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REFERENCE: G/SO 215/51 ROU (2)
KF/sk 1539/2006

21 March 2007

Dear Ms. Magid,

I have the honour to transmit to you herewith, copy of a submission from the Government of Romania dated 5 March 2007, concerning the admissibility of communication No. 1539/2006, which you submitted to the Human Rights Committee for examination under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Mr. Mohammad Munaf.

You are kindly requested to forward your comments on the State party's submission within two months from the date of this letter, that is not later than 21 May 2007.

I should also like to inform you that the Committee has decided, pursuant to rule 97, paragraph 3, of its rules of procedure, to examine the question of the admissibility of communication No. 1539/2006 separately from the question of the merits. You should therefore limit your comments on the State party's arguments to the admissibility of your communication.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alessio Bruni'.

Alessio Bruni
Officer-in-charge
Treaties and Council Branch

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*Permanent Mission of Romania
to the Office of the United Nations and the
International Organisations in Switzerland*



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No. 392

OHCHR REGISTRY

- 6 MAR 2007

Recipients : MS

REFERENCE: Case no. 1539/2006

The Permanent Mission of Romania to the United Nations presents its compliments to the Office of the High Commissioner of Human Rights and, with reference to the Office's Verbal Note G/SO 215/51 ROU (2) of 21 December 2006 by which it transmitted the text of a communication dated 13 December 2006 submitted to the UN Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights on behalf of Mr. Mohammad Munaf against Romania, and to the Mission's Verbal Note No. 289/15.02.2007, has the honour to submit herewith enclosed the Romanian Government reply on the admissibility of communication and its annexes.

In the same time, we would like to reserve our right to provide to the Office of the High Commissioner of Human Rights further evidences to support our position, as soon as they will be at our disposal.

The Permanent Mission of Romania to the United Nations avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 05 March 2007



**The United Nations Office of the High Commissioner for Human Rights
Geneva**

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**Submissions of the Romanian Government in respect of
the admissibility of the communication introduced on behalf of
Mohammad Munaf
against Romania under the provisions of the
Optional Protocol to the International Covenant on Civil and Political
Rights**

Case nr. 1539/2006

On 21 December 2006, by Note Verbale no. G/SO215/51ROU(2), the Human Rights Committee brought the present case to the attention of the Romanian Government, inviting it to present its observations as to the admissibility and as to the merits. The Committee requested the Government of Romania to present the interim measures it undertook in order to protect Mr. Mohammad Munaf and his family. The position of the Romanian authorities as regards the latter aspect was conveyed to the Committee by Note Verbale nr. 239 of 7 February 2007 of the Permanent Mission of Romania to the United Nations in Geneva (*Annex 1*).

By submitting the present observations, the Government of Romania questions the admissibility of the mentioned Communication. Romania reminds that, pursuant to Rule 92 of the Rules of Procedure and Evidence of the Human Rights Committee, the information herewith enclosed does not imply a determination on the merits of the Communication.

The observations of the Government of Romania are structured as follows:

- I. **As to the facts**
- II. **Relevant international law**
- III. **As to the law**
 - A. **The condition set forth by Article 1 of the Optional Protocol as to the quality of the author of the Communication**
 - B. **The condition that the individual whose rights have allegedly been violated be subject to the jurisdiction of the State Party, set forth by Article 1 of the Optional Protocol**
 - C. **The author of the Communication is not a "victim" within the meaning of Article 1 of the Optional Protocol**
 - D. **The author of the Communication failed to substantiate his complaints**
 - E. **The author of the Communication failed to exhaust the available domestic remedies, in accordance with Articles 2 and 5(b) of the Optional Protocol**
 - F. **The abusive character of the present Communication**
- IV. **Conclusion**

I. As to the facts

Romania considers that the facts in the present case can be summarised as follows:

1. On 15 March 2005 three journalists of Romanian citizenship, Mrs. Marie Jeanne Ion, Mr. Ovidiu Ohanesian and Mr. Sorin Miscoci, together with their guide and interpreter, Mr. Mohammad Munaf, of Iraqi and American citizenship, left Romania heading for Iraq. The declared purpose of their trip to Iraq was to gather information for some press materials.
2. The dangerous situation in which the journalists, in general, find themselves while on the territory of Iraq – including the possibility of being taken hostages or of being victims of various terrorist acts – was widely known at that time.
3. On 28 March 2005, around 19:30, the Romanian journalists and their Iraqi-American guide were kidnapped in Baghdad, in the so-called University Area, by a terrorist group later self-identified as “Muadh Ibn Jabal Brigade” (*Annex 2*).
4. The terrorist group broadcasted video images with the four hostages, as commonly done in such circumstances. The story of the abduction and the efforts undertaken for their release were closely followed by the Romanian society. The event generated an important public turmoil in Romania, as evidenced by the comprehensive public debates and by the public demonstrations organised in Bucharest (*Annex 2*).
5. On 29 March 2005, in a first contact with the Romanian authorities, the kidnapers asserted that they will kill/behead all four prisoners if Romania does not pay a certain amount of money as ransom. Later on the terrorists threatened to kill/behead all four prisoners if Romania does not withdraw its troops from the territory of Iraq (*Annex 2*).
6. Starting with the very day of the kidnapping, 28 March 2005, the Romanian authorities initiated demarches for the rescue of the three Romanian journalists and of the Iraqi-American national, considering that all four left Romania together, the latter one accompanying the former three as their interpreter and guide (even if the Romanian authorities had no legal obligation towards Mr. Munaf, as he is not a Romanian citizen). The kidnapers themselves did not make any difference when showing the video images or during negotiations when requesting the Romanian authorities to act as mentioned above in return for the freedom of the four. In the eyes of the Romanian authorities all four were victims of the same group of kidnapers, being subject to the same ordeal.
7. In the preparation of the rescue effort the Romanian authorities benefited from the help of the Iraqi Ministry of Interior (*Exhibit 1 to the Communication*) and of the troops under the command of the Multi-National Force-Iraq (MNF-I).
8. The effort of freeing the four hostages implied the temporary relocation of the Romanian military troops serving under the command of the MNF-I from Talil (where they were initially assigned), to Baghdad (where the four were being held hostages) (*Exhibit 1 to the Communication*). Some extra Romanian anti-terrorist units mandated to contribute to the release of the four hostages were sent to Baghdad (*Exhibit 1 to the Communication*), where they acted under the command of the MNF-I - the only foreign military authority allowed on the territory of Iraq, according to the relevant UN Security Council Resolutions (*see infra Section III “Relevant international law”*).

9. The rescue operation was a very complex one, involving important allocation of human resources, intervention of intelligence units and difficult negotiations in a general effort to prevent the execution of the four hostages and to secure their freedom (*Exhibit 1 to the Communication*).
10. All the time during the preparation of and the rescue operation itself, Mr. Munaf was considered and treated only as a victim. This was his only status in the eyes of those that secured his release, during an MNF-I operation, from the captivity of the kidnappers (*infra para. 11*), even if investigation proceedings already started in Romania regarding him (*infra para. 14*). It was even feared that the kidnappers would execute Mr. Munaf together with one of the Romanian journalists, when, on 26 April 2005, the terrorist group gave Romania a 24-hour ultimatum to withdraw its troops from Iraq, otherwise one of the three journalists (Sorin Miscoci) will be executed together with the American guide. A few weeks later, it was feared that the kidnappers executed Mr. Munaf when, in one of the last videos sent by the terrorist group (18 May 2005), the Iraqi-American guide did not appear, and one of the other hostages was wearing Mr. Munaf's T-shirt (*Exhibit 1 to the Communication and Annex 2*).
11. On 22 May 2005 the four hostages were released as a result of a very risky operation involving an important military effort under the command of the MNF-I (*Annex 3 and Exhibit 13 of the Communication, p.1*).
12. Following the taking over of the four hostages, they were brought by military troops under the command of the MNF-I to the premises of the Romanian Embassy in Baghdad. ~~The Romanian authorities took into custody and protection the three Romanian citizens, while the American-Iraqi national remained under the authority and protection of MNF-I, which had secured his release from the captivity of the terrorist group. On the same day of 22 May 2005, Mr. Munaf was debriefed by the international forces.~~
13. Following the debrief, in the morning of the second day, that is on 23 May 2005, the MNF-I exercised its power conferred by the relevant UN Security Council Resolutions (~~see *infra* Section III "Relevant international law"~~) to detain Mr. Munaf on suspicion that he represented a threat to security in Iraq. Since then Mr. Munaf has been detained by MNF-I troops at Camp Cropper detention unit, located near Baghdad International Airport (*see page 8, last paragraph of the Communication and Annex 2*).
14. Following the arrests operated in Iraq of persons who allegedly were involved in the kidnapping and pursuant to the investigations carried out in Bucharest and in Baghdad, which indicated the possibility that Mr. Munaf was involved in the preparation of the kidnapping, the Romanian judicial authorities initiated, on 17 May 2005, criminal proceedings against Mr. Munaf on charges of violation of the ~~Romanian domestic criminal laws concerning terrorism – the crime of constitution of and participation to terrorist groups – financing of terrorist acts and complicity to terrorist activities (Annexes 4 and 5).~~ The grounds for the basis of these proceedings are the principle of territoriality (as some of the alleged preparatory and executive acts were allegedly carried out on Romanian soil) and the principle of personality, considering that the victims were Romanian citizens.

15. There were Romanian prosecutors participating at some of the investigations carried out in Baghdad, with the approval of the Iraqi judicial authorities. During their presence there they interrogated Mr. Munaf and heard his statements on 30-31 May 2005, 26-27 July 2005, 14-15 September 2005 and 18 November 2006 (Annex 5).
16. In the context of these meetings Mr. Munaf did not raise any claim against the Romanian authorities, nor did he draw the attention of the Romanian authorities to acts of torture or ill treatment to which he, now, claims he was subjected to during detention. The Romanian prosecutors noticed that Mr. Munaf was well treated, that he benefited of decent food and proper conditions for personal hygiene were ensured; they did not notice any sign of ill treatment or of physical or psychological coercion (Annex 5 and Annex 6). At Camp Cropper there is no Romanian presence, the detention unit being run exclusively by US military (Annexes 7 and 8).
17. The Romanian prosecutors participating in the investigations in Baghdad treated Mr. Munaf in full conformity with the international and Romanian human rights standards. The mentioned statements were taken in the presence of Mr. Munaf's Iraqi lawyer, Mr. B.A.I., or in the presence of his Romanian lawyer, Mrs. B.D.E., who travelled to Baghdad for some of these specific occasions (Annex 5). The two lawyers did not contest the statements and never claimed that they were given under physical and psychological coercion (Annexes 5 and 6).
18. US representatives from Camp Cropper were also present during all interrogations - this being a requirement of the procedure (Annex 9) - and, after the interrogations, certificates were issued attesting that the military lawyers from the US contingent at Camp Cropper assisted at the interrogations and noticed that the civil and political rights of the American citizen Mohammad Munaf were respected, Mr. Munaf having been treated with respect and consideration (Annexes 5, 6 and 10).
19. For every interrogation, the Romanian prosecutors signed a memorandum regarding the conditions for access and interrogation of the accused, one of these conditions being the audio/video recording of the interrogations along with the presence of the American officials from Camp Cropper (Annex 9).
20. The mandate of the prosecutors, as mentioned above (*supra para. 17*) was only to hear the statements of Mr. Munaf relevant for the cases brought before the Romanian judicial authorities (*supra para. 14* and *infra para. 22*). They were not empowered in any way to seize the Iraqi judicial authorities with a case against Mr. Munaf (Annex 4). Moreover, in a public statement issued on 2 November 2006 the Romanian Ministry of Justice underlined that there was no delegation given to anybody who could seize the Iraqi judicial authorities with the case of the kidnapping of the three Romanian journalists (*Exhibit 24 to the Communication*). According to these statements, "[...] the Ministry of Justice has not authorized any American official to represent Romania during the Iraqi legal proceedings concerning Mohammad Munaf".
21. Additionally, the Romanian representatives from the Embassy in Iraq had no knowledge either of the trial, nor of the alleged authorization allegedly given by the Romanian authorities to US officer Robert Pirone ("Pirone power-of-attorney"). The Romanian Ambassador to Iraq, Mr. Mihai Stuparu, denied any knowledge of the trial, saying he contacted US and Iraqi authorities to ask for information but was

unsuccessful. The spokesperson of the Romanian Ministry of Foreign Affairs also issued a statement in the same sense (*Annex 11*).

22. Presently, on the docket of the Court of Appeal of Bucharest there are two cases, one in which Mr. Munaf is accused of violation of the Romanian internal laws concerning acts of terrorism (*supra para. 14*) and a second one in which Mr. Munaf is a witness in the case against O. H. (the alleged mastermind of the kidnapping plan). According to the Prosecution's charges, Mr. Munaf was an accomplice in the kidnapping organized by O. H., in which others were involved as well (*Annex 4*)
23. Initially, O. H. and Mohammad Munaf were prosecuted together as alleged accomplices. However, due to procedural reasons, the trials of the two accused were disjoined.
24. Ever since the initiation of the proceedings against Mr. Munaf by Romanian judicial authorities, Romania, through its competent body, i.e. the Ministry of Justice, has made numerous demarches and efforts in the desire to obtain the extradition of Mr. Munaf to Romania so that he could face the charges brought against him for involvement in commitment of terrorist acts or to obtain declarations from him, as witness in the proceedings against O. H., which could be used in the trial of the latter in Romania (*Annex 4*).
25. On 24 September 2005, the Ministry of Justice received an extradition request from the Court of Appeal of Bucharest concerning the accused Mohammad Munaf and addressed to the US competent authorities. The extradition request was pursuant to the provisions of a bilateral convention on extradition. It was transmitted on 25 September 2005 to the US Embassy in Bucharest. The US authorities did not certify the extradition request as they considered that the conditions set forth in the bilateral convention were not met: the accused was neither on the US territory, nor on a territory occupied or controlled by US (*Annex 1*).
26. Mr. Munaf's extradition from Iraq was also impossible, since there is no bilateral legal basis between Romania and Iraq for such a demarche (*Exhibit 15 to the Communication and Annex 12*), and since, according to its Constitution, Iraq does not extradite its own nationals - Mr. Munaf having Iraqi citizenship (*Annex 13*).
27. On the other hand, Romania requested the assistance of both Camp Cropper authorities and of the Iraqi authorities to obtain a testimony or any other kind of declaration to be used in the two cases on the docket of the Court of Appeal of Bucharest (*supra para. 14 and Annexes 4 and 5*).
28. On 19 December 2005, 20 March 2006, 26 April 2006, 26 July 2006, 16 October 2006, 7 November 2006 the Court of Appeal of Bucharest issued requests for judicial assistance addressed to the Iraqi judicial authorities, having as purpose the summoning of Mr. Munaf and the hearing of the accused by means of a videoconference. The requests were sent to the Iraqi competent authorities. No conclusive answer was received to these demarches, the Iraqi authorities considering that, since Mr. Munaf is in the custody of the MNF-I forces, the Iraqi authorities are not in a position to reply to Romania's requests (*Annex 4*).
29. When approached by the Romanian authorities on several occasions (in December 2005, 21 March 2006, 4 May 2006, 24 May 2006) the US authorities considered that

the demarches regarding Mr. Munaf should be addressed directly to the Iraqi authorities, Mr. Munaf being in the custody of the MNF-I and not within US jurisdiction (*Annex 4*).

