

Annex no. 4 - Prosecuting lawyers regarding activities performed in view of court rulings considered wrong by the prosecutors

1. Indictment report excerpts

- a. „[...] **he submitted notifications** (A/N - the notifications sent further to Civil Decision No. 1872/26.06.2003 and Civil Decision No. 1496/16.05.2005, both irrevocable) [...], *although knowing that defendant A.R.P.P. was not an entitled person and that the forest had not been the property of Carol II, both from the discussion with witness V.A. and from the text of the decision issued in November 1941 by the HCCJ, a copy of which was found at the offices of the law firm, bearing the mention “not to be used in any trial [...]”* - emphasis added (page 110 of the indictment report);

Note: By Civil Decision No. 1872/26.06.2003, the Buftea District Court granted the statement of claim, expressly stating that: *“the plaintiff is entitled to the retrocession of the 10 ha forest area located in the Snagov Commune, the “Fundul Sacului” area”*. The decision became irrevocable. As a result of said decision, a decision was issued by the County Commission for the Establishment of the Property Right whereby the rights of Al Romaniei Paul Philippe are recognized. This decision is being challenged in court by the National Forests Administration. By Civil Decision No. 1496 / 16.05.2005 of the Buftea District Court, the plaintiff’s claim was dismissed, the decision subsequently remaining irrevocable.

- b. *“Thus, on 18 April 2007 (vol. XVII, pages 67-69) and then on 6 May 2007 (vol. XVII, pages 59-62), defendant Robert Rosu, on behalf of defendant A.R.P.P., notified the Bucharest F.D. for the hand over* (A/N - via the notifications sent further to Civil Judgement No. 1872/26.06.2003 and Civil Judgement No. 1496/16.05.2005, both irrevocable)” - emphasis added. (page 171 of the indictment report);
- c. *“the decision* (A/N - Civil Judgement No. 1872/26.06.2003) *is an abuse, as the declaratory action was inadmissible at that time. [...] The decision is based on a breach of the court’s legal, professional obligation to analyse the admissibility of a declaratory action.”* - emphasis added (pages 140-141 of the indictment report);
- d. *“[...] Case No. 3387/2003 of Buftea District Court, which together with decision No. 1872/26 June 2003 has 31 pages. The case was judged at first hearing, the representative of defendant Snagov City Hall did not take any position and did not file a statement of defence but left it up to the court to decide whether or not to grant the request, and the judge granted the declaratory action filed, founded on the provisions of Article 111 of the Civil Procedure Code. Some documents were submitted in the form of photocopies, uncertified, but there was no evidence that the plaintiff was a person entitled to retrocession and there is no evidence that the forest belonged to Carol II. [...] the decision rendered by the Buftea District Court [...] was contrary to the clear evidence submitted from which it follows that A.R.P.P. did not meet the requirements of the law, whichever it may be (Law 1/2000, Law 10/2001 or Law 247/2005) for the retrocession of the forest”* - emphasis added (page 144 of the indictment report);
- e. *„The judgments* (A/N - Civil Judgement No. 1872/26.06.2003 and Civil Judgement No.

1496/16.05.2005) **are groundless**, as the courts merely assessed that defendant A.R.P.P. had the right to retrocession based on the decision of the Buftea District Court of 2003, without analysing the reasons provided by the plaintiff regarding the unlawful nature of that judgment, even more so once Romsilva had not been a party to that trial and *res judicata* could not have been cited against it for that judgment. In addition, the courts ignored the fact that defendant A.R.P.P. had not submitted a valid notification within the deadline of Law 1/2000. [...] in the trial filed by the Bucharest Forestry Department, the courts inexplicably dismissed the action, taking into consideration said decision of the Buftea District Court, although it was contrary to the clear evidence submitted, from which it followed that A.R.P.P. did not meet the requirements of the law, whichever it may be (Law 1/2000, Law 10/2001 or Law 247/2005) for the retrocession of the forest.” - emphasis added (pages 143-144 of the indictment report).

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

- f. **“Further to analysing the case documents, the court finds that the motion to ascertain the *res judicata* power of the civil judgments that ruled on preliminary matters is grounded”**. - emphasis added (page 38 of the first instance court`s judgment);
- g. **“Therefore, the main argument of the prosecution in support of the charges of committing an abuse of office either as a perpetrator or as an accomplice is that the requests for restitution were admitted although they did not meet the requirements provided by the special laws on the restitution of the properties which had been abusively taken over by the communist State”**. - emphasis added (page 37 of the first instance court`s judgement);
- “However, the criminal court cannot disregard, in analysing a perpetration of abuse of office by the defendants, that several competent courts have finally and irrevocably stated both that defendant A.R.P.P. is the heir of the former King Carol II and that he had the right to claim the restitution of the two properties, based on the special laws for the restitution of the properties which had been abusively taken over during the communist period.**
- Defendant A.R.P.P.’s capacity of heir of the former king Carol II and the right of the defendant A.R.P.P. to ask for the restitution based on the laws for the restitution of the properties abusively taken over by the State do not concern the existence of the criminal offence of abuse of office, but matters of civil law which exceed the scope of the constitutive elements of this criminal offence.”** - emphasis added (page 38 of the first instance court`s judgement);
- h. **“Considering the principle of legal certainty, which pertains to the right to a fair trial, since there are court judgments whereby it was determined that defendant A.R.P.P. is the heir of the former king Carol II, as his grandson, and that the defendant A.R.P.P. had the right to ask for the restitution of the two properties which are the subject-matter of the criminal case, the criminal sentence could no longer state the contrary of what was held by the civil courts which analysed these matters and ruled on them by final court judgments. Only if it had been found that criminal offences were committed upon rendering such court judgments, which would have led to their cancelation by way of the exceptional means of challenge called revision, could the civil courts’ rulings on defendant A.R.P.P.’s capacity of heir of the**

