NATIONAL UNION OF ROMANIAN JUDGES
Romania, Oradea, 10 Parcul Traian street, PO code 410033, Ro23059414, ATE Bank - Oradea Branch
IBAN RO72MIND0150000028404RO01, www.unjr.ro, e-mail: office@unjr.ro

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REPORT
on the unlawful involvement of the Romanian secret intelligence agencies, through secret protocols, in the Romanian judiciary system

I. Overview of the relationship between the secret intelligence agencies and the judicial system after the fall of communism in 1989 in Romania

In 1948 and then in 1956, new communist Constitutions were adopted in Romania, which were inspired by the one from the Soviet Union.

The communist structure of the state did not have the separation of powers – legislative, executive and judicial power –, like the Western democracies do. The whole state was controlled by the communist party and, at the same time, to make sure that the communist officials are obeying the law, the *Prokuratura* – composed of all prosecutors organized hierarchically – was created with the purpose to "supervise the legality" in the state.

The *Prokuratura* in a communist society was a *"a very powerful institution whose functions considerably exceed the scope of functions performed by a prosecutor in a democratic, law abiding state*", the Venice Commission stated, and describes its functionality as following:

"*The prosecution of criminal cases in court represented only one aspect of the procuracy's work, matched in significance throughout much of Soviet history by a set of supervisory functions. In a nutshell, the procuracy bore responsibility for supervising the legality of public administration. Through the power of what was known as "general supervision", it became the duty of the procuracy to monitor the production of laws and instructions by lower levels of government; to investigate illegal actions by any governmental body or official (and issue protests); and to receive and process complaints from citizens about such actions. In addition, the procuracy supervised the work of the police and prisons and the pre-trial phase of criminal cases, and, in particular, making decisions on such crucial matters as pretrial detention, search and seizure, and eavesdropping. Finally, the procuracy was expected to exercise scrutiny over the legality of court proceedings. Supervision of trials gave the procurators at various levels of the hierarchy the right to review the legality of any verdict, sentence, or decision that had already gone into effect (after cassation review) and, through a protest, to initiate yet another*

review by a court. Even more troubling, the duty to supervise the legality of trials meant that an assistant procurator, who was conducting a prosecution in a criminal case, had an added responsibility of monitoring the conduct of the judge and making protests. ***This power placed the procurator in the courtroom above both the defense counsel and the judge, in theory if not also in practice****."*[1]

Parallel with the *Prokuratura*, the communist system had a "secret police", which was responsible with doing the dirty work. In Russia this "secret police" was KGB, in Romania it was the "Securitate".

In communism the prosecutors worked hand to hand with the agents of the secret police in order to achieve the objectives given to them by the leaders of the state.

This system inspired from Soviet Union was brought to Romania. This meant that during communism Securitate undercover agents were posing as prosecutors or judges and conducted criminal investigations.

The Securitate had a special unit to conduct criminal investigation that was responsible for most horrific abuses in communism, which led to people being executed or unjustly imprisoned after a sham trial.

1. **Early years after the fall of communism. Creation of SRI**

1.a. In December 1989, immediately after the fall of communist dictator Nicolae Ceausescu, the Securitate has been abolished and its departments were dismantled in different security/intelligence structures that over time became standalone agencies.

1.b. Also, in December 1989 the new ad-hoc revolutionary government abolished the previsions from the Code of penal procedure that granted Securitate jurisdiction to investigate certain crimes.

1.c. In March 1990, through a secret Decree that was not published in any official bulletin, the interim government of that time created the Romanian Intelligence Service (SRI), a militarized intelligence agency designated to collect domestic intelligence.

[1] Solomon and Foglesong The Procuracy and the Courts in Russia: A New Relationship? In East European Constitutional Review Vol 9 No 4 Fall 2000; quoted in document CDL-AD(2005)014, at 5.
http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)048-e

1.d. Also, in parallel, in 1990, the Justice Ministry created an intelligence structure under its jurisdiction by taken over a militarized unit from the Ministry of Internal Affairs.

