

<http://www.luju.ro/the-high-court-sold-its-independence-via-contract-all-trials-affected-by-the-protocol-of-2009-signed-by-the-romanian-intelligence-service-the-high-court-of-cassation-and-justice-and-the-prosecutor-s-office-of-the-high-court-of-cassation-and-justice-deny-c>



THE HIGH COURT SOLD ITS INDEPENDENCE VIA CONTRACT - All trials affected by the Protocol of 2009 – signed by the Romanian Intelligence Service, the High Court of Cassation and Justice, and the Prosecutor's Office of the High Court of Cassation and Justice – deny citizens their right at an independent tribunal which is stipulated in Art. 6 of the European Convention for Human Rights. When a trial isn't fair, it's in fact a mistrial! (The Protocol)

Scris de Razvan SAVALIUC | Data: 24.07.2018 15:06



The editorial office of *Lumea Justitiei* (www.luju.ro) is the first to publish the English version of the abusive Secret Protocol – labeled as “strictly classified” – signed during summer of 2009 by the **Romanian Intelligence Service (SRI)** represented by George Maior – currently the Ambassador of Romania in the USA), the **High Court of Cassation and Justice (ICCJ)** represented by judge Nicolae Popa – currently retired, he publicly denies the fact that the signature on this document is his), and the **Prosecutor's Office of the High Court of Cassation and Justice (PICCJ)** represented by Laura Codruta Kovesi – recently removed from office as Chief Prosecutor of the National Anticorruption Directorate due to catastrophic management).

We're publishing the document so that foreign officials can grasp the hidden truth of this protocol, which has severely damaged Romania's justice-related proceedings. The protocol hasn't once been mentioned in the monitoring reports of the European Union's Mechanism for Cooperation and Supervision.

Called “**Collaboration protocol for fulfilling tasks that pertain to national security**”, the illegal document generated a secret kind of justice between 2009 and 2018 (when it was declassified); the sort of justice which

citizens and people on trial had no idea about. The very idea of a contract establishing collaboration between an intelligence service and prosecutors/judges is strictly forbidden by Art. 7 of the 303/2004 law, which clearly states that magistrates cannot be in service or collaborate with intelligence services (not even in an undercover capacity) and such actions are punished by being removed from office. The secret contract called "**Cooperation Protocol**" is exactly that: a collaboration that is forbidden by law.

Also according to Romanian law, intelligence services can't contribute to arraignments or have any sort of activity pertaining to something other than national security. But according to what's stipulated in this protocol, it becomes clear that the SRI – ICCJ – PICCJ collaboration is expanded through Art. 2 and 3 of the protocol to cover actions of limiting basic human rights and freedoms through actions pertaining to fulfilling responsibilities that fall upon the signing parties according to laws that regulate their activity – so covering any transgression that must be addressed by the prosecutor's office. It's also clearly mentioned that there are ongoing strategies, actions, and joint programs in effect for the signing parties; also that there's mutual access to data and information given to any signing party based on a "need to know" basis (including access for the intelligence services to the content of penal case files).

The fact of the matter is that the protocol is highly illegal because according to the Constitution anything pertaining to Human Rights can only be regulated by laws emitted by the Romanian Parliament as sole legislative authority of the country; but also because the 303/2004 law forbids collaboration between magistrates and intelligence services, collaboration punishable by removal from office of the prosecutor or judge who commits such actions. In fact, according to Art. 7 of the 303/2004 law, it is mandatory for every magistrate to make a yearly statutory statement through which they certify the fact that they are not collaborators of intelligence services.

The veracity of these statutory statements is established by the **Supreme Council of National Defense**, which has never fulfilled this role. SRI's current director, Eduard Hellvig, admitted publicly on February 25 2016 – while giving a speech at a bilateral meeting of the **National Anticorruption Directorate (DNA)** – that there have been hundreds of DNA prosecutor / SRI officer mixed teams that have worked on cases including crimes of corruption, which do not pertain to national security.

Art. 6 of the European Convention for Human Rights (CEDO), in regard to the right to a fair trial, states that: "*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an **independent and impartial tribunal** established by law.*"

It's precisely this article, which Romania is obligated to follow, that the SRI-ICCJ-PICCJ protocol goes against; because when the judge is in contact with the prosecutor and intelligence services (which are forbidden by law to work on documents of arrangement), defendants have no chance at a fair and impartial trial by an independent tribunal since through the Protocol – which acts as a contract – judges are part of joint actions and strategies in penal cases along with the prosecutors and SRI officers, all of them being accomplices.

The lack of an independent tribunal turns into mistrial all trials presided by judges that have worked, based on the Protocol, with PICCJ and SRI, because they are in breach of Art. 6 of CEDO and similar national legislative norms. Who is going to take responsibility for signing this illegal protocol and for the massive consequences it will generate in the future regarding cases already closed or that are ongoing, which are in serious breach of Human Rights and have sent to jail many innocents?