former King Carol II and on his right to ask for the restitution of Snagov Forest and Băneasa Royal Farm have been disregarded. - emphasis added (page 39 of the first instance court`s judgement);

- i. *“Although the prosecution criticizes several times, in the indictment act, this court judgment [our note - Civil Decision No. 1872 of 26 June 2003 rendered by Buftea District Court in case No. 3387/2003], claiming that it is ungrounded or that it was rendered in breach of the law, such court judgment has res judicata power, and what was stated therein is binding erga omnes. Even if a criminal offence had been committed in relation to rendering such court judgment, it would still have effects until cancelled by the exceptional means of challenge called revision, according to the Civil Procedure Code. A final and irrevocable court judgment cannot be cancelled by the means provided at Article 25(3) of the Criminal Procedure Code, which is applicable to other written instruments that court judgments. Otherwise, there would be no reason why the law expressly provided, as ground for the revision of a court judgment, the perpetration of a criminal offence upon the rendering thereof. Moreover, the prosecution did not request this either, no investigations being made on the potential criminal offences committed upon rendering such court judgment.”* - emphasis added (pages 39 to 40 of the first instance court’s judgment).
- j. *“By Civil Decision No. 1496 of 16 May 2005, rendered by the Buftea District Court in case No. 378/2005, plaintiff’s motion was rejected. Civil Decision No. 1496 of 16 May 2005 remained irrevocable after the Bucharest Tribunal rejected the appeal by Civil Decision No. 1075A of 12 May 2006 and the Bucharest Court of Appeal rejected the final appeal by Civil Decision No. 73 of 22 January 2007.*

All the three judgments ascertain the existence of defendant A.R.P.P.’s right to ask for the restitution of Snagov Forest property.” - emphasis added (page 40 of the first instance court’s judgment).

- k. *“In what concerns the matter of law on which the aforementioned civil courts have ruled by final and irrevocable judgments, the criminal court cannot find that a different interpretation of the legal provisions analysed by these court judgments would be required. Civil courts have verified both the legal basis on which the restitution relied, and the documents submitted in support of the request for restitution, and it found that defendant A.R.P.P. was entitled to ask for the restitution of Snagov Forest and that such restitution complied with the legal provisions which are applicable in this respect.”* - emphasis added (page 42 of the first instance court’s judgment).
- l. *“Just as with the other court judgments concerning the restitution of Snagov Forest property, in the case of the Băneasa Royal Farm property it was also found, under the aforementioned court judgment [our note - court decision no. 2146 of 6 December 2013 of the Bucharest Tribunal] that the requirements on the abusive takeover of the property and on defendant A.R.P.P.’s capacity of person entitled to be indemnified, as provided by Law 10/2001, are met. This is not a judgment which was rendered exclusively on the basis of Decision No. 30/2008 issued by ICDPP, as the prosecution claims in its conclusions on the merits (page 175, volume LXV of the court’s case), but a judgment which analysed the satisfaction of all the requirements provided by Law No. 10/2001. Therefore, these findings of the civil court,*

made in a final judgment in relation to defendant A.R.P.P.'s right to ask for the restitution of Băneasa Royal Farm, have *res judicata* power, and cannot be contradicted by another court judgment.

According to the principle of legal certainty, the criminal court cannot find the inexistence of this right of the defendant A.R.P.P. or the failure to meet the legal requirements provided by the restitution laws in the case of Băneasa Royal Farm and Snagov Forest. Since these are matters on which other courts of law have ruled by final and irrevocable court judgments, they have *res judicata* power before any other courts of law, irrespective of the object of the case with which such courts are vested." - emphasis added (page 43 of the first instance court's judgment).

- m. **"Another argument of the prosecution, in support of the accusations of abuse of office made against the defendants in this case, is the absence of any evidence that the land area of 46.78 ha of Snagov Forest would have belonged to the former king Carol II.**

The court cannot admit this allegation of the prosecution, firstly due to the existence of the aforementioned irrevocable court judgments, which stated that such property belonged to the defendant's predecessor, that it was taken over by the State without any right to do so and that the defendant A.R.P.P. was entitled to claim it." - emphasis added (page 206 of the first instance court's judgment).

