

SUMMARY

Regarding steps taken in "MOHAMMAD Munaf case" by the Ministry of Justice, according to its responsibility as main Romanian authority in legal issues with respect to the International Judicial Cooperation in Criminal Matters

- updated until 6 February 2007 -

1. Procedure Issued by the Court of Appeal of Bucharest to Request Extradition

1.1 On 24 September 2005, International Law and Treaties Division (ILTD)¹ within Ministry of Justice (MJ) – registered the Extradition Petition No. 25/E/2005, filled by the Court of Appeal of Bucharest, regarding the accused MOHAMMAD MUNAF, and addressed to the American competent authorities.

The Court of Appeal of Bucharest requested "extradition from the United States of America" of the named MOHAMMAD MUNAF, prosecuted under case No. 540/D/P2005 – Public Prosecutor's Office to the High Court of Cassation and Justice – Organized Crime Investigation and Terrorism Division, in order to execute preventive custody mandate No. 3/PC², issued 'in absentia', on 27 May 2005, under File No. 1830/2005, by Court of Appeal of Bucharest – Section II – Criminal Matters, in order to carry on and finalize prosecution case, as well as to have the accused present before the courts during the trial.

¹ Department known until 3 April 2006, under the name: International Law, Judicial Cooperation and Judicial Foreign Affairs; however in order to avoid confusions, the new name will be used.

² Translator's Note – Prosecution Case

1.2 At the date of Petition registration (24 September 2005) I.L.T.D. proceeded to examine if the conditions of international regularity were observed in order to request extradition from the United States of America, of accused MOHAMMAD MUNAF, according to Art. 67, Para (7), final thesis, in conformity with Art. 39 of Law No. 302/2004, with respect to International Judicial Cooperation in Criminal Matters.³

According to provisions stipulated by the laws mentioned above, the special unit within the Ministry of Justice performs an examination of International regularity regarding the Extradition Petition, in order to find if Romania has a convention (treaty) regarding extradition with the respective State or an agreement regarding mutual statement or if there is an invalidating impediment to engage in the extradition procedure, such as inability to identify the person to be extradited on the territory of the solicitant State.

As the Court of Appeal of Bucharest requested the extradition to Romania of the accused MOHAMMAD MUNAF from the United States of America, the Ministry of Justice verified the conditions of international regularity according to the legal frame in which the extradition procedures between Romania and USA are performed.

1.3 Based on the examination of the international regularity, the following was noted:

- a) The Extradition Petition was issued based on UN Convention Against Taking of Hostages, New York, 17 December 1979; Convention on Extradition between Romania and the United States of America, concluded and signed in Bucharest, on 23 July 1924 (named henceforth "Bilateral Extradition Convention"), as well as on the basis of other UN conventions, relevant to terrorism suppression.
- b) According to Art. XI, para. 1 of the Bilateral Extradition Convention "the provisions in the present treaty will be applicable on all territories belonging to the High Contractual Parties, as well as to wherever they exist, temporarily occupied or under the control of the Contractual State, for the duration of the occupation or control exerted"

³ The text in force at that time.

- c) Extradition Petition states on page 1, that the accused is “under the custody of the **Multi-National Coalition Force in Iraq** being detained at the military base Camp Cropper in Baghdad”, and on page 4, that “the accused is under the custody of the **American Military Force** and he is detained at the military base Camp Cropper in Baghdad. Based on the information we have, the accused is in the custody of the American contingent, part of the Coalition of the Multi-National Force in Iraq.”

Under these circumstances, the status of the **Coalition of the Multi-National Force in Iraq** was verified, in order to determine if the provisions found in Art. XI, para. 1, final thesis, of the Bilateral Extradition Convention were applicable (namely, if the accused **MOHAMMAD MUNAF** is on the territory occupied temporarily by, or under control of the US), so as to be able to request **MOHAMMAD MUNAF'S** extradition from the American authorities. In addition, multinational conventions mentioned in the extradition petition stipulate that the person whose extradition is requested should be on the territory of the solicitant State. **Examination conclusions:**

- a) The Coalition of the Multi-National Force has been authorized by **Resolution No. 1511 (2003) and confirmed by Resolution No. 1546 (2004)**, both resolutions issued by UN Security Council.
- b) The Coalition of the Multi-National Force is authorized to take any measures necessary to contribute to maintaining security and stability in Iraq.
- c) The Resolutions mentioned above, reinstate **Iraqi sovereignty and independence**. The Coalition Provisional Authority ceased to exist, and Iraq regained **Its Sovereignty**, with legitimate institutions (free elections have taken place already), the Coalition of the **Multi-National Force** continues to be present in Iraq at the request of the Iraqi authorities.