30. On 1 November 2006, the Romanian Minister of Justice sent letters to the Iraqi Minister of Justice and to the US Attorney General asking for their support in complying with the requests for judicial assistance issued by the Court of Appeal of Bucharest. In the letter to the US Attorney General the Romanian Minister of Justice underlined that the MNF-I should not deliver Mr. Munaf to the Iraqi authorities prior to his interrogation by the Romanian authorities (*Annex 4*, also *Exhibit 24 to the Communication*).
31. During conversations between representatives from the Romanian Ministry of Justice and the Iraqi Ministry of Justice, on 12 and 14 November 2006, the Iraqi authorities gave their consent for the hearing of Mr. Munaf via videoconference (*Annex 4*).
32. On 23 November 2006, the above mentioned videoconference took place at the Court of Appeal of Bucharest with the help of the MNF-I and of the US Embassy in Baghdad (*Annex 4*, also *Exhibit 5 to the Communication*).
33. Thus, the repeated requests of the Romanian competent authorities over a period of a year (November 2005 - November 2006) resulted in a single videoconference being organized with the help of MNF-I and of the US Embassy in Baghdad on 23 November 2006.
34. It was decided in that context that another videoconference should be organized on 14 December 2006, which, due to reasons independent of Romania's will, did not take place (*Annex 4*).
35. The Romanian authorities insisted, however, that a new videoconference should take place, a new demarche in that respect having been carried out on 29 December 2006 and reiterated on the 2 February 2007.
36. In addition, on 6 February 2007, the Romanian authorities sent letters to the Ministry of Foreign Affairs of Iraq and to the General Command of MNF-I at Camp Cropper, underlying that Romania is against the death penalty, including as far as Mr. Munaf is concerned, and that M. Munaf should remain in the custody of MNF-I at Camp Cropper (*Annex 1*).
37. Moreover, on 20 February 2007, the Court of Appeal of Bucharest decided that M. Munaf should be heard on 27 March 2007 through a rogatory commission. The assistance of the Iraqi authorities is necessary in these circumstances, and, in that regard, the request for assistance was forwarded by the Romanian Ministry of Justice to the Iraqi authorities.
38. The Romanian Embassy in Baghdad approached, for several times, the Iraqi authorities in a desire to consult and obtain a copy of the file of Mr. Munaf at the Central Criminal Court of Iraq. These demarches were unsuccessful due to Iraqi procedural restrictions. According to the position of the Iraqi Ministry of Justice, expressed at the level of deputy minister, there is no legal basis to proceed with the Romanian request, as Mr. Munaf is not a Romanian citizen and there is no bilateral agreement between Romania and Iraq on assistance in criminal matters. In the light

of the last two arguments, the Iraqi authorities emphasized that the hearing of Mr. Munaf via videoconference was a favour, an exception made by Iraq.

II. Relevant international law

39. Romania is a Party to the International Covenant on Civil and Political Rights since 9 December 1974.
40. Romania is a Party to the Optional Protocol to the International Covenant since 20 July 1993.
41. Also relevant for this case are the UN Security Council Resolutions which established and further extended for successive 12-month periods the mandate of the Multi-National Force in Iraq:

- UNSC Resolution S/RES/1511(2003) which established the multinational force under unified command;
- UNSC Resolution S/RES/1546(2004), which, *inter alia*, “not[ed] that the presence of the multinational force in Iraq is at the request of the incoming Interim Government of Iraq and therefore, reaffirm[ed] the authorization for the multinational force under unified command established under resolution 1511 (2003) having regard to the letters annexed to [resolution 1546 (2004)]” and “decided that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to [resolution 1546 (2004)] [...] setting out its tasks, including by preventing and deterring terrorism, so that *inter alia* the United Nations can fulfil its role in assisting the Iraqi people [...] and the Iraqi people can implement freely and without intimidation the timetable and programme for the political process and benefit from reconstruction and rehabilitation activities”. Moreover, according to the provisions of the resolution, “the mandate of the multinational force shall be reviewed at the request of the Government of Iraq or twelve months from the date of [resolution 1546 (2004)]”;

The letter of US Secretary of State Colin Powell annexed to UNSC Resolution 1546 (2004) details the tasks of the MNF-I, identifying, *inter alia*, combat operations against members of the groups posing security threats to Iraq, internment where this is necessary for imperative reasons of security and the continued search for and securing of weapons that threaten Iraq's security.

- UNSC Resolution S/RES/1637(2005) which, *inter alia*, reaffirmed the authorization of the multinational force and decided to extend the mandate of the multinational force as set forth in resolution 1546 (2004) until 31 December 2006;
- UNSC Resolution S/RES/1723 (2006) which, *inter alia*, reaffirmed the authorization of the multinational force and decided to extend the mandate of the multinational force as set forth in resolution 1546 (2004) until 31 December 2007;

III. As to the law

42. According to the provisions of the Optional Protocol, for a communication submitted by an individual to be considered admissible and, thus, be examined by the Human Rights Committee, it is necessary that several conditions be jointly achieved:
- a) The communication must be compatible *ratione personae* with the provisions of the Covenant and its Optional Protocol – Article 1. This condition implies:
 - ~~a.1.~~ that the communication be lodged by an individual who pretends that he or the person on whose behalf he acts is a victim of an alleged violation of his rights under the Covenant
 - a. 2. that the State that allegedly violated these rights be both a State Party to the Covenant and its Optional Protocol;
 - ~~b)~~ the individual claiming that his rights have been violated should be subject to the jurisdiction of the State Party that allegedly violated them – Article 1;
 - ~~c)~~ the communication should not represent an abuse of the right of submission of such communication and should not be incompatible with the provisions of the Covenant – Article 3;
 - ~~d)~~ the individual should have exhausted all available domestic remedies – Articles 2 and 5;
 - e) the matter should not be examined under another procedure of international investigation or settlement – Article 5.
43. Romania considers that the conditions indicated at points a) 1. , b), c) and d) above are not fulfilled by the present communication and, consequently, render it inadmissible before the Human Rights Committee. As far as the condition set under point e) above is concerned, the Romanian authorities do not have, for the time being, information on whether this matter is examined under other procedures of international investigation or settlement. However, should such information reach the Romanian authorities, it will be communicated to the Human Rights Committee together with their assessment of its impact on the admissibility of the communication under consideration before the Human Rights Committee.
44. In the first place, Romania considers that the present Communication is not submitted by or on behalf of the alleged victim (that is Mr. Munaf, as indicated in the communication) and is not directed against a State that had at any moment jurisdiction over that individual.
45. Nevertheless, should the Committee consider otherwise, Romania holds that Mr. Munaf is not a victim within the meaning of Article 1 of the Optional Protocol read in conjunction with Article 2 of the Covenant, that the Communication is not sufficiently substantiated, that its lodging represents an abuse of right and that the author failed to exhaust the local remedies.

A. The condition set forth by Article 1 of the Optional Protocol as to the quality of the author of the Communication

46. In accordance with Article 1, the Committee receives and considers communications submitted by individuals who claim to be victims of a violation of any of the rights set forth in the Covenant. This rule implies that generally, the Committee receives communications directly from the alleged victims themselves or from their representatives; in such cases, an authorisation proves the relation between the person signing the communication form and the victim or the "author" in a substantial sense. As the Committee noted in the *Queenan v. Canada*, Communication no. 1379/2005,
- "in accordance with Article 1 of the Optional Protocol, communications must be submitted by or on behalf of "individuals" who claim that any of their rights enumerated under the Covenant have been violated."
47. In cases where the victim could not give sufficient authorisation, the demarche of the communication signer can be justified otherwise; for example, in cases where the victim can not communicate with the exterior world, a related person or a close friend could submit the communication on behalf of the victim. However, in those cases, as the related person or the close friend are in full communication with the outside, it is normal that they be able to give an express authorisation to a representative.
48. In the present case, the communication was lodged by persons acting as counsels for Mr. Munaf, as he is the alleged victim of the violation of the rights guaranteed by the Covenant.
49. ~~However, Romania considers that the communication is vitiated by its lack of any indication of the existence of a power-of-attorney or an authorization given or extended by Mr. Munaf. In accordance with the text of the communication itself, this was submitted by Mr. Amy Magid, Ms. Sandra Babcock, Mr. Joseph Margulies and Mr. Jonathan Hafetz, acting as counsels for Mr. Munaf on behalf of M. Munaf's sister, Ms. Maisoon Mohammed.~~
50. The communication having not been submitted by the complainant himself, an authorization to act should have been presented by its signatories. Nevertheless, none of the counsels attached to the communication, or made known to Romania, the existence of such an authorization, given neither by Mr. Munaf nor by his sister, Ms. Maisoon Mohammed. ~~Nor did Ms. Maisoon Mohammed make proof that she was given such an authorization by Mr. Munaf.~~
51. Romania took note of the signatories' argument that Mr. Munaf is being incommunicado, and that this situation allegedly prevents him from giving an express authorisation to the counsels. However, Romania observes that the victim's relative - ~~his sister - who allegedly gave authorisation to the signatories is in full contact with the exterior. Moreover, Mr. Munaf had periodic contacts with his family, as well as with his Iraqi and Romanian lawyers (see Exhibit 10 of the Communication, as well as Annex 5), whom he could have asked to lodge such a demarche.~~
52. Thus, for the purposes of this argument, the situation in which Mr. Munaf allegedly finds himself – incommunicado – is irrelevant.

53. Consequently, Romania considers that the failure of the signatories of the communication to prove the existence of an authorization given by Mr. Munaf to act on his behalf might lead, as far as Romania is concerned, to the inadmissibility of the communication. As the Committee stated in the *Yutronic v. Chile*, Communication no 470/1997,

"In this respect, it notes that the author has submitted the communication on behalf of his sons both of whom could have submitted the communication themselves and that there is nothing in the material before the Committee in respect to the claims brought on behalf of his sons to show that the sons have authorized their father to represent them. The Committee considers that the author has no standing before the Committee and consequently, declares this part of the communication inadmissible under article 1 of the Optional Protocol."

Mutatis mutandis, as the signatories did not invoke any impediment as Mr. Munaf's sister is concerned, at least her express authorization should have been presented when lodging the communication.

54. For the reasons presented above, Romania respectfully asks the Committee to declare the communication inadmissible under Article 1 of the Optional Protocol.

B. The condition that the individual whose rights have allegedly been violated be subject to the jurisdiction of the State Party, set forth by Article 1 of the Optional Protocol

55. Article 1 of the Optional Protocol establishes the obligation for a State Party to recognize the Committee's competence to receive and consider communications from individuals subject to its jurisdiction. This article is to be read in conjunction with Article 2 (1) of the Covenant that places the obligation for the State Party to respect the rights of individuals within its territory and subject to its jurisdiction.

56. As stated by the European Court of Human Rights in *Ilaşcu and others v. Moldova and Russia* and in *Issa and others v. Turkey*,

"The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which gives rise to all allegations of the infringement of rights and freedoms set forth in the Convention [...]."

57. Jurisdiction, implying authority and control of a State over certain individuals, is primarily territorial. Extra-territorial jurisdiction is an exception – as the European Court of Human Rights found in *Bankovic and others*:

"a State's competence to exercise jurisdiction over its own nationals abroad is subordinated to that State's and other States' territorial competence (Higgins, *Problems and Process* (1994) at p. 73; and Nguyen Quoc Dinh, *Droit International Public*, 6th edition 1999 (Dailier and Pellet), p. 500). In addition, a State may not actually exercise jurisdiction on the territory of another without the latter's consent, invitation or acquiescence, unless the former is an occupying State in which case it can be found to exercise

jurisdiction in that territory, at least in certain respects [...]" (Decision of the Grand Chamber, 1999).

58. Similarly, in the Judgment in *Issa and others v. Turkey* (16 November 2004, final on 30 March 2005), the European Court of Human Rights found that:

"From the standpoint of public international law, the words "within their jurisdiction" [...] must be understood to mean that a State's jurisdictional competence is primarily territorial [...], but also that the jurisdiction is presumed to be exercised normally throughout the State's territory."

59. Thus, even if as a general rule the jurisdiction is linked to the territory of a State, it might be that the responsibility of the State is engaged even when the acts of the State are performed outside its territory (e.g. in case a State exercises effective control over an area situated outside its national territory) or produces effects there.
60. In addition, a State Party might be held accountable for violation of rights committed by its agents on the territory of another State, with or without the acquiescence of that State. This Committee's jurisprudence is constant in this respect.
61. In Communications no. 52/1979, *Lopez v. Uruguay* (CCPR/C/13/D/52/1979) and 56/1979, *Celiberti v. Uruguay* (CCPR/C/13/D/56/1979), the Human Rights Committee observes that, even if:

"the arrest and initial detention [...] allegedly took place on foreign territory, the Committee is not barred [...] from considering these allegations [...] inasmuch as these acts were perpetrated by Uruguayan agents acting on foreign soil".

It concludes that:

"Article 2 of the Covenant [...] does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State whether with the acquiescence of the Government of that State or in opposition to it."

62. However, in order for these exceptions to be applicable it must be proven that there is a causal link between the action of the agents of a State and the subsequent alleged acts (European Commission of Human Rights in *Cyprus v. Turkey*, 1994 and *Loizidou v. Turkey*, Judgment on Preliminary Objections, 1995). Moreover, it must be shown that the person alleging violations was within the power and effective control of the forces of a State Party acting outside its territory (General Comment 31 - The nature of the legal obligation imposed on the States Parties).
63. In the present case the situation is completely different. Mr. Munaf is presently, not subject to the jurisdiction of Romania, and has not been subject to this jurisdiction since 15 March 2005, the moment of his departure from Romania to Iraq together with the three Romanian citizens. Therefore, it cannot be asserted that Mr. Munaf was under the Romanian jurisdiction at the moment of his release from captivity on 22 May 2005, or, subsequently, at the moment of his arrest or while imprisoned in Iraq. Moreover, efforts of Romanian authorities to bring Mr. Munaf under Romania's jurisdiction to face the charges brought against him by the Romanian judicial

authorities for his alleged involvement in the abduction of the three Romanian citizens, as well as the efforts made to hear his statements in the two cases on the docket of the Court of Appeal of Bucharest failed (*supra paras. 23-36*). These demarches are justified by the existence of the criminal proceedings initiated against Mr. Munaf in Romania. The Romanian authorities were not even able to obtain a copy of Mr. Munaf's Iraqi file (*supra para. 38*). This proves once more that Romania has no authority or control over Mr. Munaf - in other words, no jurisdiction over him.

64. On the other hand, Mr. Munaf himself admits that he is not under Romania's jurisdiction, but in the physical custody of US military officers, as part of the MNF-I (*Part I of the Communication, p. 4*). Moreover, Mr. Munaf admitted to the same since he appealed only to the US Courts to prevent his delivery by the US authorities at Camp Cropper to the Iraqi authorities. Conclusive in that regard are Exhibit 13 to the Communication, concerning the writ of *habeas corpus* dismissed by the US District Court for the District of Columbia, and Exhibit 17 to the Communication, concerning the motion for injunctive relief in the attention of the US Court of Appeals for the District of Columbia Circuit. In any case, the US Courts in neither of the two cases found that Romania would have jurisdiction over the person of Mr. Munaf, asserting that "[...] petitioner is in the custody of a multinational entity [...]" (*Exhibit 13 to the Communication, p. 11*).
65. As presented above (*supra paras. 1-2 and pages 2, 7 and 8 of the Communication*), Mr. Munaf, who is not and has never been a Romanian citizen, voluntarily left Romania in March 2005 to travel to Iraq, and since that day did not return to Romania. Thus, since March 2005 Mr. Munaf did not find himself under the jurisdiction of Romania. On the contrary, since his arrival in Iraq, Mr. Munaf has found himself subject to the Iraqi jurisdiction – the more that Mr. Munaf is also an Iraqi citizen. At the moment of Mr. Munaf's arrival to Baghdad, Iraq was, just like now, a sovereign State.
66. Moreover, it cannot be asserted that Romania was ever an occupying power in Iraq, circumstance which could have raised the issue of Romanian extra-territorial jurisdiction (power and effective control) on Iraqi territory and over its citizens (UNSC Resolution S/RES/1546 (2004)).
67. ~~Having been abducted together with the three Romanian citizens, on 28 March 2005, Mr. Munaf was released from captivity together with them on 22 May 2005, by members of the MNF-I (*supra paras. 3-11 and page 8 of the Communication and Annex 3*). Ever since the moment of his release, Mr. Munaf has been taken into the protection of the MNE-I, an international force acting on the territory of Iraq with the consent and at the request of the Iraqi authorities:~~

"The Security Council [...]otes that the presence of the multinational force in Iraq is at the request of the incoming Interim Government of Iraq and therefore reaffirms the authorization for the multinational force under unified command established under resolution 1511 (2003)" (S/RES/1546 (2004)).