1.e. In 1991 the "national security law" 51/1991 was passed by the new Parliament, law that it is still in force until today.

1.f. In 1992 the Parliament has adopted the Law 42/1992[2] for organizing and functioning of SRI. This law was published in the Official Bulletin and, besides other things, abolished the secret decree promulgated in 1990.

The Law 42/1992 explicitly prohibited SRI to conduct criminal investigations, to detain or to arrest people. Also, this law prohibited SRI to have its own detention centers.

This prohibition for SRI was instituted because SRI became the Securitate's inheritor, people still had fresh in their memories the horrifying abuses done by Securitate and they did not want that situation to be repeated.

Also, since SRI was under the authority of the executive power and the oversight of the legislative power, its involvement in the criminal procedures or judiciary would had violated the separation of powers.

2. Secret service under the Ministry of Justice

2.a. After the Law 51/1991 was passed, the government created under the General Directorate of Penitentiaries' jurisdiction an intelligence collecting service called the "Operational Independent Service" (SIO), whose duty was focused exclusively on preventing "events" in the penitentiary (riots, crimes etc.), as well as on collecting from prisoners and jail inmates information on threats to national security.

2.b. In 1997, the leadership of the Justice Ministry turned the SIO into a stand-alone unit under the authority of a state secretary and changed its name to the "Independent Protection and Anti-Corruption Service" (SIPA).

2.c. In 2000, under the pretext of fighting corruption, the new government extended the competencies of SIPA to also monitor and gather information on magistrates (judged and prosecutors).

This was done "***to ensure a real protection and anti-corruption activity, in order to guarantee the fairness of justice and prevent corruption among magistrates***", was it stated in the governing plan of Adrian Nastase, the prime-minister of that time.

[2] You can find the relevant provisions in the Addendum with the Romanian legislation

This way, Romania became the first country in the Western hemisphere where the fair trial it was "guaranteed" by a militarized secret intelligence agency.

2.d. In 2004, in the EU pre-accession period, the European Commission had stated in multiple reports that there is a danger for the information collected by SIPA to be used to blackmail magistrates and influence the justice.

2.e. Through Government Decision 637/2004, SIPA was reorganized and its name was changed to "the General Protection and Anti-Corruption Directorate", in the subordination of Ministry of Justice.

2.e. Following the constant criticism of the European Commission, in 2006 the Government adopted Decision 127/2006 which dissolved the General Protection and Anti-Corruption Directorate subordinated to the Ministry of Justice. Monica Macovei, the Minister of Justice at that time, declared that: "*I decided to dissolve this secret service since information was circulating in the public space that it was committing abuses. The judiciary did not need a secret service.*" [3]

3. The public law was supplemented by "secret laws"

Between 2004 - 2006, the Supreme Council of National Defense (CSAT) had adopted a serious of secret decisions to supplement the Law 51/1991 on National Security in Romania, by granting SRI secretly more and more prerogatives in the criminal investigation field.

CSAT is an administrative, not legislative body that operates under the authority of the President and it is tasked with organizing and coordinating the national defense, military and security activities of Romania.

Some of the decisions taken by CSAT are the following:

- Decission no. 0068/2002 by which the Romanian Intelligence Service was designated as a national authority in the field of interception and relations with telecommunication operators (top secret);

- Decission no. 2234/2004 regarding the cooperation between the Romanian Intelligence Service and the Public Ministry to fulfill their tasks in the field of national security (not public);

- Decission no. 0237/2004 for the approval of the General Protocol on cooperation in the field of information security for national security (secret);

[3] http://www.nineoclock.ro/sipa-archives-and-control-over-magistrates-stir-controversy-once-again/

- Decission no. 17/2005 on combating corruption, fraud and money laundering (not public). This secret decision made corruption a threat to national security.

These decisions, still secret, created the framework for the Romanian Intelligence Service to, initially, get involved in criminal investigations carried out by prosecutors, activity that was prohibited for them to do after the fall of community (see #1 from above), and lately to penetrate the courts and other institutions of the judicial system.