Consequently, the international regularity conditions for requesting the extradition of **MOHAMMAD MUNAF** from United States of America are not met, as he is not present on US territory or on any other territory occupied or controlled by

the US, which means that the conditions stipulated in Art. XI, para 1 of the **Bilateral Extradition Convention⁴** are not met.

1.4 Despite the fact that the international regularity rules were not observed, but considering the importance of the case, the Ministry of Justice deemed appropriate to send on **25 September 2005** (Sunday, the day following receipt of the Extradition Petition issued by the Court of Appeal of Bucharest) the extradition documents to the US Embassy in Bucharest, with a request to **certify them according to American legislation** (implicitly attempting to find out the position of the US Department of State on the statute of the location of MOHAMMAD MUNAF).

According to American legislation, the **US General Consul in the solicitant State** (in this case, Romania) gives a **preceding certification to the extradition petitions addressed to the US Department of Justice**. Extradition petitions can not be forwarded without this formality.

1.5 By "Note Verbale" (notice sent to Ministry of Justice) No. PS7-2/28 of 30 November 2005, of the US Embassy in Bucharest, the extradition documents were returned to the Ministry of Justice, with a clear statement that **MOHAMMAD MUNAF was on the territory of Republic of Iraq and not on US territory, nor on any other territories occupied or temporarily controlled by US; consequently, the provisions of the Convention on Extradition between Romania and United States of America, do not apply**. We quote from the US categorical position:

"This petition does not fall under the provisions of the Convention on Extradition concluded between United States of America and Romania. The Convention stipulates the extradition of an offender who sought asylum in or who finds him/herself on the territory of the solicitant State, or on a territory

⁴ Art. XI, para. 1: "The provisions of this Treaty apply to all territories belonging to the High Contractual Parties, as well as to the territories, regardless where they might be, temporarily occupied or under the control of one of the Contractual Parties, for the duration of the occupation or control exerted". The same conclusions result from analyzing the US Security Council Resolutions No. 1511/2003, 1518/2003, 1546/2004, 1618/2005

under its occupation or control. Iraq, where MOHAMMAD MUNAF is detained, is neither part of the United States nor under the United States occupation or control."

1.6 Consequently, based on Art. 67 para. (9) of Law No. 302/2004, regarding International Judicial Cooperation in Criminal Matters, the Minister of Justice issued Ordinance No. 1833/C of 5 December 2005.

2. Ordinance No. 1833/C of 5 December 2005 issued by the Minister of Justice

- Based on the prerogatives of the Minister of Justice in this matter, the Ordinance No. 1833/C of 5 December 2005 found that the conditions of international regularity to request the extradition from US of the accused MOHAMMAD MUNAF were not met.
- Legal base of the Ordinance:
 - Art. 67, para. (9) of Law No. 302/2004, regarding International Judicial Cooperation in Criminal Matters⁵;
 - Art. IX, para. (1) of the Convention on Extradition between Romania and United States of America, concluded and signed in Bucharest on 23 July 1924⁶; the absence of a primary condition necessary to request MUNAF's extradition from US: the accused was neither on US territory nor on any territory controlled or occupied by USA.

⁵ Art. 67, para. (9) of Law No. 302/2004: "When the international regularity conditions to request extradition are not met, the Minister of Justice issues an ordinance which can be appealed at the High Court of Cassation and Justice – Criminal Division, by the General Prosecutor from the Public Prosecutor's Office of the High Court of Cassation and Justice"

⁶ Art. XI, para (1) of the Bilateral Convention on Extradition: "The provisions of this treaty will apply to all territories belonging to the High Contractual Parties, as well as to territories, wherever they might be, temporarily occupied or under the control of any of the Contractual States, for the duration of the occupation or control exerted."

- The legality and grounds of the Ordinance issued by the Minister of Justice were confirmed by Decision No. 7212/28 December 2005 issued by the High Court of Cassation and Justice, which rejected the appeal introduced by the General Prosecutor from the Prosecutor's Office of the High Court of Cassation and Justice.
- The Ministry of Justice never obstructed the procedure in this case, but, on the contrary, it engaged into a constant dialog with the American authorities (using diplomatic or direct means) to facilitate the progress of the criminal case on the docket of the Court of Appeal of Bucharest (see infra point 3).