68. As far as the mandate of the Multinational Force in Iraq is concerned, the provisions of the Security Council Resolution 1546 (2004) are clear:

"the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in

accordance with the letters annexed to this resolution expressing, inter alia, the Iraqi request for the continued presence of multinational force and setting out its tasks, including by preventing and deterring terrorism [...]"

69. The mandate of the MNF-I, as set forth in resolution 1546 (2004), was subsequently extended for 12-month periods by Security Council Resolutions S/RES/1637 (2005) and S/RES/1723 (2006) – consequently, the MNF-I continues to have lawful custody over Mr. Munaf.
70. Thus, as far as the status of the MNF-I is concerned, it should be noted that this is a coalition of forces from nations around the world that, in accordance with the relevant UN Security Council Resolutions and at the request of the sovereign government of Iraq, is assisting the Iraqi Government's efforts to maintain security and stability in Iraq. Among the tasks of the MNF-I it could be identified combat operations against members of the groups posing security threats to Iraq, internment where this is necessary for imperative reasons of security and the continued search for and securing of weapons that threaten Iraq's security (The letter of US Secretary of State Colin Powell annexed to UNSC Resolution 1546 (2004)).
71. Under the authority of these UN Security Council Resolutions, the MNF-I and the Government of Iraq further agreed that MNF-I would maintain physical custody of pre-trial detainees waiting for criminal prosecution in Iraqi courts under Iraqi law, in light of the fact that many Iraqi prison facilities had been damaged or destroyed during the war (*Annex 8*).
72. Mr. Munaf has been and currently is in the custody of MNF-I. Mr. Munaf is in the MNF-I custody under the international authority of the UN mandate, while he was tried by the Central Criminal Court of Iraq - a national court of Iraq that operates under Iraqi law.
73. Therefore, Mr. Munaf is not and has never been, since his departure from Romania, under the authority and effective control of Romania, as the only foreign authority over the Iraqi territory belongs to MNF-I, which acts under UN mandate and at the request of the sovereign State of Iraq.
74. The Communication fails to prove otherwise. The evidence put forward to substantiate the Communication is not convincing. Moreover, it is even contradictory to the arguments used to confirm it in the Exhibits annexed to the Communication.
75. Thus, in Part III of the Communication – Exhaustion of Domestic Remedies, it is stated that "On or about 22 May 2006, *United States military officers* brought Mohammad Munaf and three other Romanian nationals to the Romanian Embassy in Baghdad, Iraq" (emphasis added). First, one can notice the inaccuracy concerning the date, which should be 22 May 2005.
76. Moreover, such a statement is contradictory to the declarations of US military officers, which, on various occasions before US Courts, stated that the release of the four hostages "~~was secured during a raid by military troops under the command of Multi-National Force-Iraq~~" (emphasis added) (*Exhibit 13, p. 1 to the Communication*) and that "in May 2005, MNF-I troops freed the captives during a raid" (emphasis added) (*Exhibit 17, p. 14 to the Communication*), distinct, from the legal point of view, from US military officers, as asserted in the Communication.

77. The statement in Part III of the Communication at p. 5, that "the [Romanian] Embassy *allowed* US military officers to take custody of Mr. Munaf and immediately transport him to Camp Cropper [...]" (emphasis added) is not confirmed by Exhibit 2 invoked as evidence in that sense. In Exhibit 2 – Riordan Declaration – it is only stated in para. 5 that "Mr. Munaf has been held in United States custody in Iraq since May 2005, and remains in U.S. custody today." There is no reference in this declaration to the alleged attitude of the Romanian Embassy.
78. The assertion that "at the Embassy, Romanian officials *allowed* US military officers to take physical custody of the Mr. Munaf" (emphasis added) can be also found in Part IV- subsection 1, p. 8 of the Communication, bringing as evidence in that sense Exhibit 10 – Mohammed Declaration. The Exhibit to which the reference is made is not at all supportive to the statements in the Communication. In para. 14 of Exhibit 10, to which direct reference is made, there is just a confirmation that on 22 May 2005, Mr. Munaf was in US custody, not at all that the Romanian officials allowed US military officers to take physical custody of Mr. Munaf. This is simply a speculative and unproved inference. Moreover, the statement in the Communication does not correlate with other parts of Exhibit 10, especially para. 13, according to which Mr. Munaf "had *requested* to go to the US Embassy" (emphasis added). From this it could be even inferred that it was the will of Mr. Munaf himself to leave the Romanian Embassy.
79. Hence, from the arguments put forward in the Communication, it cannot be inferred that Romania is in any way responsible for the situation in which Mr. Munaf presently finds himself.
80. The Communication tries to justify Mr. Munaf's subsequent arrest, detention and trial as a result of the acts of the Romanian officials from the Romanian Embassy, who, allegedly, delivered him to the US military. As it will be showed further on, the Romanian officials from the Romanian Embassy have never had any control over Mr. Munaf and, in that sense, the conclusion of the Communication lacks any basis.
81. After his release from captivity, M. Munaf has never been transferred into Romanian jurisdiction, be it *de jure* or *de facto*. Mr. Munaf's short presence in the premises of the Romanian Embassy in Baghdad, on 22 May 2005, has no legal significance in this respect. Mr. Munaf was in the custody of the MNF-I while being brought to the Romanian Embassy, has remained in their custody while in the premises of the Embassy and has still remained in their custody after he left the Romanian Embassy.
82. As there was no indication to believe that Mr. Munaf was going to be detained in Iraq - at the moment of his departure from the Romanian Embassy in Iraq, Mr. Munaf was only to be submitted to a debriefing procedure by the MNF-I (only a day after he was arrested on charges of participation in the kidnapping of the three Romanian journalists (Annex 8)) – the Romanian authorities had no reasons to ask the MNF-I at that moment that Mr. Munaf be delivered into the custody of the Romanian authorities (situation in which he never was) so that he could face in Romania the charges brought against him for his involvement in the kidnapping of the Romanian journalists.
83. According to General Comment 31 to the International Covenant on Civil and Political Rights,

"the article 2 obligation [...] entails an obligation not to extradite, deport, expel or otherwise remove a person from [the territory of the States Parties] where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant [...]"

Considering the circumstances of the present case, it was not possible for the Romanian authorities to ascertain, at that time, that there were substantial grounds to believe that there was any real risk of Mr. Munaf being subject to torture or ill treatment or even sentenced to death, as required by General Comment 31, neither in Romania, where during the proceedings he would have benefited from all legal guarantees regarding his personal integrity, a fair trial and full respect for his right to life, nor in Iraq, where no information indicated at that time the future initiation of criminal proceedings against him.

84. In Part IV – subsection 4 – Violation of Article 9 (p. 16-17) of the Communication, the provisions of Art. 22 of the Vienna Convention on Diplomatic Relations are relied upon, and especially para. 1 of that article, in order to establish a causal link which would entail the responsibility of Romania for the subsequent situation of Mr. Munaf.

85. According to Article 22 of the Vienna Convention on Diplomatic Relations,

"1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."

86. The notion of the inviolability of the premises of the diplomatic missions means not only that "agents of the receiving State may not enter them, except with the consent of the head of mission", but also that no act in exercise of any authority by the receiving State may be taken against the premises (see Richard K. Gardiner – *International Law*, Pearson Longman 2003, p. 352). The only purpose of this article concerns the protection of the premises of an embassy against anything that might disturb the peace of the mission or impair its dignity, the notion of inviolability in this article being solely attached to the premises of an embassy. This provision of the Vienna Convention is not even meant to protect the personnel of the embassy, this regime falling under different norms of this Convention. Hence, the reliance, in the Communication, on Art. 22 of the Vienna Convention on Diplomatic Relations is ~~groundless, considering the purpose of the article itself and the legal meaning of inviolability of the premises of a diplomatic mission.~~

87. Furthermore, in view of the above mentioned provisions and of the circumstances of the case it cannot be asserted that there exists any causal link between the acts of the Romanian officials from the Romanian Embassy in Baghdad and the present situation of Mr. Munaf. The Romanian authorities never exercised any kind of acts of authority with regard to the person of Mohammad Munaf, nor had Mohammad Munaf

requested any kind of protection from the Romanian Embassy. His simple presence, for a very short while, in the premises of the Romanian Embassy is not equivalent, either under Art. 22 of the Vienna Convention on Diplomatic Relations (1961), or under any other provision of international law, with taking him into custody by the Embassy. Therefore, the reliance on the provisions of Art. 22 of the Vienna Convention is not relevant for the purposes of this case.

88. The Romanian authorities of the Embassy in Baghdad gave their consent to the representatives of MNF-I to enter the premises of the Embassy in order for the Romanian authorities to take into custody the three Romanian citizens released from captivity (*Exhibit 1 to the Communication*). Mr. Munaf was never taken into custody by the Romanian Embassy.
89. It is exactly in the same sense that the declaration of the President of Romania (*Exhibit 1 to the Communication*) should be understood. The press statement was issued on the same day as the release of the hostages, 22 May 2005, and was meant to reassure the Romanian public and to calm the public turmoil which lasted for almost two months. The language used serves simply for sending a public message, with no other connotation. Therefore, when stating that "the three Romanian citizens and their guide had been delivered to the authority of the Romanian Embassy", the message was that all four of them were safe from their kidnappers and that they were in the premises of the Romanian Embassy. "Authority", in this context, is not used in the legal sense, which would have meant both control and power over them, but rather in a more reassuring sense, concerning the state of being of the four. That the term "authority" should not be equated with "custody" is supported by the following line of the same press statement, which reads that "the Romanian authorities have taken over the custody of the Romanian citizens and are guaranteeing their security until their return home" (emphasis added). Mr. Munaf was not taken into custody by the Romanian authorities, meaning that he remained in the custody of MNF-I forces which secured the release of the three Romanian journalists and of Mr. Munaf.
90. After departing from the Romanian Embassy and having been imprisoned in Camp Cropper, Mr. Munaf has remained in the custody of the MNF-I. At no moment was he under the Romanian jurisdiction.
91. In the *Hussein case*, the European Court of Human Rights pointed out that :
- "[...] there is no basis in the Convention's jurisprudence and the applicant has not invoked any established principle of international law which would mean that he fell within the respondent States' jurisdiction on the sole basis that those States allegedly formed part (at varying unspecified levels) of a coalition with US when the impugned actions were carried out by the US, when security in the zone in which these actions took place was assigned to the US and when the overall command of the coalition was vested in the US" (Decision of the admissibility of application no. 23276/04 by Saddam Hussein against Albania, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Turkey, Ukraine and UK).
92. The thresholds set up in the above mentioned case are also valid and justified for the present situation as well. Therefore, considering the circumstances of the present

case and the evidence put forward, the Communication failed to invoke any principle of international law according to which Mr. Munaf would have fallen under Romania's jurisdiction on the sole basis that Romania formed part (at varying unspecified levels) of a multinational coalition, when security in the zone in which the alleged actions took place was assigned to the US and the overall command of the coalition was vested in the US.

93. In this context it should be underlined once again that there are no Romanian troops at Camp Cropper and there were no such troops at any time (*Annex 7*). Furthermore, the Romanian prosecutors that heard Mr. Munaf were bound to respect the rules of hearing, as established by the MNF-I, which once more proves that Romania has no custody over Mr. Munaf. He finds himself in the physical custody of US troops as part of the MNF-I (*Exhibit 13 to the Communication, at p.6, as well as Annex 9*)
94. In conclusion, after Mr. Munaf's volunteer departure from Romania in March 2005, he has never been subject to Romania's jurisdiction. Mr. Munaf has been on the territory of another sovereign State, Iraq, and no relationship (neither by action nor by failure to act) was established at any times between Mr. Munaf and Romania.
95. The Communication failed to prove that Mr. Munaf was at any time within the jurisdiction of Romania. Romania, having no jurisdiction over Mr. Munaf, could not have possibly, through its agents, failed to comply with any international obligation incumbent to it, as the Communication asserts.
96. For the reasons presented above, Romania kindly asks the Committee to reject the complaint introduced on behalf of Mr. Munaf as it fails to prove that Mr. Munaf was and still is within Romania's jurisdiction as required by Article 1 of the Optional Protocol.

C. The author of the Communication is not a "victim" within the meaning of Article 1 of the Optional Protocol

97. In order for the author of a communication to be considered a victim he must be personally and directly affected by an act or omission of the State party which he claims has violated his rights. On the contrary, the author cannot be considered a victim since his allegations are derived from assumptions about possible future events, which were not even begun at the moment the facts happened. "The Committee has only been entrusted with the mandate of examining whether an individual has suffered an actual violation of his rights". (*Hertzberg and others v. Finland*, Communication no 61/1979, para .9.3)
98. The present Communication claims that by the alleged handing over of Mr. Munaf by the Romanian authorities, his rights guaranteed by articles 6, 7, 9, 10 and 14 of the Covenant were being violated, as he was, after this handing over, deprived of his liberty and ill treated while in detention, he was facing capital charges and he was subjected to a criminal procedure that in his view was unfair. The author refers to the Committee's jurisprudence in the extradition and deportation field and quoted the findings of the Committee in the *Judge v. Canada* case, Communication no. 829/1998.

99. Romania stresses out that this version of the facts is not corresponding to the reality and that it strongly refutes it (*supra Chapter I and Chapter III – B*).
100. According to the facts, Mr. Munaf was debriefed by the MFN-I in order for him to present the information in his possession as to the security of international forces in Iraq and that in order for this debrief to be accomplished, he left the Romanian Embassy.
101. To the knowledge of the Romanian authorities, at the moment of the alleged handing over Mr. Munaf was not subject to any criminal procedure in Iraq and there was no arrest warrant issued on his name in this country. The criminal proceeding began *after* his debriefing, and only in that moment the criminal charges were defined and the measure of preventive detention was taken against him.
102. Romania remarks that, as a general rule, a State party is not required to guarantee the rights of persons within another jurisdiction.
103. At the same time, Romania is aware that, if a State takes a decision relating to a person within its jurisdiction and the necessary and the foreseeable consequence is that the person's rights under the Covenant will be violated in another jurisdiction, the State party itself may be in violation of the Covenant. (*Kindler v. Canada*, Communication no 470/1991, para 6.2.)
104. As regards the effects of the alleged handing over, this would have implied a change of jurisdiction. In consequence, what the Communication is implying is that the alleged handing over violated Mr. Munaf's rights as guaranteed by articles 6, 7, 9, 10 and 14 of the Covenant.
105. From the constant jurisprudence of the Human Rights Committee it follows that an individual is a victim in cases of extradition, deportation or other types of handing over when this exposes the person to a real risk of violation of any of his rights under the Covenant (General Comment 31). This hypothesis is found in cases where the person is facing capital charges or a measure of deprivation of liberty in another jurisdiction. These situations have a common element: at the time of the adoption of the measure of handing over, the State in question has a sum of signs indicating the risk of rights violation. *Per a contrario*, subsequent situations in which rights of that person be violated in another jurisdiction could not determine in any case a violation of the rights recognised under the Covenant by the State that proceeded to the handing over.
106. As the Committee stated in Communication no. 692/1996, *A. R. J. v. Australia*, if in another jurisdiction no intention was manifested to arrest and prosecute the author of the communication on capital charges and no arrest warrant against the author was outstanding, it follows that "no necessary and foreseeable consequence" of the violation of his rights under the Covenant exists.
107. Romania considers that this case-law of the Committee shows clearly that a measure of "handing over" could imply a violation of the provisions of the Covenant *only* if at the moment of the "handing over" the State could have established the risk of violations of the author's rights.

