

TICK-TACK, HERE COMES THE ROLLER - *Lumea Justitiei* [World of Justice] requires SCM to find that the prosecutors Laura Kovesi and Augustin Lazar no longer meet the condition of a good reputation and can be dismissed from the Magistracy. We believe that the signatories of the protocols between the POHCCJ - SRI of 2009 and 2016, declared as illegal by the CCR, are incompatible with the quality of magistrate. We demand the suspension of Kovesi and Lazar, who have criminal files against them at the Department for the investigation of crimes within the Justice System (legal action)

The editorial board of *Lumea Justitiei* will soon submit to the Judicial Inspection and the Superior Council of Magistracy (SCM) a formal complaint by which **we demand the initiation of the necessary investigations to ascertain that the prosecutors Laura Kovesi and Augustin Lazar no longer meet the condition of a good reputation in order to continue to occupy the position of magistrate.** Especially since the two signed the secret protocols with the Romanian Intelligence Service (SRI) in 2009 and 2016, protocols which on the 16 of January 2019 were declared illegal by the Constitutional Court and which triggered a legal dispute between prosecutors and courts across the country, with very serious consequences on pending or already solved trials, likely to damage the prestige of Justice and citizens' trust in the act of justice.

"COMPLAINT

By which we request the finding that the condition of a good reputation is no longer met and the issuing of a decree for the release from duty of the following prosecutors:

- **AUGUSTIN LAZAR**, Prosecutor General of Romania;
- **LAURA KOVESI**, Prosecutor of the Prosecutor's Office, attached to the Court, delegate to the POHCCJ.

¹ <https://www.luju.ro/institutii/csm/tic-tac-vine-tavalugul-lumea-justitiei-cere-csm-sa-constate-ca-procurorii-laura-kovesi-si-augustin-lazar-nu-mai-indeplinesc-conditia-de-buna-reputatie-si-pot-fi-destituiti-din-magistratura-consideram-ca-semnatarii-protocoalelor-piccj-sri-din-2009-si-2016->

Pleas in law:

According to art. 12 of Law 303/2004:

"The admission to magistracy of judges and prosecutors is done by contest, based on professional competence, skills and **good reputation**."

According to article 76 of Law 317/2004:

"(1) The verification of the complaints on the good reputation of the judges and prosecutors in office is done by the Judicial Inspection, ex officio or **on the request of any interested person**.

(2) The inspection report drafted following the verification on the good reputation are notified to the magistrate concerned by the complaint and to the person who filed the complaint, within 15 days after the drafting, with view to the formulation of objections.

(3) The inspection report mentioned under par. (2), together with the expressed objections, shall be forwarded to the corresponding section of the Superior Council of Magistracy. Based on the report and on the expressed objections, **the corresponding division adopts a decision on the findings of fulfilment or non-fulfilment of the magistrate of the good reputation condition** or, if it considers that the objections are justified, it orders, in writing and with good justification, the report to be referred back to complete the verifications, with express indication of the issues to be completed. The decision which finds the non-fulfilment of the condition of good reputation also includes a proposal to release from function, pursuant to art. 65 para. (1) letter i) of Law no. 303/2004, republished, including subsequent amendments and additions.

(4) **During the procedure of verification and establishment of the fulfilment of the condition of good reputation, the corresponding division of the Superior Council of Magistracy can, ex officio or at the suggestion of judicial inspectors, order the suspension of the magistrate, until the completion of the procedure**, if the continued exertion of the function can influence the impartial verification procedures or if such procedures are likely to seriously damage the prestige of justice.

(5) **The decision of the section under paragraph (3) may be appealed at the Superior Council of Magistracy** within 15 days after the notification. The plenary decision can be appealed by contestation at the Department of contentious administrative matters of the High Court of Cassation and Justice, within the same period; the ruling of the court is final.

(6) **The final decision which finds the non-fulfilment of the condition of good reputation is communicated to the Presidency of Romania, for the issuance of the decree of removal from post.**"

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In fact,

We consider that the said Laura Codruta Kovesi - Prosecutor General of Romania between the 2nd of October 2006 – 2nd of October, 2012, currently prosecutor attached to the prosecutor office at the court, delegate to the POHCCJ, and Augustin Lazar, currently the Prosecutor General of Romania since the 28th of April 2016, do not meet the condition of good reputation in order to hold the office of magistrate anymore.