3. Demarches of Judicial Assistance concerning Summoning and Hearing of MUNAF MOAMMAD

3.1. Demarches and Consultations

- During a visit to Washington, D.C. on 8-12 November 2005, the Minister of Justice requested the support of Mr. Alberto R. Gonzalez, Head of Justice Department and US Attorney General, to identify a solution for the hearing of MUNAF. Also present at the meeting was the Romanian Ambassador in the United States of America, Mr. Sorin DUCARU, who, at that time, informed the competent authorities in Romania on the results of the meeting.
- Since the discussions showed that not even the temporary hand-over of the accused was possible, the only alternatives to be considered were either a hearing in Baghdad or a videoconference.
- Following that, the Head of I.L.T.D.- M.J. contacted the US Department of Justice, to determine specific ways for cooperation in this case.

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- Firstly, there were direct contacts, by phone and e-mail, with A.K. – Counselor at the Legal Office within US Department of Justice and A.T. – Criminal Division within the US Department of Justice, on 2, 7 and 9 December 2005.
- On 9 December, 2005, the Head of I.L.T.D.- M.J. established contact by e-mail and phone, with A.P., diplomat at the US Embassy in Baghdad. It was agreed that the American authorities would offer assistance for the hearing of MUNAF MOHAMMAD by way of a videoconference.
- On 15 December, 2005, in response to the e-mail sent on 9 December, 2005 by the Head of I.L.T.D.- M.J., A.P. (a diplomat at the US Embassy in Iraq) sent an e-mail, basically stating the following:
 - It is possible to organise a videoconference for the hearing of MUNAF MOHAMMAD, as a witness, the Iraqi Central Criminal Tribunal having showed its willingness to provide full assistance in that respect.
 - As to the summoning of MUNAF MOHAMMAD, this could be done electronically, by way of e-mail⁷, and the original summon could be sent to Iraqi authorities, through the *US Embassy in Baghdad*.
- On the basis of this email, the director phoned A.P. on the same day, 15 December 2005, stating that, as mentioned in previous phone conversations, the Romanian authorities requested MUNAF's hearing as accused, and not as a witness. M.J. requested further clarifications, namely if there was some kind of mistake in the e-mail or where it actually was the position of the Iraqi authorities. It was also requested information on the judicial standing of MUNAF in the case on the docket of the Iraqi judicial authorities. In reply it was said that the Iraqi competent authorities did not finalize the criminal proceedings with regard to MUNAF MOHAMMAD, so that the charges brought against him were not known at that time.

⁷ Means of communication permitted in accordance with art. 15 of Law No. 302/2004 on International Judicial Cooperation in Criminal Matters

The legal situation foreseeable at that time seemed complicated, considering that, according to Romanian Criminal Procedural Code, MUNAF MOHAMMAD can not be heard as a witness in a case in which he is also an accused.

- On the demarches undertaken and measures agreed with the American authorities, I.L.T.D.- M.J. informed the Court of Appeal of Bucharest by communication No. 111246 of 16 December 2005.

3.2. Forwarding the Requests for Judicial Assistance

- Considering the existing circumstances, following the expiration of judicial term set for 19 December 2005, the Court of Appeal of Bucharest issued a request for judicial assistance, which, basically, asked the Iraqi authorities to handover the summoning to the accused MUNAF MOHAMMAD and to agree on his hearing by way of a videoconference on 30 January 2006.
 - The Ministry of Justice received a copy of the request on 29 December 2005 and the original on 30 December 2005. The copy was sent via e-mail to A.P. on the same day it was received (29 December 2005), and the original was sent on 30 December 2005 to the Ministry Foreign Affairs – Directorate General for Consular Affairs.
- Considering that no answer was received to this request, the Court issued a new request, having the same object (for the judicial term set for 20 March 2006). This request was received at the Ministry of Justice on 9 February, 2006 and was sent on the same day in the same manner as stated above.
- On 21 March 2006, the Head of I.L.T.D. – M.J. met, at the headquarters of the Ministry of Justice, with Mr. Mark A. TAPLIN, Deputy Chief of US Diplomatic Mission in Bucharest, at the request of the latter. He maintained that any

similar request for judicial assistance concerning this case must be sent, in the future, directly to the Iraqi authorities.