- n. **"Prosecution's reasoning on the criminal offence of abuse of office starts from the premise that Civil Decision No. 1872 of 26 June 2003 of the Buftea District Court is erroneous, because the declaratory action, relying on Article 111 of the former Civil Procedure Code, would not have been admissible, since the action for the exercise of a right was possible. Besides the fact that the said judgment can only be rendered ineffective if an exceptional means of appeal is admitted, the court also holds that such matter of law was controversial in the judicial practice, considering that the law did not clearly provide whether, in such case, a civil action on the exercise of the right existed or not, and which action for the exercise of the right would have been usable. This is why, on 4 October 2007, a final appeal in the interest of law was filed, whereby the Prosecution Office of the High Court of Cassation and Justice asked for a decision to be rendered in the sense that, after the coming into force of Law 10/2001, the actions for restitution in reliance on the provisions of general law (i.e., Articles 480 and 481 of the Civil Code) could no longer be accepted. Since it is a controversial matter and since an irrevocable court judgment existed, the competent public officials cannot be accused of having taken a decision of restitution by taking into account this court judgment.**" - emphasis added (page 207 of the first instance court's judgment);

3. Excerpts from the appeal grounds submitted by DNA

- o. **"[...] the indictment act retained that the Lisbon Court Decision on the capacity of defendant [xx] as heir of the former King Carol II was not recognised in Romania on the date of the deeds, so that only under the exequatur decision it would have acquired *res judicata* authority and it would have become enforceable for the authorities of our country as if it were a decision of a Romanian court.**

The indictment report holds that, before knowing the ruling in the case on the recognition of

the Lisbon court decision (as in fact it was also held in the due diligence report prepared under the coordination of defendant Roşu Robert), requests for restitution were submitted, claiming the existence of this capacity which had not been established under the law on the territory of Romania, so that we deem that this request [...] to ascertain the res judicata power of the court decision essentially concerns the circumstances in which the defendants committed the deeds with which they were charged.” - emphasis added (DNA appeal grounds - page 61-62);

- p. *“[...] investigations were made on how court decision No. ... of the Buftea District Court was obtained, however, as analysed at page 141 of the indictment report, due to the fact that the limitation term for criminal liability expired as regards the crime of abuse of office (by reference to the rendering of such court decision), it is obvious that criminal prosecution could not be commenced, not even in rem.*

However, prosecutors investigated in detail how such court decision was obtained, by hearing all the persons who were involved in this case pending before the Buftea District Court [...].

In this way, the criminal prosecution body deemed that there was enough evidence to result that civil court decision No. [...] of the Buftea District Court was obtained further to an act of corruption.” - emphasis added (DNA appeal grounds - page 63);

- q. *“ [...] the reasoning of the court of first instance is the result of an erroneous interpretation of the rules of civil procedure and Law 10/2001, as we will detail below, in deeming that the court decision in a declaratory action would be a ground for the restitution of Snagov Forest, although, besides the inadmissibility of a declaratory action on this matter, the court which rendered this decision did not verify and analyse whether the conditions related to property law, i.e. Law 10/2001, Law 18/1991 and Law 1/2000 were met. Moreover, the actual circumstances in which such court decision was rendered were disregarded, which circumstances were outlined by the case judge himself (i.e., witness C.A), and the absence of any evidence was also disregarded.” - emphasis added (DNA appeal grounds - page 154);*
- r. *“[...] the evidence put forward has confirmed that defendant A.R.P.P. was not entitled to acquire the property as heir of Carol II, as he did not meet any of the conditions provided by Law no. 10/2001, Law no.18/1991 or Law no. 1/2000 [...]” - emphasis added (DNA appeal grounds - page 155);*
- s. *“As regards civil decision No. [...] of Buftea District Court, although it is a declaratory action, and not an action for the exercise of a right, the judge of the court of first instance deemed that this would have a res judicata power as regards the right to inherit Snagov Forest and that the declaratory action would be possible by reference to the inconsistent judicial practice [...] so that the fact that the public servants who ordered the restitution did not take into account the decision of Buftea District Court cannot be held against them.*

The assessment of the court of first instance is against the law, Article 111 of the former Civil Procedure Code and, moreover, it disregards all the pieces of evidence produced in this case in relation to how such court decision was rendered and its effects. [...] It also disregards the witness statement of the judge who rendered the court decision and who

showed the limits within which such court decision could be enforced.” - emphasis added (DNA appeal grounds - page 167-168);

- t. *“The court decision is an abuse, as the declaratory action was inadmissible at such time, a plea which was in fact raised by the judge in the public session, as it follows from the statements of the heard witnesses who were present at that time in the courtroom. Subsequently, further to discussions with the mayor [...], the judge admitted the request, [...].”* - emphasis added (DNA appeal grounds - page 173);
- u. *“The judge himself, C.A., heard as a witness in the case (after the expiry of the limitation term for criminal liability for abuse of office), mentioned that the action was inadmissible, that he no longer admitted such actions and that he thought that his court decision would only be used for the recognition of the right to file a request.”* - emphasis added (DNA appeal grounds - page 174).