

# Justice Fallen into the Wrong Hands

By Alina Radu\*

“Why is your daughter beating me? Who is she to beat me, Mrs. Fistican?” Victoria Hadirca cried out while demanding an explanation from Eugenia Fistican, director of the National Institute for Justice (INJ — *Institutul National de Justitie*), the only institution that offers formal education for judges and prosecutors in Moldova.

On May 14, 2010, during a meeting in Fistican’s office, her daughter, Elena Istrati, hit Hadirca in the head three times, smashing her face against a table and causing injuries to her nose and a cerebral concussion that kept Hadirca hospitalized for a few weeks. Fistican did not intervene to stop the attack. Neither did two employees present in the meeting.

Hadirca, a student at INJ, on leave from her position as head of the INJ’s Teaching Department, had been summoned to the office and had an argument with Fistican. The director’s daughter did not like Victoria’s responses and resorted to violence. “She made my mom angry,” Istrati later explained to the police.

Fistican said her daughter reacted that way because Victoria insulted her by saying she (Fistican) doesn’t know the law and the Labor Code. She has called the doctor’s report confirming Victoria’s concussion a “lie.” The director later resigned, after the Superior Council of Magistrates (SCM) decided that her daughter did not deserve to become a magistrate and needed to be expelled. The SCM also detected other violations at the school and ordered an audit.

According to the class schedule for future judges at INJ, when the incident happened, Istrati should have been in the classroom and not in her mother’s office. Also, per INJ regulations, she should not have been allowed into the director’s office while administrative problems were being discussed, much less permitted to physically attack students or staff members.

But it’s not realistic to expect staff and students of the school that prepares judges and prosecutors in Moldova to respect the rules if the Moldovan judiciary is characterized by nepotism and permissiveness.

The INJ was inaugurated in November 2007 with a ceremony that was attended by the secretary general of the Council of Europe, Terry Davis; the president of Moldova, Vladimir Voronin; and INJ Director Fistican.

International support for the INJ came from the European Union (EU), programs of the United Nations (UN), the U.S. Embassy in Moldova and agencies such as the Organization for Security and Cooperation in Europe (OSCE). All were interested in helping Moldova overcome persistent injustice and human rights problems.

Soon after the first small groups of students registered at the school, the media revealed that the list included sons, nephews, cousins, and even godchildren of Moldovan judges, policemen and other members of the Moldovan justice administration. The relatives numbered at least a third of the entire school student population in its first days alone.

Tudor Popovici has been the head of the Association of Judges (AJM — *Asociatia Judecatorilor din Republica Moldova*) since 2008 and created and taught the INJ course “Judicial Ethics: Code of Ethics of the Judge: Interpretation and Application.” When asked in 2008 about the ethical dimension of enrolling so many relatives, he said, “The problem may occur later, when these new judges start to work and arrangements will need to be made so they never work under direct supervision of their relatives.” In school, he said, the course load is demanding and all students must meet strict requirements, regardless of who they are, or who they may be related to.

Popovici’s own son, however, does not seem to be a strict follower of basic legal principles. Dorin Popovici is a young judge known to use peculiar methods.

The Judge at the Police Station

“Your name!”

“Oxana Radu.”

“Guilty. Prison for five days!”

That is the entire transcript of Radu’s trial in front of Judge Dorin Popovici, which took place on April 9, 2009, at a police station. This dialogue, lasting only three lines, has been repeated in the media and discussed in judicial rooms hundreds of times since.

Radu was arrested while she was going home on a bus on the night of April 7, 2009. This was the night when thousands of Moldova’s young people flooded the streets to protest the results of the elections that had brought the communist regime back into power. Protesters took to the streets in support of democracy, freedom, and justice — principles they believed would be under attack by a communist regime.

However, many people who did not actively participate in the protests were also arrested. All the young people on Radu's bus, along with many passengers on many other buses, were arrested for allegedly participating in the riots. In Radu's case, her file says she was arrested "at the corner of Stefan cel Mare Street and Bucharest Street," two parallel streets that never intersect.

At the police station, in a room full of male police officers, Radu was forced to strip completely naked and suffered hours of humiliation. Her protests and requests to speak to a lawyer were ignored. Eventually, she was thrown in a basement with other girls, some of them underage. For two days, they had no communication with lawyers or relatives. They did not even have access to drinking water.

On April 9, 2009, they were lined up in front of a door in the police station. "At first, I was so glad to hear that I'd see a judge. I had so much to say from the moment I was arrested, about my rights, about my (10-year-old) child who was home alone, and about the underage girls I had been imprisoned with," Radu said.

For the first time in the history of Moldovan justice, judges went to police stations in order to speed up the trial process. They handed down judgments on hundreds of people in a few hours. At least seven judges were working at police stations in the Moldovan capital city of Chisinau that day. According to court records, Popovici spent between five and 10 minutes with each case.