- After the expiration of the judicial term set for 20 March 2006, the Court of Appeal of Bucharest issued a new request for judicial assistance, having an identical object, for the judicial term set for 26 April 2006. In view of the statements made by the American diplomat, the request was sent with specific instructions, both by way of electronic mail, as well as by diplomatic courier, on 24 March 2006, to the Romanian Embassy in Baghdad. According to the e-mail sent by Mr. Mihai Stuparu, Romanian Ambassador in Baghdad, on 2 April 2006, he personally handed the request for judicial assistance to the Deputy Minister of Justice of Iraq.
- On 26 April 2006, the Romanian Ambassador in Baghdad notified the Ministry of Justice on the position of the Iraqi authorities concerning the request for judicial assistance and on 11 May 2006 it was received, by way of info-gram, the communication sent to the Romanian Embassy in Baghdad, by the Deputy Minister of Justice of Iraq. This document stated that the Iraqi authorities could not honour the request for international judicial assistance, since MUNAF MOHAMMAD was detained at the Center of the Multi-National Force, being suggested the approach in that regard of the American authorities.
- On 15 May 2006, I.L.T.D. – M.J. sent to the Court of Appeal of Bucharest a copy of the reply of the Minister of Justice of Iraq and asked the Court to evaluate the possible future ways of international judicial cooperation in this case.
- Considering the permanent contradiction between the position expressed by the US Embassy in Bucharest on 21 March 2006 and the position of the

Ministry of Justice of Iraq, on 2 May 2006 the Ministry of Justice requested the Romanian Embassy in Washington, D.C. to ask the Department of State for clarifications. Consequently, the Romanian Embassy in US sent, on 4 May 2006, a Verbal Note to US Department of State. In order to expedite the response, the Head of I.L.T.D. – M.J. had a series of conversations with Mr. Bryan DALTON, US General Consul in Bucharest, and with other Embassy officials. The issue, raised as well by the Ministry of Justice during her meetings with the US Embassy officials in Bucharest, was found in the notes sent by the Ministry of Justice to the Ministry of Foreign Affairs for consideration in the context of bilateral high-level talks between Romania and USA.

- The topic was also discussed on 24 May 2006 in Bucharest, during the meeting between the Head of I.L.T.D. and A.T. from the Criminal Division within the US Department of Justice, to which Mr. G.D. – FBI attaché in Bucharest participated as well. It was conveyed, again, on this occasion, to the American officials the concerns of the Romanian authorities as to the deadlock situation, reiterating the position expressed by the Minister of Justice of Iraq. A.T. indicated that he would consult with A.K. from the Department of State, in order to send a response in the shortest delay possible, stating once again that MUNAF was not under American jurisdiction and that the military base where MUNAF was detained, was under the authority of the Multi-National Force.
- Under the given circumstances, on 26 July 2006, the Ministry of Justice sent by way of diplomatic means, to the Iraqi authorities, a new request for judicial assistance, having the same object, issued by the Court of Appeal of Bucharest for the judicial term set for 27 September 2006.

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In the communication dated 31 July 2006 addressed to the Romanian Embassy in Baghdad, I.L.T.D. – M.J. indicated that since, in this specific case, the American and Iraqi positions are contradictory, there is **no legal impediment for the Ministry of Justice to send immediately the request for judicial assistance, reiterated by Court of Appeal of Bucharest**, to the Iraqi authorities, by way of diplomatic means. The Ministry of Justice also stated that, particularly because this case concerns crimes of terrorism, **it is necessary for the Iraqi competent authorities to analyze** (possibly with the help of the US military contingent within the Multi-National Force in whose physical custody the accused seemed to be) and **to establish** the practical mechanisms to provide the requested judicial assistance. It was expressly requested a **handover of the procedural documents to the recipient and the delivery of the receipt proof, before the judicial term set for 27 September 2006.**

- **New requests for legal assistance, having the same object, were sent by the Ministry of Justice to the Iraqi authorities on 16 October and 7 November 2006, by way of diplomatic means.**

- **Following the press news in the international media that Mohammad Munaf and 5 other Iraqi citizens were sentenced to death by the Central Criminal Court in Baghdad, apparently for the same crimes of terrorism which form the object of the criminal cases before the Court of Appeal of Bucharest – the kidnapping in 2005 of the three Romanian journalists, on 16 October 2006, the Ministry of Justice asked the Romanian Embassy in Baghdad to make every effort to obtain from the Iraqi authorities a certified copy of the decision.**

- **On 1 November 2006, in reply to a request from the *Chargé d'affaires* of Romania in Washington, the Ministry of Justice informed the Romanian diplomatic mission on the following:**

