

## Annex no. 2 - Accusing the lawyer of profession-specific activities, including certain legal reasoning.

### 1. Indictment report excerpts

- a. “[...] **by means of the notifications, requests, memoranda that he drew up, his presence and the assertions he made during the BoD meetings of the ICDPP, helped I.H., the director of said Institute, to persuade the BoD members to approve defendant A.R.P.P.’s request, in breach of the provisions of Government Decision No. 1881/2005 and of Articles 8, 10 and 21 of Law No. 10/2001, and subsequently, by Decision No. 30 of 26 September 2008, to order, in breach of the same legal provisions, the restitution in kind of the Baneasa Royal Farm, in the absence of the documents establishing the capacity of heir, the applicability of Law 10/2001 and identification of the land according to the law, thus causing damage to the Romanian State [...]**” - emphasis added - (Indictment report, page 279);
- b. “[t]he act of the defendant Rosu Robert Mihaita, who, operating as detailed under Recital III on the state of the facts, pursuing the purpose of the criminal group, throughout the year 2008, [...], pursuant to the agreement with the defendant R.T., **by means of the notifications, requests, memoranda that he drew up, by his presence and his assertions made during the BoD meetings of the ICDPP, helped I.H., the director of said Institute, to persuade the BoD members to approve defendant P.P.A.R.’s request, in breach of [...]** meets the constitutive elements of the criminal offence of accessory to abuse of office [...]” - emphasis added - (Indictment report, pages 228-229);
- c. “[...] there were, however, some discussions in the meeting, as the BoD members asked for certain clarifications. Thus, suspect O.F., BoD member, expressly requested additional information to prove whether the claimed land was intra muros or extra muros and if it fell within the scope of Law 10/2001. **Although two legal advisors were present, the person who answered these requests was the defendant Rosu Robert. He only showed that the land belonged to the Baneasa Commune, concluding that it was in the intra muros area, without any proof to that effect. The other aspects are not brought into discussion, no clarifications or additional information are requested, and the BoD members decide that an expert appraisal was going to be made for the delimitation of the land**” - emphasis added - (Indictment report, page 205);
- d. “[d]uring the same period, lawyers from SCA T.Z.A., coordinated by defendant Rosu Robert Mihaita, analysed the documents made available by defendants P.N. and A.R.P.P., **compiling reports about some of these assets, including on the legal standing of the assets concerned by the case at hand (the former Baneasa Royal Farm or the Snagov Forest)**” - emphasis added - (Indictment report, pages 39-40).

### 2. Excerpts from the first instance court`s judgement (of acquittal)

- e. “A.R.P.P.’s capacity of heir of the former king Carol II, as his grandson, was irrevocably established by court judgment No. 132 of 6 February 1955 rendered in case No. 234/1954 of the 1<sup>st</sup> Division of the Judicial Tribunals of Lisbon, Portugal, as recognised by irrevocable court

*Decision No. 954 of 14 February 2012 rendered by the High Court of Cassation and Justice of Romania in case No. XXXXXXXXXXXX - exequatur.”*

*Even if, at the time when the deeds for which the charges of abuse of office were brought, the exequatur judgment on the recognition of court judgment No. 132 of 6 February 1955 rendered in case No. 234/1954 of the 1<sup>st</sup> Division of the Judicial Tribunals of Lisbon, Portugal was not final, currently the existence of this court judgment of recognition can no longer be disregarded, and a legal status to the contrary could not be held. It is a final and irrevocable ruling on defendant A.R.P.P.'s capacity of heir of the former King Carol II, as his grandson.*

*The provisions of the applicable laws (i.e., the Family Code of 4 January 1953, in force on the date of the deeds) have been constantly interpreted by the doctrine and case law in the sense that **any action for establishing filiation** (either to the father or to the mother of the child), once it remains final, **has retroactive effects** - since the birth of the child, and as regards the rights of the child - since his conception.” - emphasis added - (first instance court's judgment, pages 38-39);*

- f. *“[t]herefore, the irrevocable decision No. 954 of 14 February 2012, rendered by the High Court of Cassation and Justice in case No. XXXXXXXXXXXX - exequatur, has effects retroactively, since the birth of defendant A.R.P.P., and now the criminal court can no longer render a divergent judgment.” - emphasis added - (first instance court's judgment, page 39).*

