

ROMANIA
CLUJ COURT
CRIMINAL SECTION
CASE FILE NO. 22351/3/2007

COPY OF MINUTES OF CRIMINAL SENTENCE NO. 62/11.02.2015.

I. Under art. 396 pt. 5 NCCP (New Code of Criminal Procedure) in relation to art. 16 par. 1 let. b NCCP, it rules **to acquit** the defendant **BIVOLARU GREGORIAN**, son of Constantin and Floarea, born on 13.03.1952 in commune Tartasesti, Ilfov county, residing in Bucharest str. Sergent Turturica nr. 4 bl. 70 B, ap. 2 sector 5, with residence in Bucharest str. Sg. Musat Constantin nr. 1 bl. 16 ap. 3 sector 5, on the charges of committing the act of:

- **establishing a fascist organization** as stipulated by **art. 3 par. 1 in conjunction with art. 2 let. a of G.E.O. (Government Emergency Ordinance) no. 31/2002**, considering that the act was not stipulated by criminal law.

- **promoting racist, fascist or xenophobic ideology** as stipulated by **art. 5 thesis II of G.E.O. no. 31/2002**, considering that the act was not stipulated by criminal law.

II. Under art. 396 pt. 5 NCCP in relation to art. 16 pt. 1 let. b NCCP and art. 4 NCCP, it rules **to acquit** the defendant **BIVOLARU GREGORIAN** on the charge of committing the act of **illegal crossing of a foreign state border**, considering that art. 1 par. 1 of G.E.O. 112/2001, given that the article that sanctioned the act of illegal crossing of a foreign state border was abrogated by art. 98 of title II of the Law 187/2012.

III. Under art. 5 and art. 155 par. 4 NPC (New Penal Code), art. 396 pt. 6 in relation to art. 16 pt. 1 let. f NCCP it rules **to terminate criminal procedures** against the defendant **BIVOLARU GREGORIAN**, finding the prescription of criminal liability regarding offenses of:

- **initiation and establishment of an organized criminal group** under **art. 367 par. 1 thesis I** of the **new Penal Code** (*previous regulation* – art. 7 par. 1 thesis I in conjunction with art. 2 let. a and b pt. 12 of the Law no. 39/2003);

- **incitement to discrimination** under **art. 369** of the **new Penal Code** (*previous regulation* – art. 317 of the previous Penal Code);
- **promoting racist, fascist or xenophobic ideology** under **art. 5 thesis II of G.E.O. 31/2002**,
- **illegal crossing of state border** under **art. 262** of the **new Penal Code** (*previous regulation* – **art. 70 par. 1 of G.E.O. 105/2001**);
- **instigating to outrage against morals and disturbing public peace** under **art. 375 in relation to art. 47** of the **new Penal Code** (*previous regulation* – art. 321 par. 1 of the previous Penal Code).

III. Under art. 396 pt. 5 in relation to art. 16 pt. 1 let. a NCCP, it rules **to acquit** the defendant **BIVOLARU GREGORIAN** on the charge of committing the offence of **human trafficking** under art. 12 par. 1 and par. 2 let. a in conjunction with art. 2 pt. 2 let. b of the Law no. 678/2001, amended with the enforcement of art. 41 par. 2 P.c. (new regulation – **art. 210 par. 1 let. a NPC**).

IV. Under art. 102 par. 2 and 4 NCCP it finds the **illegality** of:

- evidence obtained through wiretaps and audio recording and it rules the exclusion of means of evidence consisting of the minutes of conversation recordings of defendant BIVOLARU GREGORIAN.
- the reports prepared during searches conducted on 18.03.2004, 19.03.2004, 21.03.2004, 22.03.2004 and 23.03.2004 and it rules the exclusion of evidence of all facts found and objects seized and recorded in the illegal search reports.
- evidence consisting in technical-scientific reports of vol. 35-42 of C.P.F. 6D/P/2004, finding reports prepared by the Romanian Psychologists Association, chief Commissioner psychologist Petrescu Luminita, psychologist Tudorel Butoi as well as of the Studies prepared by Mario Sorin Vasilescu and priest Sterea Tache.

V. It rejects all civil actions as unfounded.

VI. Under art. 399 pt. 1 NCCP, it rules **to revoke the preventive detention measure** ruled by the preventive arrest warrant no. 171/U of 15.04.2005 issued by the 1st Criminal Section of Bucharest Court in the File no. 2399/2005 through which the defendant Bivolaru Gregorian was taken into preventive custody under the charge of committing offenses under art. 12 par. 1 and 2 in conjunction with art. 2 pt. 2 let. b of the Law no. 678/2001 and art. 7 par. 1 of the Law no. 39/2003.