108. In cases of extradition, the State that proceeds to extradition knows the content and the consequences of the criminal charges that the person is facing in another jurisdiction and can therefore establish whether or not the person is exposed to any risk of violation of his rights; also in cases of deportation, it can easily find out if the person is facing capital charges or arrest warrants in the State of destination. Moreover, the domestic authorities can decide on the existence of a real risk that the person might face treatment of an extremely harsh nature if extradited or deported.
109. To the contrary, in the present case, to the knowledge of the Romanian authorities, at the moment of the alleged handing over Mr. Munaf was facing no criminal charges in Iraq and no arrest warrant had been issued by the MNF-I as far as he was concerned. Up to that moment, no authority in Iraq had manifested any intention to prosecute or detain Mr. Munaf.
110. That being the case, Romania could not be considered to have established the crucial link in the causal chain that would have made possible the deprivation of liberty, the ill treatment of Mr. Munaf, his violation of the right to a fair trial, his sentence to death and his eventual execution, as no element indicating any risk was present at the moment of the alleged handing over. As no risk was present, it could not be considered that Romania violated his rights under the Covenant, as the facts at the origin of the complaint – the criminal procedure in Iraq, the preventive detention in the custody of MNF-I, the sentence to death, started after the alleged handing over, independently of the alleged Romania's actions or omissions.
111. For these reasons, Romania considers that Mr. Munaf is not a victim within the meaning of Article 1 of the Optional Protocol (*Ng v. Canada*, Communication no. 469/1991, para. 15.7.) and respectfully asks the Committee to declare the communication inadmissible under Article 1 of the Optional Protocol.

D. The author of the Communication failed to substantiate his complaints

112. In the light of the constant jurisprudence of the Human Rights Committee, the author of a communication must sufficiently develop the facts and his arguments for a violation of the Covenant. This rule means that the author must explain as detailed as he/she can the facts' sequence and must offer reasons for which a certain act or omission of the State party amounts to a violation of his/her rights. In Romania's opinion, this rule should apply even more rigorously when the author benefits from legal advice.
113. Nevertheless, in the present case, the Communication did not show how Mr. Munaf's alleged handing over by the Romanian authorities would amount to a violation of his right to life, to the interdiction of torture and ill-treatment, to liberty and security, to be treated with humanity and respect and his right to a fair trial. Indeed, the Communication presented Mr. Munaf's version of facts and also their consequences, but failed to demonstrate how his alleged handing over determined or permitted those regrettable effects and which is the causal link between the handing-over and his future situation.
114. Moreover, Romania notes that the Communication does not explain in what way the alleged handing over affected Mr. Munaf's right to liberty as it does not emphasize the reasons for which Mr. Munaf considered his detention to be an arbitrary

deprivation of liberty. Mr. Munaf was arrested one day after the debriefing of the MFN-I in a criminal procedure where he was facing the most serious crimes and he was and remained in the custody of the only authority permitted by the Iraqi authorities. So, no appearance of arbitrary detention seems to be revealed in the present case.

115. As the right to be treated with humanity and respect and not to be submitted to torture or ill treatment is concerned, Romania notes that the Communication also fails to substantiate this complaint. The only piece of evidence in this respect is a second-source testimonial one (*Exhibit 2 to the Communication*), that cannot be corroborated with any other evidence and that is flagrantly contradicted by the findings of the Romanian prosecutors who met Mr. Munaf during his detention in Baghdad for several times (*Annex 5*).
116. As Mr. Munaf repeatedly met with the prosecutors, it is logical to imagine that he would have raised the question of his alleged ill treatment in his declarations.
117. As to the alleged violation of the right to a fair trial, Romania underlines that the Communication failed to provide material evidence in substantiation of the claim on how Romania's alleged behaviour affected Mr. Munaf's right to a fair trial. Romania notes that, as the Communication itself consents, Mr. Munaf benefited from legal representation before the tribunals competent to examine his case, and that he exercised the right to ask for the review of the sentence handed down by these courts by a higher tribunal (*Exhibits 10 and 14 to the Communication*).
118. Moreover, as far as the problem of the alleged power-of-attorney issued by the Romanian authorities and their lack of intervention is concerned, no indication is made in the Communication as to the exact relevant provisions of the Iraqi criminal law that would condition the continuation of the criminal proceeding and the sentence of the Iraqi Court to the existence of the express demand coming from the victims or from the part of the victims' State.
119. To the contrary, Romania notes the fact that, to its knowledge, the Iraqi Criminal Procedural Code (the Law on criminal proceedings with amendments) provides that the initiation of criminal proceedings is *ex officio* in all cases, except for some cases strictly described in paragraph 3 of the Law on criminal proceedings with amendments (*Annex 14*). It appears that the victims' attitude or the victims' State attitude could exercise no influence on the initiation, the development or the cessation of the criminal proceedings and that Mr. Munaf was sentenced to death taking into consideration the seriousness of his deeds and irrespective of any authorization or power-of-attorney given by the victims or the victim's State, which is not mentioned at all as a precondition for the unfolding of the proceedings.
120. Romania would like to recall at this stage of the case that in accordance with the jurisprudence of the Committee a similar complaint was declared inadmissible:

"Finally, in respect of the alleged violation of article 14, paragraphs 1 and 3, the Committee has taken note of the State party's contention that its obligation in relation to future violations of human rights by another State only arises in cases involving violations of the most fundamental rights and not in relation of possible violations of due process guarantees. In the Committee's opinion, the author has failed to provide material evidence in substantiation of his claim that

if deported, the Iranian judicial authorities would be likely to violate his rights under article 14, paragraphs 1 and 3, and that he would have no opportunity to challenge such violations. In this connection, the Committee notes the information provided by the State party that there is provision for legal representation before the tribunals which would be competent to examine the author's case in Iran, and that there is provision for review of conviction and sentence handed down by these courts by a higher tribunal "(A.R.J. v. Australia, Communication no 692/1996, para. 6.15.).

121. For the reasons presented above, Romania kindly asks the Committee to reject the Communication, as inadmissible under Article 2 of the Optional Protocol.

E. The author of the Communication failed to exhaust the available domestic remedies, in accordance with Articles 2 and 5 (b) of the Optional Protocol

122. In accordance with Articles 2 and 5 (b) of the Optional Protocol, the Committee will consider a communication only if the individual presenting it has exhausted all available domestic remedies.

123. It follows that in accordance to this rule, the author of a communication must offer the State the possibility to examine and redress the alleged violation at a national level before presenting it to international forums.

124. In the present case, as far as the allegation of ill treatment coming from Romanian officials during the detention and the allegation of unfair trial are concerned, Romania remarks that Mr. Munaf did not give the national authorities the possibility to redress the alleged violations.

125. Romania reminds the fact that on several occasions, Romanian prosecutors met with Mr. Munaf and heard his declarations; ~~at no time he brought to their knowledge the fact that Romanian members of the multinational forces or any other Romanian officials have harmed him and subjected him to torture or ill treatment. To the contrary, he expressly declared that he had no claim against the Romanian authorities (Annexes 5 and 6). It must be underlined that during the hearings he was also assisted by a Romanian lawyer of his family's choice (Annex 5). At no time this lawyer drew the attention of the Romanian prosecutors, or to any other Romanian authorities, of eventual signs of violence that Mr. Munaf might have presented, nor did she bring any claim before the Romanian authorities.~~

126. ~~Romania stresses that Romanian judicial authorities are competent to prosecute and examine the criminal charges against the Romanian members of the multinational forces. This means that, ex officio or by request, a criminal investigation would take place and the allegations of ill treatment would be dealt with.~~

127. In the absence of any visible sign of ill treatment (Annex 5) and in the absence of any demand coming from Mr. Munaf or his lawyer, the Romanian authorities were not able to examine whether or not this allegations are grounded. This examination would have been performed not only by the prosecutors but also by the competent court, as, in the Romanian legal system, the decision of the prosecutor can be challenged before a court.

128. Mr. Munaf also failed to offer the Romanian authorities the formal possibility to redress the alleged violation of his right to a fair trial, as far as the question of the so-called Pirone power-of-attorney is concerned, as he and his lawyers did not request the Iraqi courts to question the Romanian authorities about the existence and the limits of this alleged power-of-attorney.
129. Romania remarks the fact that the lawyers of Mr. Munaf's sister demanded the Romanian Embassy in Washington that Romania intervene in the criminal proceeding in Iraq, but this request did not come from an official authority. To this request it was replied that the alleged power-of-attorney did not exist and that he could use this answer in the criminal proceeding in order to determine an official request coming from the Iraqi courts. It was the only possible way for the Romanian authorities to intervene in a domestic judicial procedure on the existence of which they were not officially notified, without disturbing a criminal proceeding in place.
130. If officially notified about this request and asked to intervene, the Romanian authorities would have had the procedural position permitting them to present their position directly to the Iraqi judicial authorities. In the absence of such a possibility, the Romanian authorities had no other option but to publicly present their position, also available in Iraq, as to the question of the so-called Pirone power-of-attorney (See Exhibit 24 to the Communication and Annex 11).
131. Romania refers to the facts and stresses out that for the Romanian authorities there was no legal way to have access to the procedure or to the file on their own will (see also *supra para. 38*), in the absence of an express request from the Iraqi judicial authorities.
132. For the reasons presented above, Romania kindly asks the Committee to find the complaints regarding the ill treatment during detention and the alleged violation of right to a fair trial inadmissible for non exhaustion of domestic remedies, under Articles 2 and 5 (b) of the Optional Protocol.

F. The abusive character of the present Communication

133. According to the Optional Protocol, no time limit is set forth for the submission of a communication. However, the essential characteristic of the international remedies for the protection of human rights reside in the possibility to challenge a domestic decision or a State act in such a manner that the author of the communication does not affect the principle of legal security and does not challenge indefinitely a certain national decision. As a result, a communication may be lodged before the Human Rights Committee in a reasonable time limit; otherwise, the right guaranteed by the Optional Protocol will be abusively exercised.
134. Romania notes that, according to the communication, the act allegedly constituting a violation of Mr. Munaf's rights under the Covenant is the alleged handing over by the Romanian authorities. As he did not recourse to any domestic remedy before the Romanian authorities, it follows that the date of the final decision – which marks the beginning of the entitlement to exercise the right recognised by article 1 of the Optional Protocol – is, in Mr. Munaf's opinion, as stemming out from his conduct, the day of the alleged handing over, that is 22 May 2005.

135. The present communication was lodged before the Committee on 13 December 2006, almost a year and a half later and after the author was sentenced to death by the Iraqi judicial authorities, although he was aware of the criminal charges and the risk of being sentenced to death in accordance with the Iraqi national relevant criminal provisions from the beginning of his trial; he always benefited from legal advice. It follows that this communication is belated excessively and was introduced on a circumstantial basis.
136. Consequently, the author did not show consideration for the fact that the introduction of a communication excessively belated exposes the national authorities and other interested persons to a state of general uncertainty.
137. Romania also notes the fact that this Communication was conditional: it was filed as his counsels' demands presented to the Romanian Embassy in Washington were not met in their view. Romania remarks the fact that the Mr. Munaf's counsels requested from the Romanian Embassy in Washington that the Romanian authorities take the necessary measures to present "a formal statement to the Iraqi courts that Romania opposes imposing the death penalty against Mr. Munaf under any circumstances" and that they present "a formal declaration in the Iraqi courts". As explained above, these demands were not properly addressed and could not have been legally followed by the Romanian authorities. However, the Romanian authorities made the possible demarches as regards the author's case (*Exhibit 24 to the Communication and Annexes 1 and 11*)
138. The filing of the present complaint appears to have been understood and used by Mr. Munaf's counsels as a way to determine a certain conduct of the Romanian authorities, as well as a reaction to the absence of what they considered to be a "satisfactory response" from the Romanian authorities.
139. Also, it is of interest for the examination of the present Communication the fact that it was filed only after Mr. Munaf was effectively sentenced to death, although he should have been aware, as he benefited of appropriate advice, of the provisions of the Iraqi Criminal Code and the Iraqi Law on criminal proceedings regarding the sentence prescribed by law for the crimes he had been accused of.
140. Furthermore, it should be noted that one of the main pillars of the Communication is the alleged handing-over of Mr. Munaf into the US custody, by the Romanian authorities. Having regard to the information to be found in Exhibit 10 to the Communication, according to which Mr. Munaf, while in the premises of the Romanian Embassy in Baghdad, "~~had requested to go to the US Embassy~~" in Baghdad (that is, under US custody), Romania wonders how it could be accused of a fact which, even if real, ~~would have corresponded to Mr. Munaf's will.~~
141. Having regard to these arguments, Romania kindly asks the Committee to declare the communication inadmissible under Article 3 of the Optional Protocol.

IV. Conclusion

Considering the arguments put forward and the information presented, Romania respectfully asks the Human Rights Committee to find that M Munaf has never been subject to its jurisdiction and therefore the present Communication falls outside the scope of Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.

However, should the Committee consider that M Munaf was subject to Romania's jurisdiction within the meaning of Article 1 of the Optional Protocol, Romania kindly asks the Committee to declare the Communication inadmissible as it fails to comply with the conditions set forth in Articles 1, 2, 3 and 5 (b) of the Optional Protocol to the International Covenant on Civil and Political Rights.



ROMÂNIA
MINISTERUL JUSTIȚIEI
 DIRECȚIA DREPT INTERNAȚIONAL, COOPERARE
 JUDICIARĂ ȘI AFACERI JURIDICE EXTERNE
 Director

Our ref: No. 89919/2005

Bucharest, September 24, 2005

CONFIDENTIAL

U.S. Department of Justice
Criminal Division
Office of International Affairs
1301 New York Avenue, NW, Suite 800,
Washington, DC 20005

The Ministry of Justice of Romania presents its compliments to the US Department of Justice and, according to the provisions of the Treaty on extradition between Romania and the United States of America, concluded in Bucharest on the 23rd of July 1924 and the UN Conventions against terrorism, has the honor to submit the request for the extradition of the defenced *MUNAF MOHAMMAD*, born on 29.11.1962, in Iraq, Deylla Province, son of Munaf and Suat, American and Iraqi national.

The extradition is requested in order to enforce the preventive arrest warrant no. 3/UP/27.05.2005, issued in absentia by the Court of Appeal of Bucharest, for committing, initiating and supporting an association with terrorist purposes.

Considering that the requested person is detained at the Military Camp Crooper in Baghdad, a Camp under US command, the provisions of Article XI, paragraph 1, last sentence, of our bilateral Treaty may apply.

Pursuant to the provisions of Article XI of the Treaty on extradition between Romania and the United States of America, please find, hereby enclosed, the request for extradition and its supporting documents.

The Ministry of Justice of Romania avails itself this opportunity to renew to the US Department of Justice the assurances of its highest consideration.

Florin Răzvan RADU
 Director

Red. FRR (2ex)
 Ex. 2

4. In the context of the communication of 13 December 2006 submitted to the UN Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights on behalf of Mr. Mohammad Munaf against Romania, the Romanian authorities instructed the Romanian Embassy in Baghdad to undertake written demarches towards the Iraqi Ministry of Foreign Affairs, as well as to the Command of the Multi-National Force in Iraq, where Mr. Mohammad Munaf is allegedly held.

The demarche towards the Iraqi Ministry of Foreign Affairs stated the following position:

- Romania is committed to full respect of human rights and human dignity and it is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted on 15 December 1989, as well as to Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty done on 28 April 1983 and to Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, done on 3 May 2002.
- The Romanian authorities assume the international obligations of Romania *bona fide* and, consequently, Romania's principal position is that every human being's inherent right to life must be respected and protected and, thus, death penalty should not be imposed on individuals.
- In the context of the judicial proceedings currently taking place against Mr. Munaf in Iraq, Romania also expresses its conviction that no action will be taken so as to endanger Mr. Munaf's life and personal integrity and that no death penalty will be imposed against him.
- Romania also expects that no action that might facilitate such a course will occur, and that Mr. Munaf will be treated with dignity and in full respect of his inherent rights.

The demarche towards the Command of the Multi-National Force in Iraq, after reiterating the above mentioned in the demarche towards the Iraqi Ministry of Foreign Affairs, stated that "Romania considers appropriate that Mr. Munaf remains in the custody of the Multi-National Force in Iraq".