### **3. Excerpts from the grounds of appeal submitted by DNA**

- g. *“[d]efendant Roşu Robert, by presenting himself before the commission (without denying his right to attend it, together with the client - however in the case at hand he did not accompany his client, i.e. S.C. R. S.R.L., but the defendant A.R.P., with whom he had not executed any legal assistance contract), by presenting the point of view of an important law firm, convinced the members of the commission that the request for restitution filed by defendant A.R.P. was fair.*

*Thus, we hold that **complicity can take any form, including the mere presence of a person along with the offender**, so that the latter would be certain or would trust that his actions would be successful.*

*Moreover, in the case at hand, defendant Roşu Robert, by joining defendant A.R.P. in the meeting of ICDPP's Board of Directors, by presenting a significant amount of information on legal terms which were difficult to understand for persons with no legal background, by presenting concepts such as «periodic penalty payments», he influenced the decision taken by the members to an overwhelming extent.*

*In fact, from the members' statements it followed without a doubt that **the presence of a lawyer (i.e., the defendant) who convincingly presented the situation of the real estate, who handed over to them documents in support of his affirmations, and who spoke with assurance, mattered in taking the decision of agreeing to the request for restitution.**” - emphasis added - (appeal grounds submitted by DNA, pages 278-279);*

- h. *“[a]s regards defendant Roşu Robert, it was held that: [...] he helped with the conclusion of certain legal documents, by way of participating to the negotiation and drafting of clauses, directly or through lawyers of the firm who worked under his coordination, at his disposal, he thereby creating the appearance of lawful commercial transactions, which deed meets the*

*constitutive elements of the crime of complicity to money laundering [...].” - emphasis added - (appeal grounds submitted by DNA, pages 32-33);*

- i. *“[a]cting as described [...] through the **notifications, requests and memoranda** he prepared, and through his **presence and arguments presented** at the sessions of the Board of the ICDPP, he helped I.H., the director of this Institute to determine the members of the Board to approve the request made by the defendant A.R.P.P, in breach of the provisions of [...] Law 10/2001, and thereafter, [...] to order, in breach of the same legal provisions, the restitution in kind of the Băneasa Royal Farm, lacking documents regarding the capacity of heir, [...] which deed meets the constitutive elements of the criminal offense of complicity to abuse of office.” - emphasis added - (appeal grounds submitted by DNA, pages 34-35);*
- j. *“[...] the starting point of the criminal offense of forming an organized criminal group is the preliminary acts prepared before the group was actually established, i.e. before the assignment agreement of 1 November 2006 was executed, more precisely **taking action to find whether, on the one hand, the defendant A.R.P.P. could claim the said properties, and on the other hand to what extent it was possible to obtain them** by administrative and judicial proceedings.*

*In this respect, in the firm Țuca, Zbârcea & Asociații a **due diligence report** was prepared, a contract was executed in September 2009, which contract did not have effects, as it was not performed, in which assessments were made on the rights of the defendant A.R.P.P. and on the properties that he claimed.” - emphasis added - (appeal grounds submitted by DNA, page 80);*

- k. *“[w]hat is very important in upholding the existence of the crime of organized criminal group is that, upon the execution of the assignment agreement of 1 November 2006, the defendants who were indicated as being part of the criminal group **knew that the possibility to actually obtain the properties was very low, which clearly follows from the conclusions of the due diligence report.**” - emphasis added - (appeal grounds submitted by DNA, page 82);*
- l. *“[...] defendant Robert Roșu [...] had to make sure that the judicial and administrative diligences were made so as to create the appearance of legal dealings and he had to notify and keep the other members up-to-date on how the activity unfolded, on the successes he would have had or the obstacles that he would have encountered during the unfolding of this activity.” - emphasis added - (appeal grounds submitted by DNA, page 95);*
- m. *“[a]t this stage of the repossession, an essential role was played by the defendant Roșu Robert, who acted within the criminal group for attaining the goal of such group, in his capacity as lawyer of S.C. R. S.R.L., following the understanding between defendant T.R. and defendant C.T., he undertook steps for the repossession of defendant A.R.P.P. with an area of 46.78 ha, by way of signing and submitting in 2007 requests and notifications to the Bucharest Forest Division, **although he was aware that he was not entitled [...].**” - emphasis added - (appeal grounds submitted by DNA, page 210).*