In our opinion, the two are perceived by the society as notorious liars, who have acted deliberately in order to enslave the judiciary system to the interests of the intelligence services, becoming their partners and, even worse, forcing all the prosecutors within the Public Ministry to cooperate with the information services in criminal cases, by signing secret protocols, classified as state secrets, which contained illegal provisions, contrary to the independence of the prosecutors, turning them into collaborators of the intelligence services and, in some cases, even subjected them to intelligence officers, forcing them to report on the carrying out of the received instructions and information.

The two aforesaid, by abdicating from the principle of independence of the prosecutor, secretly concluded protocols with the Romanian Intelligence Service, classified as state secrets, which contained abusive terms, which turned the justice into a tactical field, as follows:

1 - PROTOCOL OF COOPERATION between the POHCCJ and SRI for the fulfilling of tasks incumbent in matters of national security, signed in February 2009 between the General Prosecutor Laura Kovesi and the SRI Director George Cristian Maior and the first deputy of the SRI director, Florian Coldea (declassified in 2018);

2 - PROTOCOL on the organization of cooperation between SRI and POHCCJ for the fulfilling of the tasks incumbent under the law, signed in December 2016 between the Prosecutor General, Augustin Lazar, and the Director of SRI, Eduard Hellvig (declassified in 2018);

Both protocols were qualified as illegal by the Constitutional Court of Romania on the 16th of January 2019, the Court retaining that these documents caused a legal conflict of constitutional nature between prosecutors and courts across the country, possibly triggering by fault of the signatories of these protocols, a national process of verification of many thousands of criminal cases in progress, in order to determine the extent to which the law was broken by the illegal cooperation between prosecutors and the agents of SRI, a process which will involve the resumption of certain cases, huge cost in terms of time and money, and an unprecedented impairment of the prestige of justice and of the public confidence in the judiciary, all this by fault of the authors of these protocols.

According to the press release of the 16th January 2019, the Constitutional Court decided:

"1. It admitted the complaint and ascertained the existence of a legal dispute of constitutional nature between the Public Ministry – the Prosecutor's Office attached to the High Court of Cassation and Justice and the Parliament of Romania, on the one hand, and the High Court of Cassation and Justice and the other courts of law on the other hand, generated by the signing between the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service of the Protocol no. 00750 of the 4th of February 2009, as well as by the improper exertion of the parliamentary control over the activity of the Romanian Intelligence Service.

2. It admitted the complaint and ascertained the existence of a legal dispute of constitutional nature between the Public Ministry – the Prosecutor's Office attached to the High Court of Cassation and Justice and the Parliament of Romania, on the one hand, and the High Court of Cassation and Justice and the other courts of law on the other hand, generated by the signing between the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service of the Protocol no. 09472 of the 8th December 2016, only concerning the provisions of Art. 6 para. (1), Art. 7 (1) and Art. 9, and the improper exertion of the parliamentary control over the activity of the Romanian Intelligence Service.

3. The High Court of Cassation and Justice and other courts of law as well as the Public Ministry – the Prosecutor's Office attached to the High Court of Cassation and Justice and the subordinated units - will verify in the pending cases, to what extent there has been a violation of the provisions concerning the material and the personae competence of the criminal investigation body and will order the appropriate legal measures. **The decision is final and binding."**

In analysing the actual responsibilities of the said Laura Codruta Kovesi and Augustin Lazar - currently the object of dozens of criminal complaints filed with the POHCCJ in signing the respective protocols - you will have to take into consideration the grounds of the CCR decision from the 16th of January 2019, to be published shortly.

We consider that until the completion of the verifications of the good reputation by the Judicial Inspection it is necessary to suspend from office the said Laura Codruta Kovesi and Augustin Lazar, given that they occupy important positions at the top of the POHCCJ, and are the object of dozens of criminal complaints related to the signing of the two protocols declared unconstitutional in whole or in part by the Constitutional Court. The prestige of the prosecutor's offices as well as the confidence in the Public Ministry during the criminal investigations conducted by the Department for the investigation of crimes within the Justice System of the POHCCJ against the two can be seriously affected by keeping them in office, which is why we consider it necessary to urgently suspend from office the said Laura Codruta Kovesi and Augustin Lazar.