Copies of the Verbal Notes sent by the Romanian Embassy in Baghdad are attached (Annex 3 and Annex 4).

5. According to the information available to the competent Romanian authorities, there are no indications that the close members of Mohammad Munaf's family currently in Romania are under any threat; furthermore, they did not ask for the protection of the Romanian authorities.

6. Romania reminds, according to Rule 92 of the Rules of Procedure of the Human Rights Committee, that the information herewith enclosed cannot imply a determination on the merits of the communication.

The Permanent Mission of Romania to the United Nations avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 07 February 2007

No. 234



REFERENCE: Case no. 1539/2006

The Permanent Mission of Romania to the United Nations presents its compliments to the Office of the High Commissioner of Human Rights and, with reference to the Office's Note Verbale G/SO 245/51 ROU (2) of 24 December 2006 by which it transmitted the text of a communication dated 13 December 2006 submitted to the UN Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights on behalf of Mr. Mohammad Munaf against Romania, has the honour to convey the following, in connection with the request of informing the Committee on the measures taken in order to ensure, to the extent possible and through the channels deemed appropriate, that the life, safety and personal integrity of Mr. Mohammad Munaf and of his family are protected :

1. Romania strongly opposes the death penalty. The abolition of the death penalty in its domestic legislation in 1989, as well as the fact that Romania has ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights with regard to the abolition of death penalty and the Additional Protocols 6 and 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms clearly indicate Romania's position on the issue. Moreover, as a European Union member State, Romania fully supports the principal standing of EU against the death penalty.

2. Mr. Mohammad Munaf, who is not a Romanian citizen and who never held the Romanian citizenship, is neither in Romania, nor in the custody of the Romanian authorities.

3. Romania already asked, on 24 September 2005, following a request of the Bucharest Court of Appeal, the extradition to Romania of Mr. Mohammad Munaf, who is indicted in a criminal investigation file, in order for the preventive arrest warrant issued by the Bucharest Court of Appeal on 27 May 2005 be enforced, for the purpose of pursuing and finalizing the criminal investigation, as well as of ensuring the presence of the accused before the court.

The extradition to Romania would have ensured, in respect of Mr. Munaf, the proper guarantees for a fair trial, as well as the full respect of the detention standards; also, it would have removed any possibility that a death penalty be imposed on Mr. Munaf.

For reasons independent of Romania's will, the extradition procedure was not fulfilled.

Copies of the request for extradition and of the answers received by the Romanian authorities are attached (Annex 1 and Annex 2).

The United Nations Office of the High Commissioner for Human Rights
Geneva

ANNEX 1

Note Verbale no. 239/7 February 2007 of the Permanent Mission of Romania
to the United Nations in Geneva, sent to the Human Rights Committee

Article 21.

First: No Iraqi shall be surrendered to foreign entities and authorities.

Second: A law shall regulate the right of political asylum to Iraq. No political refugee shall be surrendered to a foreign entity or returned forcibly to the country from which he fled.

Third: No political asylum shall be granted to a person accused of committing international or terrorist crimes or any person who inflicted damage on Iraq.

ANNEX 13

Extract from the Iraqi Constitution (Article 21) concerning
the prohibition of extradition of the Iraqi citizens

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MIN.JUSTITIEI

3101662

10.35.22 02-02-2007

2/8


EMBASSY OF THE
UNITED STATES OF AMERICA

No. P.S. 7-2/28

The Embassy of the United States of America presents its compliments to the Ministry of Justice and has the honor to reply to its Note Verbale No. 899199/2005 containing a request for extradition of U.S. citizen Munaf Mohammed to Romania.

This request does not fall within the scope of the U.S.-Romania Extradition Treaty. The Treaty provides for extradition when a fugitive has either sought asylum or is otherwise found in the territory of the state receiving the extradition request, or in the territory belonging to that state or under its occupation or control. Iraq, the state in which Munaf Mohammed is under detention, is neither part of the United States nor under U.S. occupation or control.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Justice the assurances of its highest consideration.

Embassy of the United States of America 
Bucharest, November 30, 2005

EMBASSY OF ROMANIA
BAGHDAD



No. 259

The Embassy of Romania to Baghdad, Republic of Iraq present their compliments to the Ministry of Foreign Affairs of the Republic of Iraq, Legal Affairs Department and Protocol Department, and, in the context of the complaint filed on 13 December 2006 on behalf of Mr. Mohammad Munaf, national of Iraq and of the United States of America, against Romania, before the UN Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights, in connection to the plaintiff's detention and legal proceedings taken against him, has the honor to convey the following:

Romania is committed to full respect of human rights and human dignity. Romania is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted on 15 December 1989, as well as to Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty done on 28 April 1983 and to Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, done on 3 May 2002. The Romanian authorities assume the international obligations of Romania *bona fide* and, consequently, Romania's principal position is that every human being's inherent right to life must be respected and protected and, thus, death penalty should not be imposed on individuals.

In the context of the judicial proceedings currently taking place against Mr. Munaf in Iraq, Romania expresses its conviction that no action will be taken so as to endanger Mr. Munaf life and personal integrity and that no death penalty will be imposed against him. Romania also expects that no action that might facilitate such a course will occur, and that Mr. Munaf will be treated with dignity and in full respect of his inherent rights.

The Embassy of Romania avail themselves of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Iraq the assurances of their highest consideration.

Baghdad, February 6, 2007

To: **MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF IRAQ**
- Legal Affairs Department
- Protocol Department

EMBASSY OF ROMANIA
BAGHDAD



No. 258

The Embassy of Romania to Baghdad, Republic of Iraq present their compliments to the Multi-National Forces – Iraq, General Command and, in the context of the complaint filed on 13 December 2006 on behalf of Mr. Mohammad Munaf, national of Iraq and of the United States of America, against Romania, before the UN Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights, in connection to the plaintiff's detention and legal proceedings taken against him, has the honor to convey the following:

Romania is committed to full respect of human rights and human dignity. Romania is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted on 15 December 1989, as well as to Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty done on 28 April 1983 and to Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, done on 3 May 2002. The Romanian authorities assume the international obligations of Romania *bona fide* and, consequently, Romania's principal position is that every human being's inherent right to life must be respected and protected and, thus, death penalty should not be imposed on individuals.

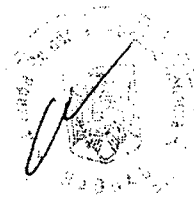
In the context of the judicial proceedings currently taking place against Mr. Munaf in Iraq, Romania expresses its conviction that no action will be taken so as to endanger Mr. Munaf life and personal integrity and that no death penalty will be imposed against him. Romania also expects that no action that might facilitate such a course will occur, and that Mr. Munaf will be treated with dignity and in full respect of his inherent rights.

Romania considers appropriate that Mr. Munaf remains in the custody of the Multi-National Force in Iraq

The Embassy of Romania avail themselves of this opportunity to renew to the Multi-National Forces – Iraq, General Command the assurances of their highest consideration.

Baghdad, February 6, 2007

To: MULTI-NATIONAL FORCE – IRAQ
GENERAL COMMAND



ANNEX 2

Various press statements from the time of the kidnapping until their release

Cincizeci si cinci de zile: cronica unei rapiri atipice

[Cotidianul - 23.05.2005]

Evenimentele petrecute la Bucuresti si Bagdad pot fi citite de acum fara teama ca cele scrise in presa din Romania pot periclitiza viata celor rapiti. Retrospectiva lor arata ca numeroase lucruri ramini de oclisut. 27 martie. Presedintele Basescu intraprinde o vizita secreta in Irak, unde spune trupelor romane ca nu vor fi retrase.

28 martie. Prin intermediul unui telefon mobil, este semnalata disparitia in Irak a jurnalistilor Marie-Jeanne Ion si Sorin Miscoci de la Prima TV si a lui Ovidiu Ohanesian de la ziarul „Romania libera”. impreuna cu ei a fost rapit si omul de afaceri Mohammad Munaf, calauza care i-a insotit pe jurnalisti

29 martie. Omul de afaceri siriano-roman Omar Hayssam, prieten cu Munaf si despre care s-a spus ca ar fi finantat plecarea celor trei, a declarat ca rapitorii i-ar fi cerut patru milioane de dolari in schimbul eliberarii jurnalistilor. Mircea Geoana, actualul sef al PSD, aliat in Qatar, e invitat la televiziunea Al-Jazeera, unde ii implora pe rapitori sa ii elibereze pe ostacii romani.

30 martie. Postul de televiziune panarab Al-Jazeera difuzeaza primele imagini ale ziaristilor, in care acestia apar paziti de doua persoane inarmate. Marie-Jeanne Ion e filmata spunind ca informatia potrivit careia rapitorii ar fi cerut ceva in schimbul eliberarii este falsa. Se vorbeste despre o rapire atipica, iar Omar Hayssam devine, brusc, suspect. Presa romana redescopera in Omar Hayssam unul dintre cei mai contestati oameni de afaceri din Romania. PSD, la rindul sau, descopera cu umire faptul ca Hayssam e un generos membru de partid social-democrat. Incep sa apara informatiile conform carora plecarea celor trei jurnalisti romani in Irak s-a facut in conditii foarte ciudate: in pripa, fara a li se fi asigurat o minima securitate.

1 aprilie. Agentia Reuters difuzeaza fotografiile cu jurnalistii, prezentati in picioare si tinind in mini actele de identitate. Din fotografiile lipsca insotitorul lor, Mohammad Munaf

2 aprilie. Un post TV difuzeaza zvonul ca cei trei ar fi fost eliberati. La Aeroportul Otopeni, zeci de jurnalisti asteapta o noapte intreaga intoarcerea acestora. Presedintele neaga informatia.

5 aprilie. Omar Hayssam a fost retinut de procurorii Parchetului de pe langa Inalta Curte de Casatie si Justitie. Anuntul este insa facut de catre Presedintia Romaniei.

6-11 aprilie. Presa relia in detaliu povestea plecarii celor trei jurnalisti romani in Irak. Astfel, tatal lui Marie-Jeanne Ion era, de mult timp, in relatii cordiale cu Hayssam, fiica acestuia aducind pentru televiziunea la care lucra publicitate de la firmele acestuia.

11 aprilie. Presedintia anunta ca cei trei jurnalisti romani sint in viata.

12 aprilie. Mile Carpenisan, corospondentul Antenei 1 in Irak, spune, intr-un interviu, ca „jurnalistii au fost eliberati pe 4 aprilie, iar intreaga afacere e o poveste murdara”. Imediat, Traian Basescu reactioneaza, spunind ca „presa este supusa unei intoxicari comparabile cu cea de la revolutie”.

13 aprilie. Basescu spune ca jurnalistii „sint in viata, dar ostacii in mod real”.

14 aprilie. Reuters da publicitatii pentru prima oara imagini cu membri ai echipei de negociatori de la Bagdad.

16 aprilie. Un important lider religios siit libanez face un apel rapitorilor ca sa ii elibereze pe cetatenii romani rapiti in Irak.

18 aprilie. Adrian Nastase spune ca arestarea lui Omar Hayssam este un act politic.

20 aprilie. Antena 1 sustine ca jurnalistii romani sint in minile altei grupari teroriste, care cere 30 de milioane de dolari drept rascumparare.

22 aprilie. Postul de televiziune Al-Jazeera a difuzat noi imagini cu cei trei ziaristi romani rapiti in Irak, incadrati de teroristi. Teroristii au cerut, prin intermediul lui Marie-Jeanne Ion, retragerea trupelor romane din Irak in patru zile. In caz contrar, ei vor fi ucisi. In comunicatul Presedintiei, se spune ca respectiva caseta e o proba dintre cele solicitate care sa li valdeze pe omul de legatura. Dan Voiculescu, liderul actualului Partid Conservator, s-a oferit sa mearga in Irak si sa se puna la dispozitia rapitorilor, in schimbul vetii jurnalistilor. Reactii defensive in fata cererii rapitorilor au si liderii PSD, ei spunind ca e timpul ca Romania sa se gindiasca la retragerea trupelor romanesti din Irak.

23 aprilie. Traian Basescu iese in curtea de la Cotroceni si sta de vorba cu rudole rapitorilor. Mai multe televiziuni transmit in direct dialogul presedintelui cu acestea. Basescu roaga televiziunile la sfrsitul dialogului sa nu difuzeze aceste convorbiri pentru ca vor face mult rau negocierilor. Prea tirziu, totul fusese transmis deja.

26 aprilie. Rapitorii irakieni au prelungit ultimatumul cu inca o zi. Postul din Qatar Al-Jazeera a difuzat la ora 21.00 o noua inregistrare video, in care ziaristii romani si ghidul lor sint prezentati intr-o stare foarte proasta si avind anne indreptate asupra lor. Dintre cei patru, Sorin Miscoci si Mohammad Munaf sint imbracati in haine portocalii, iar Ovidiu Ohanesian pare sa fi fost ras in cap.

27 aprilie. Mitng de solidaritate cu jurnalistii romani. Se cere retragerea trupelor romanesti din Irak. Vasile Ion, tatal lui Marie-Jeanne Ion, e cel mai vehement. „Solicitarile sint de ordin politic, si nu maternal”, spune Ion. Manifestatiile de solidaritate continua mai multe zile. Intr-un cotidian central apare stirea ca la una dintre demonstratiile ciltiva ziaristi vor sa manipuleze multimea si sa incendieze citeva masini. Romulus Cristea, cel care a facut declaratii in legatura cu acest subiect, a spus ca, la terminarea crizei, va da mai multe detalii. Tot in 27 aprilie, un sondaj de opinie comandat de Antena 1 spune ca cetatenii romani vor, in majoritate, ca trupele romanesti din Irak sa fie retrase.

19 mai. Dupa ce, in ultimele saptamini, vestile despre jurnalistii romani rapiti in Irak aproape ca au disparut, seara, la postul public de televiziune, Traian Basescu spune ca „orice este posibil - de la o solutionare pozitiva totala la o solutionare partiala, orice este posibil. Este posibil ca intr-o zi - Doamne, fereste sa ajungem la ea! - sa vedeti si executii, orice este posibil. Ce va pot garanta insa este ca facem tot ce se poate, tot ce poate statul roman acum, pentru o rezolvare pozitiva”.

22 mai. Administrata prezidentiala, dar si MAE, anunta ca cei trei jurnalisti romani, impreuna cu ghidul lor, sint eliberati si ca, in cel mai scurt timp, vor ajunge in tara.

Fifty five days: the chronicle of an atypical kidnapping

Cotidianul – 23.05.2005

The events that happened in Bucharest and Baghdad can be read by now without fearing that what is written in the Romanian press might endanger the lives of those kidnapped. Their retrospective shows that there are still numerous things to unveil. 27 March. President Basescu pays a secret visit to Iraq where he tells the Romanian troops that they will not be withdrawn.

28 March. The disappearance of the journalists Marie-Jeanne Ion and Sorin Miscoci from Prima TV and Ovidiu Ohanesian from the "Romania Libera" newspaper is signaled through a cell phone. The businessman Mohammad Munaf who was the guide of the journalists was also kidnapped.

29 March. The Syrian-Romanian businessman Omar Hayssam, a friend of Munaf, who allegedly financed the journey of the three, declared that the kidnappers had asked him four millions dollars in exchange for the release of the journalist. Mircea Geoana, the current head of PSD, then in Qatar, was invited to the Al-Jazeera where he pleads to the kidnappers to release the Romanian hostages.

30 March. The pan Arabian TV station Al-Jazeera broadcasts the first images of the journalists, where they appear watched over by two armed persons. Marie-Jeanne Ion is shown saying that the information according to which the kidnappers had asked something in exchange for their release is fake. People start to speak about an atypical kidnapping and Omar Hayssam becomes, suddenly a suspect. The Romanian press discovers that Omar Hayssam is one of the most questionable businessmen in Romania. PSD, at its turn, is surprised to discover that Omar Hayssam is a generous social-democrat party member. Information begin to surface according to which the departure of the three Romanian journalist took place in some very odd circumstances: hastily, without ensuring even the slightest security and, moreover, without life insurance for conflict zones.