Former president Traian Basescu stated in an interview[4] that the Supreme Council of National Defense (CSAT) had passed a decision giving "massive responsibility" to SRI, which was supposed to create joint permanent teams with prosecutors to "identify and combat corruption within the judiciary field". The statement of President Basescu was confirmed by the activity reports published by CSAT.

3.a. The 2004 CSAT activity report mentioned that the intelligence services were involved in law enforcement and criminal prosecution activities, especially in the fight against fraud, corruption and money laundering.

3.b. The 2005 CSAT activity report explicitly mentioned "*the contribution of intelligence services in supporting the truthfulness of evidences*".

Such a "contribution" is, in itself, one without any legal grounds, since the secret services do not have legal prerogatives in probation procedures within criminal proceedings dealing with corruption.

3.c Subsequently, the General Prosecutor's Office signed, outside the law and against the legal previsions, secret collaboration protocols with SRI (we'll present them in chapter III), based on which hundreds of "mixed" SRI prosecutor-officer operative teams were set up to conduct criminal investigations in hundreds of criminal cases per year.

Through these secret protocol, SRI gained prerogatives in criminal investigations, like the Securitate had under communism, up to 1989.

3.d. In the 2013 SRI's activity report, as also in the previous activity reports, it was stated that:

"***The legal SRI experts, within the local and central structures, were co-opted as members in joint operational teams of cooperation with local and central structures of law enforcement bodies*** *in 463 cases (compared to 314 cases in 2012).*

4 http://timpolis.ro/presedintele-traian-basescu-interesul-fundamental-al-romaniei-acum-si-pe-termen-lung-este-garantarea-securitatii-pe-care-nu-o-face-nici-federatia-rusa-nici-china-ci-o-fac-sua/

Within the Joint Operational Teams, numerous meetings took place, where SRI legal experts have played an important role in the legal assessment of the operational situation and the measures proposed for the documentation of criminal activities. [...]

These have produced positive effects and responses from the beneficiaries, many of which are being used as evidences in criminal cases."

"The institutional binomial The Public Ministry - SRI had also functioned in 2013 at optimal parameters, fact that was reflected in the dynamics of the results both from the perspective of knowledge, prevention and combating threats to the national security, ***as well as from the point of the effects in criminal procedures/trials***".

3.e. The 2014 SRI activity report states: "*SRI has acted consistently to ensuring the quality and consistency of the data provided to law enforcement institutions, the accuracy and soundness of the legal reasoning, as well as the relevancy of the proving material or the clues regarding possible evidences."*

The involvement of the SRI in the judicial power was not limited to establishing secret protocols with the General Prosecutor's Office, but went all the way to signing secret protocols with the Superior Council of Magistracy, High Court of Cassation and Justice or Judicial Inspection. Some of these protocols are still secret.

II. Actions of the magistrates' associations after 2015

In 2015 representatives of the Romanian Intelligence Services made a series of public statements that revealed the involvement of this secret service in the judiciary, despite the fact that such actions of theirs were forbidden by law. Attached to this report it will be a briefing from that time, which presents, in detail, the succession of the events and our actions (addendum no.2).

Specifically, in April of 2015, General Dumitru Dumbrava, the head of SRI's legal department, stated in an interview[5] that SRI would not "*withdraw from the* ***tactical field*** *once the indictment was presented to the court*" and that SRI maintained its *"(…) interest/attention until the final resolution of every case is reached*". He also stated SRI was profiling judges to detect patterns of criminal behavior, even without suspicion of such behavior.

This raised serious and legitimate concerns about the independence of the whole Romanian judiciary system, since SRI was prohibited by law to interfere with courts and prosecution.

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

Eduard Hellvig, the current SRI Director, made matters worse, by stating[6] at the SRI's 25th anniversary 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 to this event was General Iulian Vlad, the last head of Securitate before the fall of communism.[7]

The previous director of the SRI, George Maior, described SRI at the same event as "*a kind of a brain of the state, the eyes, the ears of the state*".

