and eating.<sup>7</sup>

The Romanian Ministry of Justice acknowledged that the capacity of Botoşani Prison had been exceeded

Between this illustration of conditions in Romania’s prisons prior to EU accession in 2007, and despite pre-accession commitments given at the time, little appears to have changed.

As recently as April 25th 2017 the European Court of Human Rights (ECHR) condemned Romania’s prisons as “inhumane and degrading”.

Four Romanians, Daniel Arpad Rezmiveş, Marius Mavroian, Laviniu Moşmonea and Iosif Gazsi had complained to the court of overcrowding in cells, unhygienic sanitary conditions, poor food and the presence of rats and insects.

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The Court noted that the personal space allocated to each of the applicants during most of their detention had been less than 3 sq. m. This severe lack of living space over the course of several months appeared to have been exacerbated by other factors, such as: the lack of natural light, the very short duration of daily walks, the unhygienic toilets which were not always partitioned off, inadequate sanitary facilities and insufficient access to hot water, poor ventilation in the cells, the presence of mould in some of the cells, the presence of insects and rats, dilapidated mattresses, poor-quality food and bedbugs.

In addition, having regard to the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visits in 2010 and 2014 to certain prisons and police detention facilities, to the Committee of Ministers' assessment of the general measures adopted with a view to executing the Bragadireanu group of judgments, to the recommendations issued by the Romanian Ombudsman following investigations into complaints by prisoners and to the official statistical data concerning the Romanian prison population, the Court found that the applicants' allegations about the material conditions of their detention were credible.

Bucharest has yet to provide a concrete schedule for planned improvements. Indeed, previously in October 2016 Raluca Pruna, Romanian Minister of Justice (Nov 2015-Jan 2017), admitted to the

Romanian Superior Magistrates Council, to have lied to the European Court of Human Rights (ECHR) regarding the budgeting of almost a billion euros for the construction of seven new penitentiaries.

She stated that she felt compelled to lie on behalf of the government, fully knowing that while there were a lot of good intentions, nothing was allocated from the state budget for this specific purpose. Consequently, NGOs, political figures, political parties and public opinion in general have asked for the resignation of Minister Pruna from office.

Tragically, at the time of writing, it has been reported that following extradition from the UK, a 33 year old Romanian citizen died in hospital custody following incarceration at Rahove prison on January 2nd 2018. The man concerned suffered from acute learning difficulties and physical disabilities. He had been denied medical treatment and appropriate medication.<sup>8</sup>

Former Member of the European Parliament Nikki Sinclaire, who sat on both the Subcommittee on Human Rights and the Committee On Women's Rights And Gender Equality said "This tragic case again highlights the need for concern about the welfare of detainees, especially those who are vulnerable, and who are extradited back to Romania, given the poor track record of the treatment of prisoners there".

## As for reform?

**“The European Union state, ranked as one of the bloc’s most corrupt, joins its eastern European peers Hungary and Poland, where populist leaders are also trying to control the judiciary, defying EU concerns over the rule of law.”<sup>9</sup>**

Romania, as is the case with all EU member states, is obliged to implement EU Directive 343/2016 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.<sup>13</sup>

But the Romanian Parliament, under the mask of transposing the directive, has tried to pass other justice laws as well.

The time was right for them, but this was to generate political scandal and public protest. The Parliament proposed 50 laws as a package, where some might be welcomed it should be noted that this is a tried and tested way for the party that is in power to protect some of its own politicians, while improving the quality of justice.

However, at the time of writing it is too early to judge the laws, as some are likely to be declared unconstitutional and may be dropped. It is not possible to say at this time whether this could lead to the whole package being dropped.

The parlous state of Romania’s prisons has been acknowledged by English courts that have refused extradition of suspects on the basis of Article 3 of the European Convention on Human Rights which prohibits “inhuman or degrading treatment or punishment”.

London-based extradition specialists JFH Crime, referring to the 2017 cases of Greco and Baggarea<sup>14</sup> have stated “Challenges in this country have been brought mainly in relation to the amount of space that prisoners are held in. In previous cases, the Court has decided that the amount of space that a prisoner would normally have is not enough. However, the Romanian authorities have promised that people extradited from the UK would be held in better conditions, with more space. Evidence from

people later extradited has made it clear that this is not happening, and the Romanian authorities have accepted that there are problems.”

This opinion appears to confirm the opinion that Romania has, again, failed to act on its pre-accession promises.

Lydia Gall of Human Rights Watch, writing in the Financial Times (2012) highlighted the fact that situations such as that of Romania’s failure to act upon its obligations with regard to judicial and penal reform can be laid at the door of the EU Institutions themselves.

“Beyond barking, EU institutions rarely act. The Commission backed down over infringement proceedings when France deported Roma to Eastern Europe in 2010, and over Hungary’s media law in 2011. The European Parliament is riven by factionalism, with political groups appearing willing to support condemnation only when the abusive government is of the opposite stripe. And the Council seems reluctant even formally to discuss human rights abuse by member states, let alone speak out against them. If the EU is to stand up for the values it supposedly embodies, it should recognise that member states that breach the rules on rights need to be held to account.”<sup>10</sup>

Former MEP Nikki Sinclair said “The tunnel vision desire of the European Union for political unification regardless of the harm to its citizens is highlighted by its failure to heed the warnings of the 2006 Moscovici report. As a former member of the Women’s Rights And Gender Equality Committee and also the Human Rights Committee, I spent five years listening to EU politicians criticising other countries records whilst heralding the EU’s various charters. This situation shows that the EU can talk the talk but blindly stumbles the walk. The EU’s failure to hold Romania to its accession promises whilst millions of women have suffered abuse is indicative of how low the EU rates people below its desire for its own growth and well being.”

# Conclusions and recommendations

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## Whereas

- Romania has clearly failed to comply with its obligations, freely entered into, regarding Judicial reform prior to, and after, accession to the EU.
- Has failed to demonstrate a separation of powers between the executive, law enforcement agencies, and the judiciary.
- Has been heavily criticised for for the treatment of suspects before and during the arrest process.
- Has been the subject of negative judgements from the European Court of Human Rights (ECHR) due to conditions in its jails, and treatment of its prisoners.

## Recommends

- A moratorium on extradition to Romania of suspects until such time as the ECHR deems that the Romanian penal system fully meets EU standards.
- A reassessment at EU and member state level of official responses to European Arrest Warrants initiated in Romania.
- In the case of the UK, after withdrawal from the EU in March 2019, to consider carefully HMG's response to Interpol Red Notices issued at the behest of the Romanian government.

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