1 April. Reuters news agency broadcasts pictures of the journalists who are shown standing and holding the identity papers in their hands. Their companion, Muhammad Munaf was missing from the pictures.

2 April A TV station broadcasts the rumour that the three had been released. At the Otopeni airport, tens of journalist wait for them to return for an entire night. The Presidency denies the rumour.

5 April Omar Hayssam was detained by the prosecutors from the Prosecutor's Office of the High Court of Cassation and Justice. This announcement is made, though, by the Romanian Presidency.

6-11 April The press reprints in detail the story of the three journalists' journey in Iraq. It appears that the father of Marie-Jeanne Ion had been for a long time in close relation with Hayssam, as his daughter brought advertising contracts from the business entities that the latter owned.

11 April The Presidency states that the three journalist are alive.

12 April Mile Carpenisan, the correspondent of Antena 1 in Iraq, being interviewed says that "the journalists had been freed on April 4 and the whole business is a dirty story". Immediately, Traian Basescu reacts by saying that "the press is intoxicated like when the revolution took place".

13 April Basescu says that the journalists "alive, but certainly hostages".

14 April Reuters broadcasts for the first time images with the members of the team of negotiators from Baghdad

16 April An important Lebanese Shiite religious leader appeals to the kidnappers to release the Romanian citizens kidnapped in Iraq.

18 April Adrian Nastase says that the arrest of Omar Hayssam is a political act.

20 April Antena 1 holds that the Romanian journalists are in the hands of another terrorist group which demands 30 millions dollar as reward.

22 April. The TV station Al-Jazeera broadcasted new images with the three Romanian journalists kidnapped in Iraq, surrounded by terrorists. The terrorist asked, through Marie-Jeanne Ion, the withdrawal of American troops from Iraq within four days. Failure to comply with this demand will result in their death. In the press release of the Presidency it is written that the tape in question is a requested evidence to validate the contact person. Dan Voiculescu, the leader of the current Conservatory Party, presented himself to go to Iraq and enter in the custody of the kidnappers in exchange of the lives of the journalists. The leaders of the PSD also have defensive reactions in regard to the kidnappers' request, as they say that is the time for Romania to think about withdrawing its troops from Iraq.

April 23. Traian Basescu talks with the relatives of the abducted in the courtyard at the Cotroceni. Several televisions live broadcast the President's dialogue with the relatives. At the end of the dialogue, Basescu asks the televisions not to broadcast these conversations as they will do very much harm to the negotiations. Too late, everything had already been broadcasted.

April 26. The Iraqi abductors have prolonged the ultimatum with one more day. The TV station from Qatar broadcasted, at 21.00 hours, a new video recording where the Romanian journalists and their guide are shown in a very bad shape with guns pointing towards them. Among the four, Sorin Miscoci and Mohammad Munaf are dressed in orange coloured clothes and Ovidiu Ohanesian seems to have his head shaved.

April 27. Solidarity gathering with the Romanian journalists. The withdrawal of the Romanian troops from Iraq is being asked. Vasile Ion, the father of Marie-Jeanne Ion is the most passionate. "The demands have a political nature and not a material one" says Ion. The solidarity gatherings will go on for several more days. A central daily newspaper publishes the information that at one of the gatherings several journalists try to manipulate the crowd and to torch some vehicles. Romulus Cristea, who has made declarations regarding this topic, said that at the end of the crisis he will provide for more details. Also on April 27th an opinion poll ordered by Antena 1 shows that the majority of the Romanian citizens want the Romanian troops withdrawn out of Iraq.

May 19. While in the last weeks the news concerning the Romanian journalists abducted in Iraq have almost disappeared, in the evening, on the public TV station, Traian Basescu says that "everything is possible – from a solution positive in its entirety to a partial solution, everything is possible. It is possible that one day – God help us not to see such a day! – when you will see executions too; everything is possible. What I can guarantee you, though, is that we are doing everything it can be done, everything what the Romanian state can do now, for a positive outcome".

May 22 The presidential administration, but also the MFA, announces that the three Romanian journalists, together with their guide, have been released and that they are going come back in the country shortly.

Internet address

• Eveniment, Stiriile din 27 Aprilie 2005

Piata Universitatii a gazduit, ieri, dominoul perfect al disperarii

27.04.2005

Desi in Piata Universitatii din Bucuresti lumea isi dadea cu parerea, cautand speranta ca pe o oaza intr-un desert, vestea ca in 24 de ore unul dintre jurnalistii rapiti va fi executat s-a raspandit ca piesele unui domino, cutremurand sufletele celor prezenti. De aceasta data, lacrimile tineau post de piese. Figurile inmarmorite si apoi lacrimile apareau unele dupa altele, pana ce au acoperit piata. Oamenii aveau capul de plumb si tineau mainile stranse la piept. Ziaristii care au trecut in viata lor peste momente inspaimantatoare traiau, cu siguranta, una dintre cele mai grele clipe ale carierei lor. Acalmia inghitea vantul, iar copacii verzi din jur luau culoarea mucegaiului. Teama domnea pretutindeni, iar fumul de tigara se transforma in siluetele unor stafi.

In cateva clipe, la ora expirarii ultimatumului, zona s-a umplut, afisele cu ziaristii nostri impanzind piata. Era linistea dinaintea furtunii. (Andrei R.Dobrogea)

Gardianul. University Square hosted, yesterday, the perfect domino of despair

Event, News of 27 April 2005

University Square hosted, yesterday, the perfect domino of despair

27.04.2005

Although in the University Square in Bucharest people were just guessing, searching for the hope like for an oasis in the desert, the news that in 24 hours one of the kidnapped journalists will be executed spread like the pieces of a domino game, shuddering the hearts of those present. This time it was tears that replaced the pieces of the domino game. Speechless faces and than tears came out one after the other until the square was covered. People's heads ware heavy as lead and their hands were crossed on the chest. Journalists that passed in their life through awful moments definitely lived one of the hardest moments of their career. The peacefulness was hiding the wind, and the green trees around had the colour of mould. The fear was everywhere, and the cigarette smoke was changing into the silhouette of some ghosts.

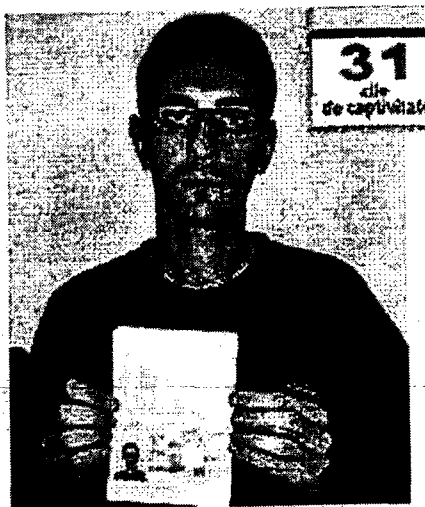
In some moments, when the ultimatum expired, the area was full, the posters with our journalists being everywhere in the square. It was the quietness foregoing the storm.
(Andrei R. Dobrogea)

Internet address

Eveniment, Stirile din 27 Aprilie 2005

SORIN MISCOCI: DACA NU FACETI CEVA, VOI FI PRIMUL OMORATAstazi, la ora 15.00. ?Brigazile Mu? adh bin Jabal? au amenintat ca vor executa primul ostatic
27.04.2005

- Ieri, la ora 15.00, Dan Dumitru, directorul stirilor Prima TV, a primit un telefon de la "Brigazile Mu? adh bin Jabal", titlatura grupului care ii detine pe cei trei jurnalisti romani. Un vorbitor de limba araba sustinea ca acestia sunt patrioti irakieni si nu vor bani pentru viata ostaticilor, ci retragerea trupelor romanesti din Irak. Arabul a spus ca astazi, la ora 15.00, va fi executat Sorin Miscoci. El a anuntat ca au trimis un mail audio cu vocile jurnalistilor.
- In mesaj, prima care a vorbit a fost Marie Jeanne Ion: "Lucrez ca jurnalist la Prima Tv, in Bucuresti. Acesta este un mesaj care a fost inregistrat special pentru acest post de televiziune. Va rog, difuzati-l! Este adevarat ca presedintele Romaniei duce acum tratative cu rapitorii nostri, insa oficialitatile din Romania nu sunt de acord sa indeplineasca cererea rapitorilor".
- Tanara a continuat: "Asa ca va rog pe voi, cetatenii romani, sa ne ajutati si sa ne salvati viata. Si, va rog, organizati demonstratii pentru a face presiuni asupra oficialitatilor, pentru a-i determina sa indeplineasca cererea rapitorilor". Apoi a urmat alta voce: "Numele meu este Ovidiu Ohanesian, sunt ziarist la cotidianul ?Romania Libera?, rog romanii, familia mea, Guvernul, presedintele sa faca ceva ca sa nu murim. Imi pare rau, vietile noastre sunt in mainile voastre".



Ieri, dupa ce a expirat ultimatumul acordat tani noastre de "Brigazile Mu?adh bin Jabal", la redactia Prima TV a fost primit un mail (mesaj) audio, pe adresa de email a lui Dan Dumitru, seful Departamentului "Stiri". Inainte de aceasta, dan Dumitru fusese sunat pe telefonul mobil de la un numar cu prefix irakian, fiind anuntat ca va primi, in cateva minute, un mesaj pe adresa de e-mail. Aceasta ultima informatie va creste, fara indoiala, si mai mult tensiunea din tara noastra. La inceput a vorbit un arab, in limba sa natala. Dupa aceea, a apelat la un translator. Acesta a spus ca "Brigazile" sunt constituite dintr-un grup de patrioti irakieni, care nu vor bani pentru rascumpararea ostaticilor, ci retragerea trupelor romanesti din aceasta tara. Mai mult, barbatul a spus ca primul executat va fi operatorul Sorin Miscoci. Executia ar urma sa aiba loc astazi, la ora 18.00. Dupa ce translatorul si-a incheiat mesajul, cei trei ostatici romani au vorbit pe rand la telefon. Marie-Jeanne Ion implora poporul roman sa iasa in strada, sa faca presiuni asupra autoritatilor de la Bucuresti. Ovidiu Ohanesian parea sa aiba cea mai proasta stare psihica si, cu vocea inecata in lacrimi, nu a spus decat "nu ma simt in stare sa zic nimic". Sorin Miscoci, vizibil afectat, le-a transmis atat autoritatilor romane, cat si compatriotilor sai sa faca ceva pentru ca nu mai au la dispozitie decat 24 de ore, altfel, in mod categoric, el va fi primul executat. "Daca vreti sa nu aveti viata mea pe constiinta...", a spus in final Sorin Miscoci. Toti au spus ca implora poporul roman sa iasa in strada, sa organizeze manifestatii si sa preseze statul roman sa ia decizia de a retrage trupele romanesti din Irak. Dupa acest mesaj, telefonul a fost inchis.

Mesajul integral al celor trei ostatici

Marie Jeanne Ion: Lucrez ca jurnalist la Prima Tv, in Bucuresti. Acesta este un mesaj care a fost inregistrat special pentru acest post de televiziune. Va rog, difuzati-l! Este adevarat ca presedintele Romaniei duce acum tratative cu rapitorii nostri, insa oficialitatile din Romania nu sunt de acord sa indeplineasca cererea rapitorilor. Asa ca va rog pe voi, cetatenii romani, sa ne ajutati si sa ne salvati viata. Si, va rog, organizati demonstratii pentru a face presiuni asupra oficialitatilor, pentru a-i determina sa indeplineasca cererea rapitorilor.

Sorin Miscoci: Numele meu este Sorin Miscoci. Sunt cameraman la Prima TV Bucuresti si va rog domnule presedinte, romani, familia mea salvati-ne, va rog salvati-ne. Rapitorii mi-au spus ca voi fi primul ucis. Va rog, romani, faceti presiuni asupra autoritatilor sa retraga trupele romane din Irak ca sa fim salvati. Va rog.

Ovidiu Ohanesian: Numele meu este Ovidiu Ohanesian, sunt ziarist la cotidianul "Romania Libera? rog romanii, familia mea, Guvernul, presedintele sa faca ceva ca sa nu murim. Imi pare rau, vietile noastre sunt in mainile voastre.

http://www.gardianul.ro/2005/04/27/eveniment-c2/sorin_font_color_dd111_miscoci_font... 3/2/2007

Gardianul, SORIN [...] MISCOCI [...]: IF YOU DO NOT DO SOMETHING,...

Event, News of 27 April 2005

SORIN MISCOCI: IF YOU DO NOT DO SOMETHING, I WILL BE THE FIRST KILLED

Today, at 15.00 o'clock, Muahd ibn Jabal Brigades threatened that they will execute the first hostage

27.04.2005

- Yesterday, at 15.00 o'clock, Dan Dumitru, the director of the news department at Prima TV, received a phone call from Muahd ibn Jabal Brigades, as the group holding the three Romanian journalists is called. An Arabic speaking person was saying that these are Iraqi patriots, which do not want money in exchange of the life of the hostages, but the withdrawal of the Romanian troops from Iraq. The Arab said that today, at 15.00, Sorin Miscoci will be executed. He announced that they sent an audio message with the voices of the journalists.
- The first who spoke in the message was Marie-Jeanne Ion: "I wok as journalist at Prima TV, in Bucharest. This is a message which was specially recorded for this TV station. Please broadcast it! It is true that the President of Romania is presently negotiating with our kidnappers, but the Romanian officials do not agree to fulfil the request of the kidnappers".
- The young lady went on: "So I beg you, Romanian citizens, to help us and save our lives. And, please, organise demonstrations in order to put pressure on the authorities to determine them to fulfil the request of the kidnappers". Than another voice followed: "My name is Ovidiu Ohanesian, I am a journalist at "Romania Libera" Newspaper, I beg the Romanians, my family, the Government, the president to do something so that we don't die. I am sorry, our lives are in your hands".

Yesterday, after the ultimatum gave to our country by Muahd ibn Jabal Brigades expired, at Prima TV there was received an audio mail (a message), on the e-mail address of Dan Dumitru, the director of the News Department. Before that, Dan Dumitru had been called on his mobile from a number with Iraqi prefix, being announced that he would get, within a few minutes, a message on the e-mail address. This last information will undoubtedly raise even more the tension in our country. In the beginning an Arab spoke in his native language. After that he spoke through a translator. This one said that the Brigades are made up of a group of Iraqi patriots, which do not want money as ransom for the hostages, but the withdrawal of the Romanian troops from this country. Moreover, the man said that the first to be executed will be the cameraman Sorin Miscoci. The execution would be today at 18.00 o'clock. After the translator finished his message, the three Romanian hostages spoke on the phone one by one. Marie-Jeanne Ion begged the Romanian people to get out in the streets, to put pressure on the authorities in Bucharest. Ovidiu Ohanesian seemed to have the most pessimistic state of mind and, with the voice in tears, only said "I can not say anything". Sorin Miscoci, visibly affected, told the Romanian authorities and his compatriots to do something as they only have 24 hours, otherwise he will definitely be the first executed. "If you do not want to have my life on your conscience ..." said, in the end, Sorin Miscoci. Everyone said that they beg the Romanian people to go out in the streets, to organize manifestations and to press the Romanian State to decide the withdrawal of the Romanian troops in Iraq. After this message the phone was hanged up.

The entire message of the three hostages

Marie Jeanne Ion: I work as a journalist at Prima TV, in Bucharest. This is a message specially recorded for this TV station. Please, broadcast it! It is true that the President of Romania negotiates with our abductors, however the officials for Romania do not agree with him on executing the demand of the abductors. Therefore I ask you, the Romanian citizens, to help us and save our lives. And please gather in meetings to pressure the officials in order to make them execute the demand of the abductors.

Sorin Miscoci: My name is Sorin Miscoci. I am a cameraman at Prima TV Bucharest and I ask you Mr. President, Romanians, my family save us, please save us. The abductors told me that I will be the first to be killed. Please, Romanians make pressure on the authorities to withdraw the Romanian troops from Iraq in order to be saved. Please.

