

The European Arrest Warrant and Human Rights in Romania

HRWF (17.01.2017) - The European Arrest Warrant (EAW) is an important tool in combating serious cross-border crime. An efficient system of extradition within the European Union is needed, especially to fight terrorism successfully. However, functioning inter-state cooperation in judicial matters inside the EU must not be at the expense of basic principles of fairness and justice. Currently there are a number of flaws in the EAW system that need to be remedied if we want to avoid future cases of injustice and increased mistrust in the EAW. Such injustice and denunciation can be a result of a state failure to protect the basic rights of individuals when issuing EAWs. To ensure operational judicial cooperation, it is our responsibility as a collective group to be the watchdog for such cases that threaten this system. Regrettably, there are currently cases in which EAWs are being respected despite serious and well-founded human rights concerns. Such circumstances put the unifying judicial system in Europe at grave risk.

Romania is one of the countries that is problematic in this regard. The persistent lack of independence of the judiciary and the appalling detention conditions in Romania should be taken into consideration for the possible implementation of Recital 13 of the Preamble of the Framework Decision regulating the European judicial cooperation, which reads: **"No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."**

Apart from the mandatory and optional grounds for refusing to execute a warrant outlined in the EU Framework Decision (2002), many member states have enacted additional reasons related to human rights when refusing to respect a warrant, such as the risk of an unfair trial. That was the case a few years ago when Sweden refused to surrender a Romanian citizen to Bucharest. Now, it is the turn of the UK to take or not a similar decision concerning a Romanian request to extradite Alexander Adamescu, a German citizen living and working in London as a playwright. Concerns about fair trials and detention conditions in Romania are indeed based on solid facts.

Interference of the Romanian Intelligence Service in the judiciary

The interference in the work of the judiciary by some powerful external powers is a chronic disease that has expanded unabated over the years despite the resistance of some judges. One of the actors currently in the dock is the Romanian Intelligence Service (SRI).

Dana Girbovan, a judge at the Court of Appeal in Cluj-Napoca and president of the National Union of the Romanian Judges (UNJR), is spearheading the campaign of Romanian judges against the covert involvement of the SRI in the judiciary. Under the pretext of fighting corruption, the SRI has increased its influence to a point where the independence of the judiciary and the rule of law have become strongly questionable.

The scandal of the SRI's involvement in the judicial process became public in April of 2015. General Dumitru Dumbrava, the head of SRI's legal department, then stated in an interview¹ 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 behavior, regardless of reported suspicion. This raised serious

1 <http://www.juridice.ro/373666/dumitru-dumbrava-sri-este-unul-dintre-anticorpii-bine-dezvoltati-si-echipati-pentru-insanatosirea-societatii-si-eliminarea-coruptiei.html>

concerns about the independence of the whole Romanian judiciary as the SRI is prohibited by law to interfere with courts and prosecution.

At the SRI's 25th anniversary, Eduard Hellvig, the current SRI Director, made matters worse, by explaining² 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 guest of honor at this event was General Iulian Vlad, the last head of Securitate, the former communist secret police.³

This affair has led to a variety of concerned comments by Romanian and foreign judges' organizations⁴ while the European Union seems hesitant to intervene in favor of the Romanian judiciary, fearing it would restrain the combat against corruption which was perceived as a success story until now.

In light of these statements and considering Romania's totalitarian history, **the National Union of the Romanian Judges (UNJR)** raised concerns about the independence of the judiciary system in Romania and asked the state institutions to clarify in a transparent manner the involvement of the SRI in the judiciary. However, for over a year the government has refused to publish the decisions of the Supreme Council of National Defense (CSAT) because they are classified as "state secret".

In parallel, the UNJR along with hundreds of individual judges petitioned **the Superior Council of the Magistracy (CSM)** - the judicial body with a constitutional duty to "guarantee the independence of the judiciary" - to defend the autonomy of the judiciary by clarifying publicly what General Dumbrava meant when he referred to the courts as a "tactical field" for the SRI. Unfortunately, the CSM failed to do so. The CSM received a classified reply from the SRI that it did not share with the UNJR, thereby further undermining people's confidence in courts and judges.

On 11 August 2015, **Romania Libera** revealed that magistrates in key positions had obtained doctoral degrees at the SRI Academy.⁵ This Academy is not only under the jurisdiction of the SRI but it is the school where future SRI officers and spies are trained. In the summer of 2015 the academy initiated a program with European funds to "train" a

2 <http://www.evz.ro/hellvig-despre-implicarea-sri-in-justitie-serviciul-lucreaza-bine-dar-din-pacate-comunica-prost.html>

http://www.dcnews.ro/directorul-sri-eduard-hellvig-lamure-te-declara-ia-gen-dumbrava_476395.html

3 <http://www.flux24.ro/seful-securitatii-comuniste-invitat-special-la-aniversarea-sri/>

http://www.stiripesurse.ro/eduard-hellvig-noul-ef-al-sri-da-ordine-in-serviciu-de-fa-a-cu-florian-coldea_956664.html

<http://www.ziaristionline.ro/2015/05/24/monografia-sri-25-de-ani-lansare-extraordinara-la-bookfest-2015-cu-gen-iulian-vlad-virgil-magureanu-george-maior-florian-coldea-si-eduard-hellvig-foto/>

4 <http://www.unjr.ro/stiri/55-europeanmagistratesconcernedabouttheinfluenceofintelligenceagencyoverthejudiciaryprocessinromania.html>
(May 23, 2015)

<http://unjr.ro/75-europeanmagistratesconcernedthattheinvolvementofthesecretservicesintheromanianjudiciaryprocesshasnotbeenclarifiedyet.html> (November 21, 2015)

<http://www.unjr.ro/comunicate-de-presa/90-medeldecleration-iseuropeundersiege.html> (March 12, 2016)

5 <http://www.romanalibera.ro/politica/institutii/magistrati-si-sefi-de-institutii-au-fost-facuti-doctori-de-generalul-politician-gabriel-oprea-388840>

targeted group of 1,000 magistrates, out of which 500 had to be in leadership positions in courts or prosecutors' offices. Enrolling magistrates had to provide their personal information to the academy and at the end of the training they were evaluated by SRI Officers.

There are about 4,700 civil, criminal and administrative judges and 2,800 prosecutors in total in Romania. Therefore, having 1,000 judges and prosecutors trained by the SRI has an enormous impact on the judiciary. In order to understand the extent of the SRI's influence over Romanian judges and prosecutors, the UNJR asked the SRI Academy to provide the names of all magistrates that took part in any of its classes and trainings. The request was based on the law on access to public information but was ultimately rejected. Consequently, UNJR filed a lawsuit which is currently pending.

On 16 March 2016, the Paris-based Magistrates Association **MEDEL (Magistrats européens pour la Démocratie et les Libertés)** published a declaration entitled « Is Europe under Siege? », in which it stated:

In Romania, a general of the Romanian Intelligence Service (SRI) has admitted that the courts became "tactical fields" for this secret service, that all the judges are profiled using behavioural patterns and that this secret intelligence agency is currently "maintaining its interest/attention until a final court decision has been reached in each case".