The mindset displayed by the representatives of the security apparatus was very troubling since a judge is not serving the state in a democracy, but the law. In front of a judge, the citizen and the state must be equal.

In the light of these statements and considering Romania's totalitarian history, the National Union of the Romanian Judges (NURJ) along with the Association of Romanian Magistrates (AMR) and the Association of Romanian Prosecutors (APR) started a serious of actions, both foreign and domestic, in order to push for the clarification of the SRI's involvement in the judiciary.

1. Domestic actions of NURJ and other associations

Since May of 2015 NURJ urged on a serious of occasions all the competent Romanian institutions, like the Superior Council of Magistracy, the Presidency, the Supreme Council of National Defense, the General Prosecutor Office, the Romanian Intelligence Service and the Parliamentarian Oversight Committee on the Romanian Intelligence Service, to clarify the involvement of SRI in the judiciary.

NURJ also requested from the above institutions a serious of public information and filed lawsuits when they refused to provide the information.

The first institution requested to act was the **Superior Council of Magistracy (SCM)**, which has the constitutional duty to "guarantee the independence of the judiciary".

6 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
http://www.stiripesurse.ro/eduard-hellvig-noul-ef-al-sri-da-ordine-in-serviciu-de-fa-a-cu-florian-coldea_956664.html

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

8 http://www.unjr.ro/2015/05/25/european-magistrates-concerned-about-the-influence-of-intelligence-agency-over-the-judiciary-process-in-romania/

In May 2015 NURJ, along with AMR, APR and over one hundred of individual judges, requested the Superior Council of Magistracy to take a stand and defend the independence of the judiciary from the statements of SRI General Dumitru Dumbrava, who claimed that the courts became a "tactical fields" for Romanian Intelligence Service.

The Council rejected the associations' request, affirming that the statement did not affect the independence of the judiciary, even at the perception level. The Council justified the decision based on classified notes they received from SRI. Recently it was found that SCM had a secret cooperation protocol with SRI since 2012, based on which they acted upon.

NURJ also met with the **Supreme Council of National Defense** (CSAT) to discuss the role of the Council in the relationship between judiciary and secret services. The meeting took place in February 2016, and was requested by the Council, after NURJ asked them publicly on numerous occasions to clarify this issue.

After the meeting, CSAT sent an official letter to NURJ where it stated that, because the "national security law" is from 1991, and it is outdated, they had to opt for those secret decisions adopted by CSAT in order to "supplement" the law.

For this reason they made, through such secret decision for example, the corruption a threat to national security. Since secret services are dealing with threats to national security, implicitly the SRI's activity was extended in the judiciary field.

This artificial way of "amending" the law by secret decisions is a dangerous precedent for the rule of law, preventing citizens from knowing, in real terms, how extensive and excessive the competences of some state institutions are.

CSAT had also mentioned in the letter that, starting from their secret orders, there were signed "cooperation protocols" between SRI and the General Prosecutor's Office and created "joint teams of prosecutors-SRI agents to counteract the risks deriving from carrying out criminal activities".

Starting from this lead, NURJ had requested, based on the law providing access to information of public interest, from the Public Ministry and the main Romanian intelligence services to state whether or not they have signed collaboration protocols, and if so, on what legal basis they did it and what is the content of those protocols.

The Public Ministry and the Romanian Intelligence Service refused to release any kind of information on these subject, stating that they are classified.

The External Intelligence Service replayed that between 1998 and 2005 the institution was party of three protocols of cooperation with the General Prosecutor's Office, respectively the National Anti-Corruption Prosecutor's Office.

The Secret service of the Ministry of the Interior replayed that it's activity is carried out under a collaboration protocol signed with General Prosecutor Office and that the content of the protocol is classified.

Consequently, NURJ initiated several lawsuits, requesting the publication of these protocols, with the argument that the rule of law is incompatible with the administration of justice based on secret acts. The cases are pending.

2. Foreign actions

MEDEL, at the proposal of NURJ, published a serious of resolutions and press releases to raise awareness about the situation in Romania.