Ovidiu Ohanesian: My name is Ovidiu Ohanesian. I am a journalist at the "Romania Libera" daily newspaper. I ask the Romanians, my family, the Government, the President to do something in order to save us from being killed. I am sorry; our lives are in your hands.

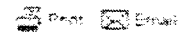
Andi Topala

Internet address

ANNEX 3

Press statement from MNF-I (18 October 2006)

CCCI convicts 27 insurgents. Five sentenced to death, two sentenced to 15 years imprisonment



Thursday, 19 October 2006

**MULTI-NATIONAL FORCE-IRAQ
COMBINED PRESS INFORMATION CENTER**

BAGHDAD, Iraq
<http://www.mnf-iraq.com>
703.270.0320 / 0299

Oct. 18, 2006
Release A061019a

CCCI convicts 27 insurgents. Five sentenced to death, two sentenced to 15 years imprisonment

BAGHDAD — The Central Criminal Court of Iraq convicted twenty seven individuals from Oct. 5 to 12 for various crimes including kidnapping, possession of illegal weapons, using or taking advantage of someone else's legal documents, heading, leading, joining armed groups, and illegal border crossing

A Tunisian man has received the death sentence for violating Article 4 of the Terrorist Law. Ground forces captured the defendant, a suspected member of a terrorist cell and a foreign fighter in May of 2006. The defendant participated in dozens of attacks against the Iraqi Army, the Iraqi National Guard, the ground force and civilians.

Three Iraqi men received death sentences for kidnapping, a violation of part B, J, D and H of Article 421 of the Iraqi Penal Code. Ground forces apprehended the defendants in connection with a kidnapping ring. The defendants were guards and construction workers where the victims were kept.

The trial court has sentenced an Iraqi-American man to death for kidnapping, a violation of part G, D and H of Article 421 of the Iraqi Penal Code. Ground forces apprehended the defendant in May of 2005 for the participation in the kidnapping of three individuals.

Those convicted of passport violations and entering the country illegally included men from Egypt, Syria, Libya, Sudan, Saudi Arabia and Jordan. Other sentences ranged from two to 15 years imprisonment.

-30-

FOR MORE INFORMATION, PLEASE CONTACT THE COMBINED PRESS
INFORMATION CENTER AT: CPICPRESSDESK@IRAQ.CENTCOM.MIL

< Prev Next >

ANNEX 4

Note on the demarches undertaken in the "Mohammad Munaf" case by the Ministry of Justice of Romania, according to its competencies as the Romanian central authority I the field of international judicial cooperation in criminal matters as of 6 February 2007



ROMÂNIA
MINISTERUL JUSTIȚIEI

Nr. 74739/2006

NOTĂ

privind demersurile întreprinse în „cazul Mohammad Munaf” de Ministerul Justiției, potrivit atribuțiilor sale de autoritate centrală română în domeniul cooperării judiciare internaționale în materie penală

- Actualizată la 6 februarie 2007 -

1. Procedura declanșată de cererea de extrădare formulată de Curtea de Apel București

1.1. La data de 24 septembrie 2005, s-a înregistrat la Ministerul Justiției (M.J.) - Direcția Drept Internațional și Tratatate (D.D.I.T.)¹ cererea de extrădare nr. 25/E/2005, formulată de Curtea de Apel București privind pe inculpatul MUNAF MOHAMMAD și adresată autorităților competente din Statele Unite ale Americii.

Curtea de Apel București solicita „**extrădarea din Statele Unite ale Americii**” a numitului MUNAF MOHAMMAD, inculpat în dosarul de urmărire penală nr. 540/D/P/2005 al Parchetului de pe lângă Înalta Curte de Casație și Justiție - Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism, în vederea punerii în executare a mandatului de arestare preventivă nr. 3/UP, emis în lipsa inculpatului la 27 mai 2005, în dosarul nr. 1830/2005, de către Curtea de Apel București - Secția a - II -a Penală, în scopul continuării și finalizării urmăririi penale, precum și al asigurării prezenței inculpatului la judecată în fața instanței de fond.

1.2. La data înregistrării cererii (24 septembrie 2005), D.D.I.T. a procedat la examinarea îndeplinirii condițiilor de regularitate internațională pentru a se solicita extrădarea din Statele Unite ale Americii a inculpatului MUNAF

¹ Denumirea acestei direcții anterior datei de 3 aprilie 2006 era « Drept Internațional, Cooperare Judiciară și Afaceri Juridice Externe », dar, pentru a evita confuzii vom folosi denumirea actuală (D.D.I.T.)

MINISTERUL JUSTIȚIEI

MOHAMMAD, conform art. 67 alin. (7), teza finală, raportat la art. 39 din Legea nr. 302/2004 privind cooperare judiciară internațională în materie penală².

Potrivit dispozițiilor legale menționate, direcția de specialitate a Ministerului Justiției efectuează un examen de **regularitate internațională** al cererii de extrădare, spre a constata dacă România are **convenție (tratat) de extrădare** cu statul respectiv ori o înțelegere privind declarația de **reciprocitate**, sau dacă există un impediment dirimant în angajarea procedurii de extrădare, cum ar fi **neidentificarea pe teritoriul statului solicitat a persoanei extrădabile**.

Întrucât Curtea de Apel București a solicitat extrădarea inculpatului MUNAF MOHAMMAD **din Statele Unite ale Americii** către România, Ministerul Justiției a verificat condițiile de regularitate internațională în raport cu cadrul juridic în care se desfășoară procedurile de extrădare între România și S.U.A.

1.3. Ca urmare a examenului de regularitate internațională **s-au constatat următoarele:**

- a) Cererea de extrădare a fost formulată în **temeiul Convenției ONU contra luării de ostateci, New York, 17 decembrie 1979, Convenției de extrădare încheiată și semnată la București la 23 iulie 1924 între România și Statele Unite ale Americii (denumită în continuare „Convenția bilaterală de extrădare“)**, precum și al celorlalte convenții ONU relevante pentru reprimarea terorismului.
- b) Potrivit art. XI alin. 1 din Convenția bilaterală de extrădare „Stipulațiunile prezentului tratat vor fi aplicate în toate teritoriile aparținând Înaltelor Părți Contractante, precum și în teritoriile, ori unde s-ar afla ele, **ocupate în mod temporar sau aflate sub controlul unuia din Statele contractante**, în tot timpul duratei ocupațiunii sau exercițiului controlului.”
- c) În cuprinsul cererii de extrădare se menționează, la pagina 1, că inculpatul se află **„în custodia Fortelor Coalitiei Multinaționale din Irak, deținut în campusul militar Camp Crooper din Bagdad”**, iar la pagina 4, că **„inculpatul este în custodia Fortelor militare americane, deținut în campusul militar Camp Crooper din Bagdad**. Din datele pe care le deținem, **inculpatul se află în custodia contingentului american din cadrul Fortelor Coalitiei Multinaționale din Irak.**

² Forma în vigoare la acea dată.

În aceste condiții, s-a procedat la **verificarea statutului Forțelor Coaliției Multinaționale din Irak**, pentru a constata dacă sunt incidente dispozițiile art. XI, alin. 1, teza finală, din Convenția bilaterală de extrădare (respectiv, **dacă inculpatul MUNAF MOHAMMAD se află pe un teritoriu ocupat în mod temporar sau aflat sub controlul SUA**), pentru a se putea solicita autorităților americane extrădarea lui MUNAF MOHAMMAD. Menționăm că și convențiile multilaterale invocate în cererea de extrădare impun ca persoana a cărei extrădare se solicită să se afle pe teritoriul statului solicitat. **Concluziile verificării:**

- a. Forța Multinațională a Coaliției a fost **autorizată prin Rezoluția nr. 1511 (2003) și reconfirmată prin Rezoluția nr. 1546 (2004), ale Consiliului de Securitate al ONU.**
- b. Forța Multinațională este autorizată să ia toate măsurile necesare pentru a contribui la menținerea securității și stabilității în Irak.
- c. Prin aceleași Rezoluții se reafirmă **suveranitatea și independența Irakului. Autoritatea Provizorie a Coaliției a încetat să existe, iar Irakul și-a recăpătat suveranitatea, având instituții legitime** (au avut loc alegeri libere), **Forța Multinațională a Coaliției continuând să fie prezentă în Irak la cererea autorităților irakiene.**

Prin urmare, **nu sunt întrunite condițiile de regularitate internațională** pentru a se putea solicita extrădarea *din Statele Unite ale Americii* a lui MUNAF MOHAMMAD, întrucât **acesta nu se află nici pe teritoriul SUA și nici pe un teritoriu ocupat sau controlat de SUA**, astfel încât nu sunt întrunite condițiile prevăzute de art. XI alin. 1 din Convenția bilaterală de extrădare.³

1.4. În ciuda constatării că nu sunt îndeplinite condițiile de regularitate internațională, având în vedere importanța cazului, Ministerul Justiției a apreciat oportun să transmită totuși, **la 25 septembrie 2005** (duminică, ziua următoare primirii cererii de extrădare formulată de Curtea de Apel București), documentele de extrădare Ambasadel SUA la București, căreia i s-a solicitat **certificarea acestora**

³ art. XI alin. 1: „Stipulațiunile prezentului tractat vor fi aplicate în toate teritoriile aparținând Înaltelor Părți Contractante, precum și în teritoriile, ori unde s-ar afla ele, ocupate în mod temporar sau aflate sub controlul unuia din Statele contractante, în tot timpul duratei ocupațiunii sau exercițiului controlului.” Aceeași concluzie rezultă și din analiza Rezoluțiilor nr. 1511 (2003), 1518 (2003), 1546 (2004), 1618 (2005) ale Consiliului de Securitate al ONU, precum și a Constituției Irakului.

MINISTERUL JUSTIȚIEI

potrivit legislației americane (urma a se obține astfel, implicit, și poziția Departamentului de Stat al SUA cu privire la statutul locului unde se află MUNAF MOHAMMAD).

Potrivit legislației americane, **consulul general al SUA în statul solicitant** (în cazul de față România) **certifică, în prealabil, cererile de extrădare adresate Departamentului de Justiție al SUA. Fără această formalitate, cererile de extrădare nu pot fi transmise.**

1.5. Prin „nota verbală” (adresa transmisă Ministerului Justiției) nr. PS 7 - 2/28 din 30 noiembrie 2005 a Ambasadei Statelor Unite ale Americii la București, **documentele de extrădare au fost restituite Ministerului Justiției, precizându-se în mod clar că MUNAF MOHAMMAD se află pe teritoriul Republicii Irak, iar nu pe teritoriul S.U.A. sau pe un teritoriu ocupat sau aflat temporar sub controlul acestora, astfel încât nu sunt incidente dispozițiile Convenției de extrădare dintre România și Statele Unite ale Americii. Cităm din poziția categorică a autorităților americane:**

„Această cerere nu intră sub incidența Tratatului de extrădare încheiat între Statele Unite ale Americii și România. Tratatul prevede extrădarea infractorului urmărit care a căutat azil sau se găsește pe teritoriul statului solicitat sau pe un teritoriu aflat sub ocupația sau controlul acestuia. Irak, statul în care se află în detenție MUNAF MOHAMMAD, nu face parte din Statele Unite și nici nu se află sub ocupația sau controlul Statelor Unite.”

1.6. Prin urmare, ministrul justiției a emis, în temeiul dispozițiilor art. 67 alin. (9) din Legea nr. 302/2004 privind cooperarea judiciară internațională în materie penală, ordinul nr. 1833/C din 5 decembrie 2005.

2. Ordinul ministrului justiției nr. 1833/c din 5 decembrie 2005

- În virtutea atribuțiilor care îi reveneau Ministerului Justiției în această materie, prin **ordinul ministrului justiției nr. 1833/c din 5 decembrie 2005** s-a constatat că nu erau întrunite condițiile de regularitate internațională pentru a solicita extrădarea din **SUA** a inculpatului **MUNAF MOHAMMAD**.
- Temeiul juridic al ordinului a fost reprezentat de:
 - dispozițiile art. 67 alin. (9) din Legea nr. 302/2004 privind cooperarea judiciară internațională în materie penală⁴;
 - prevederile art. XI alin. (1) din Convenția de extrădare încheiată și semnată la București la 23 iulie 1924 între România și Statele Unite ale Americii⁵; lipsa unei condiții elementare pentru a se solicita SUA extrădarea lui **MUNAF**: inculpatul nu se afla pe teritoriul SUA sau pe un teritoriu controlat ori ocupat de SUA.
- Legalitatea și temeinicia ordinului emis de ministrul justiției au fost **confirmate** prin **decizia nr. 7212 din 28 decembrie 2005 a Înaltei Curți de Casație și Justiție, prin care a fost respins recursul declarat împotriva acestuia de procurorul general al Parchetului de pe lângă Înalta Curte de Casație și Justiție.**
- Ministerul Justiției nu a „blocat” nici un moment procedura în acest caz, ci, dimpotrivă, a purtat un dialog constant cu autoritățile americane (pe canale diplomatice și direct) și cele irakiene (prin intermediul Ambasadei României la Bagdad) pentru a facilita desfășurarea în bune condiții a procesului penal aflat pe rolul Curții de Apel București (a se vedea în continuare, pct. 3)

3. Demersuri privind asistența judiciară, în vederea citării și audierii lui MUNAF MOHAMMAD

3.1. Demersuri și consultări

- Cu ocazia vizitei la Washington, D.C., din 8-12 noiembrie 2005, **ministrul justiției a solicitat sprijinul domnului Alberto R. GONZALES, șeful Departamentului de Justiție și procuror general al S.U.A., pentru identificarea unei soluții pentru audierea lui MUNAF.** La întrevvedere a asistat și ambasadorul României în Statele Unite ale Americii, domnul Sorin DUCARU, care, la momentul respectiv, a informat operativ despre rezultatele întâlnirii, autoritățile competente din țară.

⁴ Art. 67 (9) din Legea nr. 302/2004 : *Atunci când se constată că nu sunt întrunite condițiile de regularitate internațională pentru a se transmite cererea de extrădare, ministrul justiției emite un ordin care poate fi atacat cu recurs la Secția Penală a Înaltei Curți de Casație și Justiție, de către procurorul general al Parchetului de pe lângă Înalta Curte de Casație și Justiție, în termen de 5 zile de la comunicare.*

⁵ Art. XI alin. (1) din Convenție : *Stipulațiunile prezentului tratat vor fi aplicate în toate teritoriile aparținând Înalțelor Părți Contractante, precum și în teritoriile, ori unde s-ar afla ele, ocupate în mod temporar sau aflate sub controlul unuia din Statele contractante, în tot timpul duratei ocupațiunii sau exercițiului controlului.*

MINISTERUL JUSTIȚIEI

- Întrucât din discuție a reieșit că nici predarea temporară a inculpatului nu este posibilă, au rămas în discuție posibilitatea audierii lui la Bagdad și cea a audierii prin videoconferință.
- **În continuare, directorul D.D.I.T. - M.J. a contactat Departamentul Justiției și Departamentul de Stat al S.U.A., pentru a stabili modalitățile concrete de cooperare în acest caz.**
- ✓ S-au stabilit, într-o primă fază, **în zilele de 6, 7 și 9 decembrie 2005,** contacte directe, **prin telefon și e-mail,** cu A. K., consilier la Biroul Juridic al Departamentului de Stat al SUA, și A. T., Divizia Penală a Departamentului de Justiție al S.U.A.
- ✓ **La 9 decembrie 2005, directorul D.D.I.T. - MJ a intrat în contact, prin e-mail și telefon, cu A. P., diplomat la Ambasada S.U.A. la Bagdad.** S-a convenit ca autoritățile americane să acorde sprijinul pentru audierea prin videoconferință a lui MUNAF MOHAMMAD.
- ✓ **La 15 decembrie 2005,** ca răspuns la e-mail-ul **directorului D.D.I.T. - M.J.** din 9 decembrie a.c., A. P. (diplomat la Ambasada S.U.A. în Irak) **a transmis un e-mail,** prin care a comunicat, în esență, următoarele:
 - Realizarea audierii prin videoconferință a lui MUNAF MOHAMMAD, **ca martor,** este posibilă, Tribunalul Penal Central Irakian exprimându-și disponibilitatea de a acorda întregul sprijin în acest sens.
 - **În ceea ce privește procedura de citare a lui MUNAF MOHAMMAD,** citația poate fi transmisă electronic, prin e-mail⁶ și în original, către autoritățile irakiene, *prin intermediul Ambasadei S.U.A. la Bagdad.*
- ✓ Ca urmare a acestui e-mail, directorul a contactat **telefonic, în aceeași zi** de 15 decembrie 2005, pe A. P., precizând că, așa cum s-a arătat în convorbirile telefonice anterioare, **autoritățile române solicită audierea lui MUNAF în calitate de inculpat,** nu de martor. M.J. a solicitat lămuriri suplimentare, respectiv, dacă este vorba despre o eroare în e-mail sau aceasta este poziția autorităților solicitate. De asemenea, s-au solicitat informații privind calitatea procesuală a lui MUNAF în cauza aflată pe rolul autorităților judiciare irakiene. Răspunsul a fost că autoritățile irakiene competente nu au finalizat la acest moment cercetările în cauza privind-l pe MUNAF MOHAMMAD, astfel încât la acest moment nu se cunosc capetele de acuzare împotriva acestuia.