In this regard, we invoke the Decision no. 299 of the 11th of July 2012 of the Prosecutors' Section of the SCM, which on the grounds that the former vice-president of the SCM, George Balan, was being investigated by DNA at that time, ordered **"the suspension from office of Mr. Balan George, prosecutor at the Prosecutor's Office attached to the Court of Appeal, member of the SCM, pending the verification procedure of the good reputation"**.

In taking this temporary measure (we mention that in the end the former vice-president of the SCM was acquitted by a final ruling) the Prosecutors' Section of SCM argued: "Good reputation aims at the credibility and respect enjoyed by the prosecutor or judge within the team to which they belong, how they are appreciated at the level of management positions, as well as whether they were the object of verifications of disciplinary or criminal nature. Also, in the assessment of good reputation neither should we ignore the perception the objective observer, being necessary to analyse the subjective reflection of the magistrate's behaviour in the general consciousness (...) When we consider the person of the prosecutor, the prestige of the position is socially assigned to them by the acquisition of the status of magistrate. The prestige of the position may be affected by a behaviour that infringes the rules of conduct imposed by law and regulations or by any attitude contrary to the position. Thus, the dignity of the position is mirrored in the personal conduct of the prosecutors. This being so, the notion of good reputation as referred to in Law 3017/2014 includes a wide range of skills, which include those analysed, such as the duty of reserve, impartiality, professional and social dignity or the prestige of the position, respectively of Justice".

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Last but not least, in analysing the behaviour of the two, we should consider the numerous criminal, disciplinary and deontological investigations which concern/ed them, as well as:

- the public scandal of 2018 related to failure of said Laura Codruta Kovesi to appear before the Parliamentary Investigation Committee, in spite of two rulings of the CCR ordering her to appear;
- the ascertaining at the level of the Plenum of the SCM in 2018 of a breach of professional deontology by Augustin Lazar by a series of public statements inconsistent with his status;
- official revocation from the office of chief prosecutor of the DNA in 2018, of the said Laura Codruta Kovesi for disastrous managerial results;
- ongoing revocation procedure, targeting the prosecutor general Augustin Lazar;

And especially their notorious public lies, which caused the revolt and indignation of public opinion, as follows:

1 – the said Augustin Lazar allowed himself on the 18th of January 2017 to lie in the Plenum of the SCM and to the general public (the meeting was televised) that he had never agreed to the conclusion of the protocols SRI - POHCCJ, calling them "legal engineering" to which he would never have agreed, failing to admit that had just concluded in December 2016 a protocol with the SRI.

In the respective plenary session of the SCM, the said Lazar stated "It is true that there was a protocol that does not exist anymore. I think it's one of my failures, I did not state, I did not make a big deal out of it when I took office; I should have said: **'There isn't any protocol anymore to provide for joint committee or joint teams or something.'** There was a protocol which was about operational teams between the Public Ministry and intelligence services, but I always saw it this way: this protocol does not exist, I did not it assume it, we will not continue with such engineering, so to speak, because they are not provided by the Criminal Procedure Code, Good Lord ... We investigate, and you judge by the Criminal Procedure Code. There is nothing else to be called joint team or something.

Whoever opens the criminology course can easily see ... now, I will apologize, I am the author of a criminology course; the prosecutor is the one who coordinates a team made of officers of the judicial police. The officers of the judicial police are legally empowered to perform acts of pursuit that are valid and legally enforceable, they can be brought before the judge, evidence can be heard and means of evidence are taken to allow a solution in a case. The prosecutor is not a member of the team, the prosecutor is the coordinator, so it is written in the Criminal Procedure Code; he leads and coordinates the activity of the judicial police. He does not confront any of the members of the team of judicial police officers. The latter consists strictly of those officers. Whoever comes from the outside with a file under the arm to bring information to those who work on the case has nothing to tell to the judicial police officers, because he/she is not empowered to carry out criminal pursuit acts together with them; he can only talk to the person who runs and coordinates this activity.