In the first resolution, from May 2015, MEDEL stated that it "*shares the same deep concerns of the judges and prosecutors from Romania who took a stand against the unlawful involvement of the Romanian Intelligence Service (SRI) in the judiciary process. This situation is a threat to the democracy in Romania, therefore we call on all Romanian authorities to take immediate actions in protecting the independence of the judiciary and reestablishing the rule of law so every Romanian would have the confidence that has part of a just and fair trial.*"[8]

In March 12, 2016, MEDEL called again for "*the immediate ceasing of any kind of interference of secret services in the judiciary in Romania*", underling that "*In the context that SRI is part of the criminal investigation and it is also involved in the courts, corroborated with the failure of authorities to clarify transparently these matters, this raises serious doubts about the respect for basic human rights and the guarantee of a fair and just trial of any person accused by the state. The most recent attacks to the Romanian Constitutional Court, for ruling unconstitutional the article used by prosecutors to delegate SRI to conduct acts of penal investigation, confirms that there is an unhealthy involvement of SRI in the judiciary process.*"[9]

NUJR along with AMR had also notified the European Commission as well as the Helsinki Committee on the situation in Romania, the correspondence with them being annexed.

[8] http://www.unjr.ro/2015/05/25/european-magistrates-concerned-about-the-influence-of-intelligence-agency-over-the-judiciary-process-in-romania/
[9] http://www.unjr.ro/2016/03/16/medel-declaration-is-europe-under-siege/

Except the Helsinki Committee, which held a hearing in the US Senate on the issue[10], all the other European institutions had turned a blind eye to these problems, choosing to ignore the facts and continue claiming that they support unconditionally the fight against corruption, regardless of the cost and methods used.

In fact, during the meeting with the Cooperation and Verification Mechanism experts of the European Commission, NUJR had expressed concerns and provided public information supporting the legitimate fact that SRI is unlawfully involved in the judiciary. These issues were not mentioned in any of the country's reports, and at the last meetings NUJR was not invited to participate anymore.

The recent development, though, proved that NUJR's concerns about the unlawful involvement of SRI in the judiciary were sounded, since some of the secret protocol between this secret intelligence agency and different judicial institutions were published.

III. The cooperation protocols

1. **The cooperation protocol between the General Prosecutor's** Office – hereinafter referred to as the "*Prosecutor's Office*" – **and the Romanian Intelligence Service** – hereinafter referred to as the "*Service*".

The protocol was published on March 30, 2018 and disclosed the involvement of the Service in criminal prosecution beyond the limits set by law.

For comparison, we have attached both the English version of the protocol and the relevant legislation (appendices 5 and 6).

Here are some of the most troubling articles of this Protocol:

> *Art. 2 – **The parties cooperate**, according to the competencies and attributions provided by the law, in the activity of capitalization of the information from the field of prevention and combating of offences against national security, of the terrorism acts, of the offences that have a correspondent in the threats to the national security and of **other severe offences**, according to the law.*

[10] https://www.csce.gov/international-impact/events/romanian-anti-corruption-process-successes-and-excesses

According to the law, "*At the request of the competent judicial bodies, specially designated staff of the Romanian Intelligence Service may grant support in carrying out certain criminal investigation activities for offences concerning the national security.*

The criminal prosecution bodies shall have the obligation to impart to the Romanian Intelligence Service any data or information regarding the national security, resulting from the criminal prosecution activity" (art. 12 and 13 from Law 14/1992 on the organization and the operation of the Romanian Intelligence Service).

As a result, the competence of the SRI was strictly limited to providing support, at the request of criminal investigation bodies, ONLY in case of "certain criminal investigation activities for offences concerning the national security".

The threats to the national security are expressly defined in art. 3 of Law 51/1991 - Law on National Security of Romania.

Not only does the law not allow the involvement of the Service in other types of offenses, but expressly forbids it, by art. 13 of Law 14/1992, which states that "***The bodies of the Romanian Intelligence Service may not carry out criminal investigation activities****, they may not take a detention measure or preventive custody, nor dispose of their own arrest places*".