Ever since spring of 2018 and up until now, dozens of citizens have lodged penal complaints at the PICCJ against those who signed this protocol and other similar ones (there is another one that is particularly grievous, also signed in 2009 by SRI and PICCJ). The case has yet to be resolved, becoming obvious that PICCJ itself, as party that signed the protocol, cannot be an objective and impartial prosecutor.

On June 24 2018, the editorial office of "Lumea Justitiei" has lodged a complaint with the Superior Council of Magistracy (the institution which guarantees the independence of justice), in which we requested they take note of the violation of the independence of justice through the protocols that SRI signed, and that measures would be taken in order to identify the magistrates that have worked in mixed protocol teams in order to remove them from office and revise the trials affected by these illegal collaborations. In its reply to our editorial office, CSM stated:

As a result of your complaint, registered at the Superior Council of Magistracy with the nr. 1/13251/25.06.2018, we inform you that it will be analyzed together with the research regarding the protocols with intelligence services/information-gathering structures.

We also inform you that during the April 4 and 19 2018 sessions, the Council has launched an ample process of clarifying the matter of how the protocols signed between SRI and institutions from the judicial system were applied."

Read the full content of the Protocol signed by SRI-ICCJ-PICCJ in the summer of 2009:

ROMANIA

ROMANIAN INTELLIGENCE SERVICE NO. 006045 of 21.08.2009 No. 7510 of 14.06.2018	PROSECUTOR'S OFFICE ATTACHED TO THE HIGH COURT OF CASSATION AND JUSTICE No. 006727 of 21.08.2009	HIGH COURT OF CASSATION AND JUSTICE No. 0044 of 02.09.2009
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COOPERATION PROTOCOL
between

the Romanian Intelligence Service,
the Prosecutor's Office attached to the High Court of Cassation and Justice and the High Court of Cassation and Justice for the fulfilment of the tasks incumbent on them in the field of national security

In accordance with the provisions of the:

- **Constitution of Romania**, republished;
- **Law no. 182 / 2002** on the protection of classified information, as subsequently amended and supplemented;
- **Government Decision No. 585/2002** approving the National Standards for the Protection of Classified Information in Romania, as subsequently amended and supplemented;
- **Law no. 51/1991** on the national security of Romania;
- **Law no. 535/2004** on the prevention and combating of terrorism;
- **Law no. 14/1992** on the organization and functioning of the Romanian Intelligence Service, as subsequently amended and supplemented;
- **Law no. 304/2004** on judicial organization, as subsequently amended and supplemented;
- **Law no. 508/2004** on the establishment, organization and functioning within the Public Ministry of the Directorate for the Investigation of Organized Crime and Terrorism Offenses, as subsequently amended and supplemented;

- **Law no. 455/2001** on electronic signature;
- **Government Decision no. 1259/2001** regarding the approval of the technical and methodological norms for the application of the Law no. 455/2001 on electronic signature,

Between the Romanian Intelligence Service (R.I.S.), the Prosecutor's Office attached to the High Court of Cassation and Justice (P.O.H.C.C.J.) and the High Court of Cassation and Justice (H.C.C.J.), hereinafter referred to as the Parties, the following Cooperation Protocol is concluded.

Chapter I. Principles and areas of cooperation

Article 1 - Cooperation between *the Parties* shall be carried out with the observance of the following principles:

- a. The principle of the rule of law, which enshrines the rule of law, the equality of all citizens before the law, respect for fundamental human rights and the separation of powers in the state;
- b. The principle of responsibility, which requires state authorities to be liable for the fulfillment of their duties;
- c. The principle of material competence requires the respect of each Party's legal attributions;
- d. The principle of coherence and continuity in cooperation, according to which the signatory parties must work together permanently and provide a unitary and flexible framework for achieving the objectives to be accomplished;
- e. The principle of intellectual property on the information subject to cooperation, according to which the information remains the property of the issuer, and their dissemination to third parties is possible only with the express consent of the issuer. Each Party shall ensure the protection of the classified information received, according to the classification level assigned by the issuer;
- f. The principle of periodic evaluation of the activities provided for in this Protocol - a basic condition for ensuring efficiency in achieving the common objectives.

Article 2 - *The Parties* shall cooperate, in accordance with the powers and duties prescribed by law, for:

- a. The accomplishment of measures aimed at authorizing the carrying out of information gathering activities by temporarily restraining the exercise of fundamental rights and freedoms, under the conditions of art. 53 of the Romanian Constitution, republished;

- b. The carrying out other activities in order to fulfill the responsibilities of the parties in accordance with the legal provisions governing their activity.