VII. Under art. 397 and art. 404 par. 4 let. c NCCP, it rules:

- **to abrogate the protective measure of seizure of buildings** from Bucharest, sector 5, str. Sergent Turturica, nr. 123 and Bucharest, Str. Sg. Musat Constantin nr. 1, bl. 16, sc. A, ap. 3 ruled by Ordinance no. 6D/P/2004 of 23.05.2005,
 - **to return all assets seized during the residence search** of 18.03.2004 at the building from Bucharest, Str. Sg. Musat Constantin nr. 1, bl. 16, sc. A, ap. 3 and mentioned in the search report attached to the case file on pages 584-588, vol. 4 of the criminal prosecution file.
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VIII. Under art. 396 pt. 5 in relation to art. 16 pt. 1 let. a NCCP, it rules **to acquit** the defendants: **CATRINA NICOLAE**, son of Vasile and Eugenia, born on 13.01.1961 in Hunedoara, residing in Bucharest str. Peleaga nr. 5, sector 5,

BURUIANA OVIDIU EUSEBIO, son of Victor and Ileana, born on 14.10.1972 in Tecuci municipality, residing in Bucharest str. Cetatea de Balta nr. 26 bl. P10, ap. 72, sector 6; **NECULA MARIUS**, son of Iordache and Constanta, born on 28.07.1970 in Ploiesti municipality, Prahova county, residing in Bucharest, bd. Tineretului nr. 41, bl. 52, ap. 3, sector 4; **ROSU PETRU**, son of Ion and Maranda, born on 29.06.1961 in Parava commune, residing in Bucharest str. Academiei nr. 39-41, sc. 2, ap. 34, sector 1; **ROSU CAMELIA**, daughter of Eugen and Eleonora, born on 28.11.1961 in Bacau, residing in Bucharest bl. 1 Decembrie 1918 nr. 35, bl. 44, ap. 208, sector 3; **BOZARU DAN**, son of Gheorghe and Maria, born on 05.05.1961 in Dragasani, Valcea county, residing in Iasi, str. Plata Unirii bl. 2, ap. 32 Iasi county; **VISAN TEODORA CAMELIA**, daughter of Toader and Maria Titina, born on 19.10.1967 in Panciu, Vrancea county, residing in Bucharest str. PEtre Ispirescu nr. 9 bl. 40, ap. 22, sector 5; **TANTAS MIHAELA**, daughter of Mihai and Maria, born on 21.11.1974 in Constanta municipality, Constanta county, residing in Bucharest str. Profesor Nicoara Moiser nr. 41 bl. D3, ap. 84 sector 3; **LOMOS DUMITRU REMUS**, son of Dumitru and Aurica, born on 13.11.1972 in Botosani municipality, Botosani county, residing in Bucharest str. Peleaga nr. 6 sector 5; **MIHAILESCU DIANA SILVIA**, daughter of Constantin and Danuta, born on 02.02.1972 in Ramnicu Valcea, Valcea county, residing in Bucharest Soseaua Pantelimon nr. 258 bl. 47, ap. 59, sector 2; **HANGAN LIANA MARIA**, daughter of Alexandru and Ileana, born on 27.07.1969 in Prundu Bargaului commune, Bistrita Nasaud county, residing in Bucharest bd. Porf. Dimitrie Pompeiu nr. 3-5, ap. 318 sector 5; **COJOCARU COSTICA**, son of Neculai and Paraschiva, born on 16.10.1968 in Braila, residing in Buzau, bd. Unirii bl. 3 ap. 21, Buzau county; **LAZAR MARIA CIPRIANA**, daughter of Vasile and Teodora, born on 11.08.1969 in Roman municipality, Neamt county, residing in Bucharest str. Veseliei nr. 49B, sector 5; **RADU IULIANA**, daughter of Mihail and Elena, born on 12.08.1968 in Pascani municipality, Iasi county, residing in Bucharest, str. Sergent Turturica nr. 125 sector 5; **STROE**