In conclusion, this article 2 of the Protocol expends the competence of SRI in the field of criminal investigation far beyond the legal provisions. All the other articles of the Protocol that mention specific attribution refer to Article 2, which is the reference article.

Art. 3 – The objectives of cooperation are:

- *Creation of a joint operative team to act based on action plans for the exertion of the parties' specific competencies, **for the documentation of the facts** provided at art.2;*
- *Granting by the Service, under the law and of the present Protocol, of the specialized technical assistance to the prosecutors in the cases provided in art. 2, **in which the administration of the evidence** imposes specific knowledge or technical endowments or in the cases in which persons with protected identity are listened to;*

Art. 14** – (1) Grants support, through specialized departments, for the completion of the information in complex cases such as those provided by **art. 2**, on the docket of the Prosecutor's Office, purpose for which **it carries out activities of investigations and operative surveillance.

In 2016 the Constitutional Court (CCR) has declared unconstitutional the article 142, par. 1, of the Criminal Procedure Code that referred the bodies of the state who can conduct the technical surveillance (communications, audio-video ambient wiretapping) because it was not specific enough.

That article states that "*the prosecutor enforces the technical surveillance or may order it to be carried out by the criminal investigation body or by specialized workers of the police or* ***by other specialized state bodies***."

CCR shows that the phrase "or other specialized state bodies" does not comply with the Constitution, because is not clear to whom it refers.

The Service conducted in 2014 "*42,263 technical surveillance warrants and 2,410 ordinances from the Public Ministry and the National Anti-corruption Directorate (DNA)"*, states the activity report submitted by SRI to the Parliament in that year.

According to the Criminal procedure code (version in force in 2009, when the protocol was signed), art. 65 "**the task of administrating the evidence during the criminal trial belongs to the criminal investigation body and to the court.**"

In conclusion, all those warrants conducted by SRI based on the protocol were done against the prevision of the law.

Art. 6 – (1) *Communicates, operatively, but not later than 60 days, the manner of capitalization of the information notices or referrals received from the Service,*

Through this article, the prosecutors took the obligation to report to SRI what they did with the data and information provided to them by the Service

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Art. 7 (2) *Puts at the disposal of the Service, the data and information regarding the implication of some military officers or civil employees thereof in the preparation or carrying out of offenses, if it deems that, by this, finding out the truth in the case is not impeded or slowed down.*

This obligation assumed by the Prosecutor's Office is not mentioned in any law. On the contrary, this prevision violates the non-public character of the prosecution procedure and warns the SRI about corruption-related scrutiny of its employees.

> ***Art. 16*** *– Makes, by operative workers especially designated,* ***the activities mentioned in art. 224, para.2*** *of the Criminal Procedure Code, in the cases provided* ***in art. 2****.*

The article violates the limited competences allowed to the Service by the Code of penal procedure, through art. 224, which states: "*Also, in order to gather evidence necessary to the criminal investigation bodies for the initiation of criminal investigation, the operative employees of the Ministry of Interior, as well as of the other state bodies having attributions related to national security, especially appointed for this purpose,* ***may perform preliminary acts*** *in connection* ***with the deeds that constitute, according to the law, threats to national security***."

> ***Art. 34*** *– (1) The Service shall ensure the recording of the communications or calls resulted from the interception on data carriers with serial numbers, made available by the prosecutor, as well as the sending thereof to the Prosecutor's Office or the territorial prosecutors' offices.*
> *(2) For the support of the specific activities carried out by the Prosecutor's Office or the territorial prosecutors' offices, the Service shall ensure the transcription of the communications or the calls considered relevant in the case.*
> *(3) Subsequently, at the written request of the prosecutor, the Service may ensure the rendering of other calls, selected from the recorded traffic.*

This secret provision violates the provision from the Code of penal procedure:

"Art. 91^2 – The prosecutor *proceeds* ***personally*** *to the interceptions and recordings provided under art. 91^1 or may dispose that these are performed by* ***the criminal investigation body****.*

Art. 91^3 – alin.2 The recorded conversations are ***entirely transcribed in writing*** *and attached to the official report, with certificate for authenticity from the criminal investigation body, checked and countersigned by the prosecutor who performs or supervises the respective criminal investigation."*

The above mentioned articles are ONLY for exemplification, the full analysis of the attached protocols revealing that they contain rules of secret criminal procedure, some of which contradict the public one.