One can talk about a team if we sit down at a table and they come with the file and show us the file on the investigation activity which indicate certain crimes, as any other institution. Any institution, any public servant, if they find out that a crime was committed, must inform the competent authorities. But they have nothing to do with it, and I'd say these things have been clear to me for a long time, I have been in the prosecution business for a long time, **the information officer can never come and manage my officers**, because I am the one telling them what to do, namely in in writing and with a justification, as provided by the Criminal Procedure Code, and **cannot direct me as a prosecutor, unless, God forbid, I am committing a crime. So I can imagine there was a joint commission, I do not know what and how, I'd like to know that too, but maybe the Judicial Inspection could find out about such a mixed commission that they conduct some investigation**, that someone else performed acts of pursuit outside the authorized officer and that someone else signed the

documents by which they issued order of criminal file proceedings, other than the prosecutor who was supposed to do it."

2 – **the said Laura Codruta Kovesi allowed herself on the 27th of January 2017**, - while the press and the Romanian society were concerned about the existence of secret protocols between the SRI - POHCCJ – to issue, as chief prosecutor of the DNA, a press release that reads as follows:

27th of January 2017

No. 106/VIII/3

DNA PRESS RELEASE

"Referring to a series of pieces of information circulated in the public area (information transmitted by press articles published in the period 25-27th January 2017 (in the daily newspaper "**Evenimentul Zilei**" - via the webpage www.evz.ro - and on the website www.flux24.ro) presented as revelations about the "fabrication or staging of criminal cases" or "criminal prosecutions made on order" by the DNA, at the initiative of and/or with the involvement of politicians and individuals from the leadership of the Romanian Intelligence Service, as well as about the use of methods exceeding the legal framework, in the exertion of their duties, by the chief prosecutor of the DNA, the Information and Public Relations Office is authorized to communicate the following:

Such information is untrue, offensive and absurd and are meant to discredit the work of the DNA prosecutors, being used as a ploy by persons interested in defending themselves in the public space and not before a court of law (...) the above-mentioned information are completely untrue: the chief prosecutor of the DNA did not participate to videoconferences organized by SRI, neither on a weekly basis nor occasionally, and has no special terminals installed in the office by which one can communicate instantly with the SRI.

There is and there was no cooperation protocol between SRI and DNA and there is no secret protocol Coldea / Kovesi.

There were no mixed SRI-Prosecutors teams or meetings between prosecutors and intelligence officers in safe houses.

Criminal cases are handled strictly by reference to the Criminal Code, the Criminal Procedure Code and Law 78/2000 (...)

Neither the Criminal Procedure Code nor any other special law applicable to the criminal prosecution of corruption offenses provide for the involvement of an intelligence service in the manner of obtaining of evidence in criminal cases. The evidence is submitted by the prosecutor and the officers of the judicial police under delegation from the prosecutor. **No information officer attended the hearing by the prosecutor or police officer of a witness**

or the submission of another means of evidence (...) Therefore, the transmission of such untrue information casts not only the DNA prosecutors under an unfavourable light, but creates doubts that are difficult to eliminate on the legality and fairness of the functioning of the entire judiciary system. In parallel, DNA has asked the Superior Council of Magistracy ... to perform investigations so as to see to what extent the independence of the judiciary and the prestige of magistrates are affected by the transmitted information. "

In 2018, the declassification of the POHCCJ - SRI protocol from 2009, contrary to the official statements, would prove that the respective DNA press release was a diversion, and the said Laura Codruta Kovesi signed a secret protocol with SRI, including with the SRI General Florian Coldea, that there were mixed teams and meetings between SRI Officers and prosecutors. The lie was even more unspeakable as that specific press release did not come as a consequence of a public information request from any journalist, but as a deliberate, premeditated action of Laura Kovesi, disturbed by the allegations of the press.

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Considering the above facts, please proceed to the suspension from office of the two during the verifications of the Judicial Inspection of the matters of good reputation; ascertain the non-fulfilment of the condition of good reputation; and order the issuing of a decision finding the non-fulfilment of the condition of good reputation, and its communication to the Presidency of Romania, in order for it to issue the decrees of release from office.