CRISTINA, daughter of Valentin and Ana, born on 25.12.1970 in Bucharest, residing in Bucharest str. Spatarului nr. 35, sector 2; **TIPLEA GRIGORE**, son of Grigore and Viorica, born on 17.05.1968 in Gherla municipality, Cluj county, residing in Bucharest bd. Ferdinand I nr. 44, ap. 12, sector 2; **NEGICI MIHAI ROBERT**, son of Pavel and Elena, born on 12.02.1975 in Tecuci municipality, Galati county, residing in Bucharest, str. Sergent Turturica nr. 133, sector 5; **BOZDOC ALEXANDRU CRISTIAN**, son of Dumitru and Elena, born on 11.04.1972 in Sibiu municipality, residing in Sibiu, str. Steflesti nr. 2, ap. 15; **VISTERNEANU LACRAMIOARA**, daughter of Stelian and Elena, born on 01.10.1968 in Niculitel, Tulcea county, residing in Bucharest str. Trompetului nr. 14, sector 5 and **DOCHINOIU DIANA**, daughter of Vasile and Maria Elena, born on 20.06.1958 in Bacau municipality, Bacau county, residing in Bucharest str. Sg. Turturica nr. 125, sector 5

on the charge of committing the crime of **human trafficking** under art. 12 par. 1 and par. 2, let. a in conjunction with art. 2 pt. 2 let. b of the Law no. 678/2001, amended with the enforcement of art. 41 par. 2 P.c. (new regulation – **art. 210 par. 1 let. a NPC**).

IX. Under art. 396 pt. 6 NCCP in relation with art. 16 pt. 1 let. f NCCP, it rules to terminate criminal proceedings against the defendant **LOMOS DUMITRU REMUS** following his death on 04.11.2014.

X. Under art. 396 pt. 5 in relation with art. 16 par. 1 let. b NCCP, art. 3 NPC, rules to acquit the defendants:

- **ROSU CAMELIA, ROSU PETRU and BURUIANA OVIDIU EUSEBIO**, on the charge of committing the crime of **establishing a fascist organization** under art. 3 par. 1 in conjunction with art. 2 let. a of G.E.O. no. 31/2002, given that the act was not incriminated at the time it was perpetrated – **ROSU CAMELIA, ROSU PETRU and BURUIANA OVIDIU EUSEBIO** on the charge of committing the crime of **promoting a fascist, racial or xenophobe ideology** under art. 5 thesis II of G.E.O. 31/2002, given that the act was not incriminated at the time when it was committed.

- **ROSU CAMELIA and ROSU PETRU** on the charge of committing the act of **distribution or sale of fascist symbols** under art. 4 par. 1 thesis I of G.E.O. 31/2002, given that the act was not incriminated at the time when it was committed.

- **BURUIANA OVIDIU EUSEBIO** on the charge of committing the crime of **denial of the Holocaust** under art.6 of G.E.O. 31/2002, given that the act was not incriminated at the time when it was committed.

XI. Under art. 5 and art. 155 par. 4 NPC, art. 396 pt. 6 in relation with art. 16 pt. 1 let. f NCCP, it rules **to terminate criminal proceedings**, finding the prescription of criminal liability of the defendants on the charge of:

- the offence of **initiation or constitution of an organized crime group** under **art. 367 par. 1 thesis I** of the **new Penal code** (*old regulation* – art. 7 par. 1 thesis I in conjunction with art. 2 let. a and b pt. 12 of the Law no. 39/2003) regarding **defendants ROSU CAMELIA, CATRINA NICOLAE, VISTERNEANU LACRAMIOARA and ROSU PETRU.**

- the offense of **adhesion or support of an organized crime group** under **art. 367 par. 1 thesis II** of the **new Penal code** (*old regulation* – art. 7 par. 1 thesis I in conjunction with art. 2 let. a and b pt. 12 of the Law no. 39/2003) regarding the **defendants NECULA MARIUS, VISAN TEODORA CAMELIA, TANTAS MIHAELA, COJOCARU COSTICA, LAZAR MARIANA CIPRIANA, RADU IULIANA, BOZARU DAN, STROE CRISTINA, TIPLEA GRIGORE, MIHAILESCU DIANA SILVIA, NEGICI MIHAI ROBERT, BOZDOC ALEXANDRU CRISTIAN, DOCHINOIU DIANA, BURUIANA OVIDIU EUSEBIO.**

- the offence of **inciting to discrimination** under **art. 369** of the **new Penal code** (*old regulation* – art. 317 of the old Penal code) regarding the **defendants BURUIANA OVIDIU EUSEBIO, ROSU PETRU and ROSU CAMELIA.**