Based on these protocols, people who did not know that they existed were investigated, prosecuted and convicted.

2. Protocol between SRI and the Superior Council of Magistracy

According to the Constitution, the Superior Council of Magistracy is the guarantor of the independence of the judiciary.

By virtue of this role, the SCM has exclusive attributions, without any interference from outside, regarding the career of judges and prosecutors, as well as their promotion and sanctioning.

Through the protocol signed with the SRI, the Council has allowed the Service to interfere with its activity by allowing it to access its data (including the personal files of magistrates), agreeing to use secret information in disciplinary cases or collaborating with Service in the procedure of issuing an opinion on legislative projects concerning the administration of justice or the status of magistrates.

In this regard, the following protocol provisions are in force:

Art. 3 - (1) *Cooperation shall be carried out under the law and this Protocol in strict compliance with the competencies and competencies of the Parties through:*
making effective use of the possibilities for early identification and timely removal of deeds that could affect the performance of justice or the achievement of national security;
mutual information with the data and information that each Party holds and which are useful for the fulfillment of the specific tasks of the other Party;
analyzing draft normative acts related to the object of activity of the Parties;
exchange of documentary material, works and data useful to the other Party for the development of specialized materials.
(2)In complex cases*, effective cooperation shall be carried out on the basis of* ***joint plans approved by the two institutions' management,*** *specifying the tasks assigned to each Party.*

> ***Art. 5 (4)*** *In exceptional situations, the data and information transmitted by the Romanian Intelligence Service* ***may be entered in the investigation files of the Superior Council of Magistracy, only in compliance with the provisions of para. (2) and para. (3).***
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> ***Art. 6 -*** *The Parties undertake, within a reasonable time,* ***to communicate to each other the results obtained on the basis of the information*** *received from the other Party.*

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3. All the others protocols are still secret

There are a whole series of other protocols that have not yet been declassified. Some of these are no longer in force (those listed in the protocol between SRI and PICCJ or those between SIE and MP), but some may still be applied.

According to SRI, there are 64 secret protocols between the Service and public institutions, most of which are still secret.

The most important and severe one are the Protocols signed by the High Court of Cassation and Justice and SRI and the Judicial Inspection and the SRI. These are still classified, and in case of the High Court is not being yet clear if it is a single SRI protocol or two, the public statements of the authorities in this respect being contradictory.

IV. Conclusions

Communism collapsed in Romania almost 30 years ago, which is only one generation away. The mentality of the state institutions as well as of the majority of people did not change overnight simply by passing from one form of government to another. Changing the mentality, especially of an oppressive institution, requires time, transparency and oversight.

Romania had one of the most brutal communist regimes, which was imposed and maintained through Securitate. The need of an effective and strong democratic oversight on secret services should have come naturally, as an antibody of civil society, to prevent the horrors of the past.

But this has never happened in Romania, civilian oversight was simply not a subject of debate. A strong secret service, with widespread influence in all state institutions, in media and even in the judiciary, was seen as a natural, tolerable and even necessary authority of the government.

The fight against corruption in the past years, clearly a necessary measure in Romania and massively supported by the West, was the ideal cover up for SRI to gradually regain influence within the judiciary to the point where now, in 2016, it gained back a part of the power Securitate had under the communist regime.

We call on all democratic institution to take a stand about this abnormal situation in Romania and urge the Romanian Government to get the secret services out of the judicial field, in order to safeguard the independence of the judiciary and to prevent future violations of human rights.

National Union of the Romanian Judges