With Radu, he only confirmed her name and then copied and pasted the verdict: she was to be transferred to a jail — three hundred kilometers from her home — for five more days. "He did not provide a lawyer, he did not take time for judicial deliberation and he made the decision by copying and pasting it from other decisions," Natalia Molosag, Radu's lawyer, confirmed.

The Minister of Justice has confirmed Oxana's allegations and said that Popovich had admitted serious violations of procedural law (examining Oxana's file outside the court), violating several rules and procedural safeguards.

Radu sued both the police and the judge, but the cases are still pending in court. For months, the Moldovan press and non-governmental organizations actively called for Popovici and the other six judges' dismissal from the judiciary. The results of these calls were mixed. These cases are debated and decided within the very same judicial system itself, and the judges have their own powerful defenders. Journalists, on the other hand, are considered to be "mad dogs."

The Head of Justice and the "Mad Dogs"

Ion Muruianu, head of the Supreme Court of Justice (CSJ — *Curtea Supremă de Justiție a Republicii Moldova*), publicly expressed his anger against the Moldovan press. In an official speech, made in February 2010 at the National Meeting of Judges, he called investigative journalists “mad dogs who are dangerous to society.”

Journalists, lawyers and human rights defenders complained to the Superior Council of Magistracy (CSM — *Consiliul Superior al Magistraturii*), which is the main institution responsible for judicial ethics and judges’ misbehavior. CSM issued a disciplinary sanction against Muruianu, who, in turn, filed an appeal to the CSJ, the very institution that he leads.

In early March 2010, 52 ministers of parliament (MPs) from the majority Alliance for European Integration (AIE — *Alianta pentru Integrare Europeana*) voted in the Parliament of Moldova to remove Muruianu from his position, both because Moldova had allegedly lost too many cases at the European Court of Human Rights (ECHR) under his administration and because of the dog comment. The opposition, the communist faction, stood up in his support and filed an appeal at the Constitutional Court (CC — *Curtea Constitutionala*), asking it to review the dismissal.

Justice Minister Alexandru Tanase explained why the old-fashioned forces in Moldova want to keep Muruianu in his position: “The effort to restore Muruianu as president of the Supreme Court of Justice is a business goal of criminal outfits. Ion Muruianu is needed in this position by the many business circles that have built empires.”

In April 2010, the Constitutional Court of Moldova decided that Muruianu’s dismissal by Parliament had been ordered contrary to constitutional norms and ordered that he be reinstated in his post. A few days later, the CSJ cancelled the sanctions previously dictated by the CSM. Muruianu’s mandate expires in March 2011, and he has already applied to be reelected as head of the SCJ.

#### On Judges’ Watch(es)

Constitutional judges in Moldova do not inspire the same respect in the public that their counterparts in other countries do. Instead, they have inspired a national joke — many Moldovan journalists and NGO representatives will jokingly point at their wristwatches when talking about judges because most of them received expensive Swiss watches from the head of the Communist Party, Vladimir Voronin, while he was president of Moldova.

In May 2009, after the CC validated the results of the elections that gave the Communist Party the majority. Voronin used public funds to buy expensive watches and offered them in a special gathering to members of CC and of the Central Election Commission (CEC

— *Comisia Electorala Centrala*). Dumitru Pulbere, the head of CC, confirmed to the media that he “got the watch and an album.”

The Moldovan judiciary is going through a complicated stage. Year after year, studies from Transparency International and other organizations portray it as a field where bribes are common, and media reports reveal that contact with corrupt and unethical practices start as early as law school.

The public holds a gloomy perception of judges. According to the “Perceptions and Experiences of Household Representatives and Businessmen about Corruption in Moldova,” a report by Transparency Moldova, only 1.7 percent of respondents have total trust in the judicial system, and almost a third have no trust at all.

“It is hard to open a file against a judge who is accused of bribes, nepotism or any other illegal activity. We cannot do this because they have judicial immunity,” says Viorel Radetchi, head of Anti-Corruption Prosecutor’s Office (PA — *Procuratura Anticoruptie*). He added that Moldova has yet to open a file against judges who are accused of corruption or nepotism.

As for the people mentioned in this article, as of early 2011, the situation was as follows: Elena Istrati was dismissed from INJ one month after the incident and her mother resigned from the director’s position two months later to work as a judge at the Supreme Court of Justice. Popovici was eventually dismissed. Even though he tried to be reinstated as a judge and later applied to practice as a lawyer, both options were rejected in response to strong pressure from the media and NGOs.

Two of the other judges were also dismissed, but others are still working. Popovici’s father resigned from the position of head of Association of Judges and no longer teaches at NIJ, but his ethics manual is still used by students.

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