Problema de drept care se preconiza deja la acel moment era dificilă, având în vedere că, potrivit Codului de procedură penală român, MUNAF MOHAMMAD nu poate fi audiat ca martor în dosarul în care are calitatea de inculpat.

- **Despre demersurile întreprinse și măsurile convenite cu autoritățile americane M.J. - D.D.I.T. a informat Curtea de Apel București prin adresa nr. 111246 din 16 decembrie 2005.**

⁶ Mijloc de comunicare permis de art. 15 din Legea nr. 302/2004 privind cooperarea judiciară internațională în materie penală

3.2. Transmiterea cererilor de asistență judiciară

- În situația dată, Curtea de Apel București a formulat, după termenul din 19 decembrie 2005, o cerere de asistență judiciară prin care solicita, în esență, autorităților irakiene, înmânarea citației inculpatului MUNAF MOHAMMAD și audierea acestuia prin videoconferință, pentru termenul din 30 ianuarie 2006.
 - Cererea a fost primită la Ministerul Justiției în copie la 29 decembrie 2005 și în original la 30 decembrie 2005. Copia a fost transmisă prin e-mail lui A.P. în aceeași zi în care a fost primită (29 decembrie 2005), iar originalul a fost la rândul său trimis la 30 decembrie 2005 Ministerului Afacerilor Externe – Direcția Generală Afaceri Consulare.
- Având în vedere că nu s-a primit un răspuns la această cerere, instanța a formulat o nouă cerere, cu același obiect (pentru termenul din 20 martie 2006). Această cerere a fost înregistrată la Ministerul Justiției la 9 februarie 2006, fiind transmisă în aceeași zi în același mod menționat mai sus.
- La 21 martie 2006, directorul D.D.I.T. – M.J. s-a întâlnit, la sediul Ministerului Justiției, cu domnul Mark A. TAPLIN, adjunctul șefului Misiunii diplomatice americane la București (la solicitarea acestuia). Acesta a susținut că orice cerere de asistență judiciară similară în această cauză va trebui trimisă, pe viitor, direct autorităților irakiene.
- După termenul din 20 martie 2006, Curtea de Apel București a formulat o nouă cerere de asistență, cu obiect identic, pentru termenul fixat pentru data de 26 aprilie 2006. Având în vedere cele precizate de diplomatul american, cererea a fost transmisă atât prin postă electronică, cât și prin curier diplomatic, la 24 martie 2006, Ambasadei României la Bagdad, cu instrucțiuni precise. Potrivit e-mail-ului transmis de domnul Mihai STUPARU, ambasadorul României la Bagdad, la 2 aprilie 2006 acesta a predat personal adjunctului ministrului irakian al justiției originalul cererii de asistență judiciară.
- La 26 aprilie 2006, printr-o comunicare operativă, ambasadorul României la Bagdad a informat Ministerul Justiției despre poziția autorităților irakiene față de cererea de asistență judiciară internațională ce le-a fost adresată, iar la 11 mai 2006 s-a primit, printr-o infogramă, și adresa transmisă Ambasadei României la Bagdad de către ministrul adjunct al justiției al Republicii Irak. În acest document se arăta că autoritățile irakiene se află în imposibilitate să dea curs cererii de asistență judiciară internațională, întrucât MUNAF MOHAMMAD este reținut în Centrul Fortelor Multinaționale și se sugera să fie abordate autoritățile americane.
- La 15 mai 2006, D.D.I.T. – M.J. a transmis Curții de Apel București o copie a răspunsului Ministerului irakian al Justiției și a solicitat

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instanței să aprecieze asupra formelor de cooperare judiciară internațională care ar putea fi utilizate în continuare.

- Având în vedere contradicția constatată între poziția exprimată de Ambasada SUA la București la 21 martie 2006 și poziția Ministerului irakian al Justiției, la 2 mai 2006 Ministerul Justiției a solicitat Ambasadei României la Washington, D.C. să ceară clarificări Departamentului de Stat. Ca urmare, Ambasada României în S.U.A. a transmis, la 4 mai 2006, o notă verbală în acest sens Departamentului de Stat al SUA. În vederea urgentării primirii unui răspuns, directorul D.D.I.T. a avut mai multe convorbiri cu consulul general al S.U.A. la București, domnul Bryan DALTON și cu alți oficiali ai ambasadei. Problema, ridicată și de ministrul justiției în cadrul întreprinderilor sale cu oficiali ai Ambasadei SUA la București, s-a aflat și în punctajul trimis de M.J. către M.A.E. pentru întâlnirile bilaterale România - S.U.A. la nivel înalt.
- Subiectul a fost abordat și în cadrul întâlnirii din 24 mai 2006, de la București, între directorul D.D.I.T și A. T., de la Divizia Penală a Departamentului de Justiție al S.U.A., la care a participat și dl. G.D., atașat F.B.I. la București. S-a învederat oficialilor americani, și cu acest prilej, preocuparea autorităților române față de situația de blocaj creată, învederându-se poziția exprimată de Ministerul irakian al Justiției. A.T. a arătat că se va consulta cu A. K., de la Departamentul de Stat, în vederea transmiterii unui răspuns cât mai curând posibil, precizând încă odată că MUNAF nu se află sub jurisdicție americană și că baza militară în care este reținut MUNAF este sub autoritatea Forțelor Coaliției Multinaționale.
- În condițiile date, la 26 iulie 2006 Ministerul Justiției a transmis autorităților irakiene, pe canale diplomatice, o nouă cerere de asistență judiciară cu același obiect formulată în cauză de Curtea de Apel București, pentru termenul din 27 septembrie 2006.

În adresa din 31 iulie 2006, către Ambasada României la Bagdad, M.J. - D.D.I.T. a arătat că, în condițiile în care partea americană și partea irakiană au poziții contradictorii în acest caz, nu există **niciun motiv legal pentru ca Ministerul Justiției să nu transmită neîntârziat cererea de asistență judiciară reiterată de Curtea de Apel București**, pe cale diplomatică, autorităților irakiene. M.J. a subliniat, de asemenea, că în speță, cu atât mai mult cu cât este vorba despre infracțiuni de terorism, **este necesar ca autoritățile irakiene competente să analizeze** (eventual cu sprijinul comandamentului contingentului militar american din cadrul Forțelor Coaliției Multinaționale, în custodia fizică a căruia ar reieși că se află inculpatul) și **să stabilească** mecanismele de acordare, **din punct de vedere practic**, a asistenței judiciare solicitate. În mod expres, s-a solicitat înmânarea actelor de procedură către destinatar și **remiterea dovezii de înmânare până la termenul de judecată din 27 septembrie 2006.**

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- **Noi cereri de asistență judiciară, cu obiect identic, au fost transmise autorităților irakiene de Ministerul Justiției, pe canale diplomatice, la 16 octombrie și 7 noiembrie 2006.**
- **Ca urmare a apariției în mass-media internațională a informației potrivit căreia Mohammad Munaf și alți 5 cetățeni irakieni au fost condamnați la moarte de către Tribunalul Central Penal din Bagdad, aparent pentru aceleași fapte de terorism care formează obiectul cauzelor penale aflate pe rolul Curții de Apel București – răpirea celor trei jurnaliști români, în anul 2005, la 16 octombrie 2006, Ministerul Justiției a solicitat Ambasadei României la Bagdad să întreprindă diligențe pe lângă autoritățile irakiene în vederea obținerii unei copii certificate a acestei hotărâri.**
- **La 1 noiembrie 2006, ca urmare a unei solicitări a însărcinatului cu afaceri al României la Washington, Ministerul Justiției a comunicat misiunii diplomatice române că:**
 - a) **Politica penală a României este guvernată de imperativul respectării depline a drepturilor și libertăților fundamentale ale omului, în conformitate cu Convenția europeană a Drepturilor Omului. Dreptul la viață este o valoare supremă, astfel încât pedeapsa cu moartea este contrară principiilor constituționale fundamentale ale statului român.**
 - b) **Ministerul Justiției nu a imputernicit niciun oficial american să reprezinte statul român în cadrul procedurilor judiciare irakiene privindu-l pe Mohammad Munaf și nu are cunoștință despre existența unei asemenea imputerniciri.**
 - c) **România și-a manifestat în mod direct intenția de a supune acest caz jurisdicției române, sens în care imediat după săvârșirea faptelor respective autoritățile judiciare române au dispus urmărirea penală împotriva lui Mohammad Munaf pentru săvârșirea infracțiunilor de terorism, victimele acestor infracțiuni fiind trei jurnaliști de cetățenie română. Urmărirea penală a fost finalizată și s-a dispus trimiterea în judecată a inculpatului Mohammad Munaf, împreună cu inculpatul Omar Hayssam, pentru infracțiuni de terorism.**
 - d) **Autoritățile române nu au renunțat niciun moment la judecarea lui Mohammad Munaf pentru infracțiunile de terorism legate de răpirea, în anul 2005, a trei jurnaliști români. În acest sens, începând cu luna decembrie 2005, România a solicitat repetat asistența autorităților irakiene și americane pentru soluționarea cauzelor penale aflate pe rolul Curții de Apel București. Astfel, autoritățile române solicită audierea lui Mohammad Munaf pe de o parte în calitate de inculpat în dosarul nr. 6595/2/2006 al Curții de Apel București, Secția I Penală, iar pe de altă parte în calitate de martor, în dosarul nr. 33970/2/2005 al aceleiași instanțe (cele două dosare penale rezultând din disjungerea cauzei privindu-l pe inculpatul Mohammad Munaf de cea privindu-l pe inculpatul Omar Hayssam). **Autoritățile române insistă în audierea lui Mohammad Munaf în cele două cauze penale aflate pe rolul Curții de Apel București.****

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- e) Cel puțin până la soluționarea definitivă a cauzelor penale sus-menționate, Ministerul Justiției insistă ca Munaf să nu fie transferat din custodia contingentului american al Forței Coalitiei Multinaționale în cea a autorităților irakiene.
- La 1 noiembrie 2006, ministrul justiției, Monica MACOVEI, a transmis scrisori omologilor american și irakian, prin care solicita sprijinul pentru soluționarea cererilor de asistență judiciară formulate de către Curtea de Apel București, în cele două dosare penale aflate pe rolul acestei instanțe.
 - ✓ În scrisoarea către șeful Departamentului de Justiție al SUA, Alberto R. GONZALES, transmisă în copie și Secretarului Apărării, se solicita în mod expres ca Forța Coalitiei Multinaționale să nu-l predea pe Mohammad Munaf autorităților irakiene înainte ca acesta să fie audiat de instanța română, ca inculpat în dosarul nr. 6595/2/2006 al Curții de Apel București, Secția I Penală, iar pe de altă parte în calitate de martor, în dosarul nr. 33970/2/2005 al aceleiași instanțe.
 - În zilele de 12 și 14 noiembrie 2006, directorul D.D.I.T. din Ministerul Justiției a avut două convorbiri telefonice cu ministrul adjunct al justiției al Republicii Irak, Pusho DEZAYE, în vederea obținerii acordului pentru audierea prin videoconferință a lui Mohammad Munaf, în cele două dosare penale menționate, și pentru a-i solicita sprijinul pentru audierea, ca martori, a altor 6 cetățeni irakieni.
 - Ca urmare a convorbirilor cu demnitarul irakian, care a comunicat acordul autorităților irakiene pentru audierea lui Munaf prin videoconferință, directorul D.D.I.T. a continuat dialogul cu oficialii ai Ambasadei S.U.A. la Bagdad, pentru stabilirea detaliilor tehnice.
 - La 23 noiembrie 2006 a avut loc, la Curtea de Apel București videoconferința, organizată cu sprijinul MNF – I și al Ambasadei SUA la Bagdad.
 - La solicitarea apărătorului lui Mohammad Munaf, în ambele dosare penale s-a acordat termen pentru pregătirea apărării la 14 decembrie 2006.
 - După 23 noiembrie 2006, continuă demersurile pentru organizarea audierii prin videoconferință a lui Mohammad Munaf și audierea, prin comisie rogatorie, a șase martori, cetățeni irakieni. Astfel:
 - ✓ La 23 noiembrie 2006, ministrul justiției, Monica MACOVEI, a transmis o nouă scrisoare omologului irakian, Hashim Abderrahman al-Shibli, prin care îi solicita sprijinul în vederea audierii lui Munaf și a altor șase cetățeni irakieni. Totodată, având în vedere că Ministerul Justiției a intrat în posesia unor copii ale unor acte judiciare privind atât pe cetățeanul american și irakian Mohammad Munaf, cât și pe alți cinci cetățeni irakieni, între care și un document care pare a fi o hotărâre sau o parte dintr-o hotărâre pronunțată de

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către Tribunalul Penal Central din Bagdad, prin care s-a dispus condamnarea acestora la pedeapsa capitală, se solicita confirmarea autenticității acestor documente.

- ✓ A continuat dialogul cu oficialii Ambasadei SUA la Bagdad, pentru perfectarea videoconferinței din 14 decembrie 2006. Aici trebuie menționat că imediat după videoconferința din 23 noiembrie 2006 s-a constatat cel puțin o reticență a oficialilor Ambasadei în a mai acorda sprijinul pentru audierea din 14 decembrie, aceștia susținând că autoritățile române ar încerca să „ocolească” procedurile de extrădare cu privire la „un cetățean american aflat în custodia autorităților irakiene”.
- ✓ La 4 decembrie 2006, s-a transmis autorităților irakiene, pe canale diplomatice, o copie a rechizitoriului prin care Mohammad Munaf a fost trimis în judecată. În format electronic acest document a fost remis și Ambasadei S.U.A. la Bagdad.
- ✓ La 19 decembrie 2006, adjunctul șefului Misiunii diplomatice a SUA la București, Mark A. TAPLIN, a fost primit în audiență, la cererea acestuia, de directorul D.D.I.T. Diplomatul american a solicitat ca pe viitor cererile privind audierea prin videoconferință a lui Munaf, prin care se solicită sprijinul părții americane, să fie transmise exclusiv prin Ambasada SUA la București, fără a mai fi contactată prin e-mail Ambasada SUA la Bagdad. (acest fapt îngreunează evident comunicarea)
- ✓ La 29 decembrie 2006, Ministerul Justiției - D.D.I.T. a transmis Ambasadei SUA la București o nouă notă verbală prin care reiterează solicitarea de sprijin în vederea realizării audierii lui Munaf.
- ✓ La 2 februarie 2007, Ministerul Justiției a transmis o nouă notă verbală Ambasadei SUA la București, solicitând urgentarea unui răspuns la nota verbală din 29 decembrie 2006.