- the offence of **outrage against moral and disturbing public peace** under **art. 375** of the **new Penal code** (*old regulation* – art. 321 par. 1 of the old Penal code) regarding the **defendants MIHAILESCU DIANA, BURUIANA OVIDIU EUSEBIO, DOCHINOIU DIANA, LAZAR MARIANA CIPRIANA and TIPLEA GRIGORE.**

- the offence of **distribution without the authorization or consent of the owner of rights of a work** under **art. 140 let. b** of the **Law no. 8/1996** (*old regulation* – **art. 140 let. a** of the **Law no. 8/1996**) regarding the **defendants CATRINA NICOLAE and LAZAR MARIANA CIPRIANA,** and under art. 25 NCCP it left the civil lawsuit unsolved.

- the offence of **reproduction without copyright of a work** under **art. 140 let. a** of the **Law no. 8/1996** (*old regulation* – **art. 142 let. a** of the **Law no. 8/1996**) regarding the **defendants CATRINA NICOLAE and LAZAR MARIANA CIPRIANA,** and under art. 25 NCCP it left the civil lawsuit unsolved.

XII. Under art. 102 par. 2 and 4 of the NCCP, it finds the **illegality** of:

- evidence obtained through wiretaps and audio recording and it rules the exclusion of means of evidence consisting of the minutes of conversation

recordings of defendant Dochinoiu Diana and the communications of SC EXTAZ SRL.

- the reports prepared during searches conducted on 18.03.2004, 19.03.2004, 21.03.2004, 22.03.2004 and 23.03.2004 and it rules the exclusion of evidence of all facts found and objects seized and recorded in the illegal search reports.

- evidence consisting in technical-scientific reports of vol. 35-42 of C.P.F. 6D/P/2004, finding reports prepared by the Romanian Psychologists Association, chief Commissioner psychologist Petrescu Luminita, psychologist Tudorel Butoi as well as of the Studies prepared by Mario Sorin Vasilescu and priest Sterea Tache.

XIII. It rejects all civil actions as unfounded.

XIV. Under art. 397 and art. 404 par. 4 let. c C.c.p., following the ruling of acquittal regarding defendants **Necula Marius, Visan Teodora Camelia, Tantas Mihaela, Cojocar Costica, Lazar Mariana Cipriana, Radu Iuliana, Rosu Camelia, Bozaru Dan, Stroe Cristina, Tiplea Grigore, Catrina Nicolae, Mihailescu Diana Silvia, Negaci Mihai Robert, Bozdoc Alexandru Cristian, Visterneanu Lacramioara, Dochinoiu Diana, Rosu Petru, Buruiana Ovidiu Eusebio** for committing the offense of human trafficking and termination of criminal proceedings against them for committing the offenses of initiation or constitution of an organized crime group and adherence to or support of an organized crime group, **it rules to revoke the protective measure of seizure of immovable property** of defendants ordered by **Ordinance no. 6D/P/2004 of 23.05.2005** (page 122, Vol. 75 C.P.F.), of auto movable property ordered by **Ordinance no. 6D/P/2004 of 23.05.2005** (page 251-256, vol. 75), of movable property money and jewels ordered by **Ordinance no. 6D/P/2004 of 04.03.2005** (page 70-73, vol. 75)

XV. Under art. 272 NCCP, appointed lawyers' fees are borne by the MJF (*Ministry of Justice Fund*) as it follows:

- for the defendant Popescu Liana Maria (former Hangan) – the amount of 150 lei, for lawyer Purcarin Paul;

- for injured parties Dumitru Ionela, Danut Doina and Albu Garofita – the amount of 450 lei, for lawyer Ploscar Loredana;

- for injured parties Lupescu Ion, Lupescu Simion and Gaitan Constantin, the amount of 450 lei, for lawyer Milchis Ovidiu;

- for injured parties Andrei Mihaela, Valean Alina and Bertescu Valeria, the amount of 450 lei, for lawyer Dumbraveanu Diana;

- for injured parties Muresan Diana and Marques (former Muresan) Agness Arabella, the amount of 300 lei, for lawyer Maxim Anca.

XVI. Under art. 275 par. 3 NCCP, legal costs remain the responsibility of the state.

With right to appeal within 10 days from ruling.
Ruled in public session of 11.02.2015.

PRESIDENT
Illegible signature

FOR CONFORMITY
DIANA CALUGAR
- REGISTRAR -
(illegible signature)
(embossed stamp)

(end of translation)