

ROMANIA
PUBLIC MINISTRY
THE PROSECUTOR'S OFFICE OF THE
COURT OF APPEAL BUCHAREST
No. 977/VIII-1/2004

RESOLUTION

29.03.2004

GEORGE BĂLAN – General Prosecutor of the Prosecutor's Office of Bucharest Court of Appeal.

Having investigated the complaint submitted by DUMITRU MĂDĂLINA, with the domicile in Costinești, 99 Gării street, Constanța County, Romania, against the penal investigation procedures performed on the basis of the search warrants no. 63, 64/March 16th, 2004, issued by the Bucharest Court,

I ESTABLISHED:

On March 18th, 2004, on the basis on the search warrant issued by the Bucharest Court, a house search has been made at the location at 2, Vasile Grozavu Str., 5th district, Bucharest, owned by DUMITRU IONELA-CRISTINA.

Dumitru Mădălina, who was in the building at the time of the search, has contested the violent way the search was performed, as well as the fact that some of the objects seized belonged to her.

She also mentions that she withdraws her declaration taken by the prosecutor during the search, as it was given under pressure.

The complaint submitted by the plaintiff is unfounded, due to the following reasons:

- the search was legally performed, on the basis of the warrant no. 63 and 64/16.03.2004, issued by a judge from the Bucharest Court;

- the building has been forcefully broken into because the information held by the penal prosecution authorities showed that there would be attempts of destruction of the evidences (see the search report from March 18th, 2004, that states that in the D.N. Cocea area, 5th district, several persons have set on fire objects and notes from some of the searched locations);

- the forceful breaking into was also done in order to discover “in *flagrante delicto*” unauthorized video-chat activities, fact confirmed by the search reports made at other locations;

- some of the goods found (paralyzing spray, pistols, handcuffs) in the searched locations could have been used for opposing to the search;

- the goods have been seized during the search in order to identify their contents (notes), the contents of the floppy disks or of the PC hard disk. At the time of the search, the prosecutor did not have the possibility to identify the owner of each good. This was supposed to take place later, during the penal proceedings, when the goods that did not represent “material evidence” would be given back to their rightful owners.

During the search and the issue of the report, neither the party nor the witnesses raised any objections regarding the way the search was performed or regarding the objects seized.

We mention that the plaintiff does not have any capacity in the trial case. Her permanent address is in Costinești, Constanța County, and the temporary residence in Bucharest, 14Trompetului Street, 5th district, and the owner of the searched building is Dumitru Ionela Cristina.

To be note as well that the plaintiff Dumitru Madalina has filed two documents at the Prosecutor’s Office of Bucharest Appeal Court on 22.03.2004 and 26.03.2004, called “Complaints against the measures taken by the representative of the Prosecutor’s Office of Bucharest Appeal Court” and respectively “against the deeds of the Prosecutor Nica Andreea” basing these complaints on the provisions of art. 275 and art. 278 Penal Procedure Code.

Thus on 18.03.2004 Dumitru Madalina was heard as a witness, judicial capacity which does not imply the obligation of legal assistance, as provided for in art. 171-173 Penal Procedure Code, especially since she did not request legal assistance when she lodged the complaint.

The claims of the plaintiff that the declaration was taken under pressure and that she was physically and emotionally molested can not be considered, because both in the case of the handwritten declaration, and in the declaration in standard form, series C, No. 065018 from 18.03.2004, such exceptions were not raised by the plaintiff, who signed the declarations.

To be mentioned that Lt. Raicu Alina, officer psychologist in the First Special Battalion of the Romanian Gendarmerie, was also present at the hearing as a witness of DUMITRU MADALINA, and that she issued the Report No. 169795/2004, which shows that no pressure was made upon the victim, nor was she physically abused during the hearing. Moreover, at her request, she was brought three types of chocolate and a glass of water.

Thus it can not be accepted that the witness declaration given on 18.03.2004 is a violation that leads to the nullity of the act, as provided for in art.197 Penal Procedure Code.

The complaint lodged by DUMITRU MADALINA in which she refers to the initial declaration is not legally grounded and a new statement cannot be considered as evidence, as provided for in art. 64 Penal Procedure Code.

The judicial nature of the document is Complaint against the deeds of the Prosecutor, provided for in the art. 278 Penal Code, as anyway she named it.

During the penal proceedings, the declaration given on 18.03.2004 will be considered in accordance with the other evidence, and in case the prosecution authority considers a new hearing of DUMITRU MADALINA is relevant and useful, measures should be taken for the citation and hearing.

For the above-mentioned reasons,

On the basis of the provisions of art 275 and the following, Penal Procedure Code,

I DECIDE:

The dismissal as ungrounded of the complaint submitted by MADALINA DUMITRU against the penal proceeding actions performed during the house search on 18.03.2004.

One copy of the present resolution will be handed to Prosecutor CHABORSKI GRIGORE, to be considered in the dossier no. 720/P/2003.

The solution will be communicated.

GENERAL PROSECUTOR

GEORGE BALAN