Chapter II. Objectives of cooperation

Article 3 - The objectives of the cooperation are:

- a. the creation of a secure and stable computer system, accredited by the Office of the National Registry of State Secret Information, necessary for the safe and maximal handling of information in electronic format circulated in order to fulfill the measures stipulated in art. 2;
- b. the insurance by R.I.S. and making available to the P.O.H.C.C.J. and the H.C.C.J., in accordance with the legal provisions, of the technical infrastructure of the system necessary to carry out the activities within the fields of cooperation;
- c. the granting free of charge, by R.I.S., of the assistance in the field of the protection of classified information held and used by the P.O.H.C.C.J. and the H.C.C.J. to prevent leakage of data and information of this nature transmitted through the computer system;
- d. the correlation of the activities of requesting, endorsing and approving the authorization of information gathering through measures involving the temporary restriction of the exercise of fundamental rights and freedoms, under the conditions of art. 53 of the Constitution of Romania, republished and ensuring the access of each party to the electronic archive, according to the "Need to know" principle;
- e. the making available - on the basis of reciprocity, within the limits of the competencies of *the Parties*, the information, data, documents and materials relevant and useful for the fulfillment of the specific tasks, as well as ensuring their protection, in the area of competence, according to the provisions of the official and internal normative acts in the field;
- f. the development and carrying out by the parties, in complementary areas, of common strategies, actions and programs.

Chapter III. Responsibilities of R.I.S.

Article 4 - (1) In cases where it finds the existence of threats to the national security or acts of terrorism provided by Law no. 535/2004, R.I.S. requests, under the law, the authorization to perform information gathering activities by temporarily restricting the exercise of fundamental rights and freedoms.

(2) The requests mentioned in paragraph 1) are signed by the head of U.M. 0198 Bucharest and will have attached (embedded) an extended electronic signature, based on a qualified digital certificate, in accordance with the provisions of Law no. 455/2001 on electronic signature.

Article 5 – It ensures, by certain designated persons, the functioning of the operating system and the applications installed in the system to the parameters necessary for the proper performance of the specific tasks of the parties.

Article 6 – It provides technical support to the representatives of the P.O.H.C.C.J. and the H.C.C.J. which ensures the security of the system at the level of the two institutions.

Article 7 - It provides the protection of proprietary classified information or received through the IT system.

Chapter IV. Responsibilities of P.O.H.C.C.J.

Article 8 - (1) In order to fulfill the duties provided by art. 21 and art. 22 of the Law no. 535 / 2004, at the request of R.I.S. regarding the authorization of certain information gathering activities by temporarily restricting the exercise of fundamental rights and freedoms, it requests the President of the High Court of Cassation and Justice to issue his mandate or, as the case may be, rejects the request by reasoned resolution.

(2) The documents referred to in paragraph 1), issued by P.O.H.C.C.J., shall be signed by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice and shall have attached (embedded) an extended electronic signature based on a qualified digital certificate, in accordance with the provisions of Law no. 455/2001 on electronic signature.

Article 9 – It ensures, through the specialized personnel specifically designated, the security of the system and the functioning of its components in the area of responsibility.

Article 10 - It provides the protection of proprietary classified information or received through the IT system.

Chapter V. Responsibilities of H.C.C.J.

Article 11 - (1) Pursuant to the provisions of art. 21 and art. 22 of the Law no. 535/2004, following the request of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, it orders, as the case may be, the issuance of the mandate by which it authorizes the performance of the proposed activities, or the rejection of the request, when it considers it to be unjustified.

(2) The interlocutory decisions and the mandate shall be signed by the judges especially designated by the President of the High Court of Cassation and Justice and shall have attached (embedded) an extended electronic signature, based on a qualified digital certificate, according to the provisions of Law no. 455/2001 on electronic signature.

Article 12 - It ensures, through the specialized personnel specifically designated, the security of the system and the functioning of its components in the area of responsibility.

Article 13 - It provides the protection of proprietary classified information or received through the IT system.

Chapter VI. Rules of cooperation

Article 14 - Cooperation shall be conducted in strict compliance with the powers and duties of the parties, as provided for by law and this Protocol.

Article 15 - In exceptional situations, for the exploitation of operative opportunities, the requests regarding the authorization of certain information gathering activities by temporarily restraining the exercise of fundamental rights and freedoms, in accordance with Art.53 of the Constitution of Romania, republished, may also be transmitted in physical form, through the specialized unit of the R.I.S. in the transport and distribution of official mail.

Chapter VII. Final provisions

Article 16 - The Parties' management may convene also on other fields of cooperation, with the observance of the provisions of this Protocol.

Article 17 – This Protocol may be modified with the Parties' consent, by addenda, which shall become an integral part thereof.

Article 18 - Within 7 days from the entry into force of the provisions of this Protocol, the management of the Parties shall designate representatives with concrete tasks in fulfilling the provisions of this Protocol, the coordinates of whom shall be communicated in writing.

Article 19 - This Cooperation Protocol has been concluded in three originals, one for each Party, and shall enter into force three days after the date of signature.

**DIRECTOR OF THE
ROMANIAN
INTELLIGENCE
OFFICE**

**George-Cristian
MAIOR**

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**PROSECUTOR GENERAL
OF THE PROSECUTOR'S
OFFICE ATTACHED TO
THE HIGH COURT OF
CASSATION AND JUSTICE**

Laura Codruta KOVESI

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**PRESIDENT OF THE
HIGH COURT OF
CASSATION AND
JUSTICE**

Nicolae POPA

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