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- a) The Romanian criminal policy is governed by the imperative of full respect of the human rights and fundamental freedoms, in accordance with the European Convention on Human Rights. The right to life is a supreme value; consequently the death penalty is contrary to the fundamental constitutional principles of Romania.
- b) The Ministry of Justice never empowered any American official to represent Romania within the Iraqi legal proceedings concerning Mohammad Munaf and has no knowledge of the existence of such a delegation.
- c) Romania directly expressed its intention to bring this case within the Romanian jurisdiction, in which regard, immediately after the commission of the crimes, the Romanian judicial authorities initiated the criminal proceedings against Mohammad Munaf for commission of the crimes of terrorism, the victims being three journalists of Romanian citizenship. The criminal proceedings were finalized and it was decided to initiate the trial of the accused Mohammad Munaf and of the accused Omar Hayssam, for the crimes of terrorism.
- d) The Romanian authorities **never gave up the intention to judge Mohammad Munaf** for the crimes of terrorism linked to the kidnapping in 2005 of three Romanian journalists. Consequently, as of December 2005, **Romania repeatedly asked for the assistance of the Iraqi and American authorities for the conclusion of the criminal cases on the docket of the Court of Appeal of Bucharest**. Thus, the Romanian authorities ask for the hearing of Mohammad Munaf, on one hand, as an accused in file No. 6595/2/2006 on the docket of the Court of Appeal of Bucharest, Section I – Criminal Matters, and on the other hand, as a witness in file No. 33970/2/2005 on the docket of the same court (the two criminal files have resulted from disjointing the case against accused Mohammad Munaf from the case against accused Omar Hayssam). **The Romanian**

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authorities insist for the hearing of Mohammad Munaf in the two criminal cases on the docket of the Court of Appeal of Bucharest.

- e) At least until the final resolution of the above-mentioned criminal procedures, the Ministry of Justice insists that Munaf not be transferred from the custody of the American contingent of the Multinational Force into the custody of the Iraqi authorities.
- On 1 November 2006, the Minister of Justice, Monica Macovei, sent letters to her American and Iraqi counterparts, asking for support to solve the judicial assistance requests made by the Court of Appeal of Bucharest, in the two criminal cases on the docket of this court.
 - √ In the letter addressed to the head of the US Justice Department, Alberto R. Gonzalez, sent also in copy to the Secretary of Defense, it was expressly requested that the Multinational Force should not hand Mohammad Munaf over to the Iraqi authorities before his hearing by the Romanian court, as an accused in file no. 6595/2/2006 of the Court of Appeal of Bucharest, Section 1 – Criminal Matters, as well as, on the other hand, a witness in file no. 33970/2/2005 of the same court.
- On 12 and 14 November 2006, the director of the I.L.T.D. within the Ministry of Justice had two phone conversations with the Deputy Minister of Justice of Iraq, Pusho Dezaye, in order to obtain his approval for hearing Mohammad Munaf by videoconference in the two mentioned criminal files, and to ask for support to hear other 6 Iraqi citizens as witnesses.
- Following the discussions with the Iraqi dignitary, who transmitted the approval of the Iraqi authorities regarding Munaf's hearing by

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videoconference, the Head of the I.L.T.D. continued his dialogue with officials of the US Embassy in Baghdad, in order to set the technical details.

- The videoconference took place on 23 November 2006, at the Court of Appeal of Bucharest, organized with the support of the MNF-I and the US Embassy in Baghdad.
- At the request of Mohammad Munaf's lawyer, a term to prepare the defense was given, until 14 December 2006.
- After 23 November 2006, the demarches aimed at organizing the hearing by videoconference of Mohammad Munaf and the hearing by rogatory commission of 6 witnesses, Iraqi citizens, continued. Thus:

✓ On 23 November 2006, the Ministry of Justice, Monica Macovei, transmitted another letter to her Iraqi counterpart, Hashim Abderrahman al-Shibli, asking for support in order to hear Munaf and the other six Iraqi citizens. At the same time, considering that the Ministry of Justice obtained copies of certain legal acts regarding both the American-Iraqi citizen Mohammad Munaf and other five Iraqi citizens, among which a document that seems to be a verdict or a part of a verdict reached by the Central Criminal Court in Baghdad, which sentenced them to death, it asked for the confirmation of the authenticity of these documents.

✓ The dialogue with the officials of the US Embassy in Baghdad continued in order to organize the videoconference of 14 December 2006. It must be noted here that, shortly after the videoconference of 23 November 23 2006, a certain reluctance from the part of the officials from the Embassy to support the organization of the 14 December hearing was apparent, as they indicated that the Romanian authorities

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would, in this way, try to "bypass" the extradition procedures of "an American citizen who is the custody of the Iraqi authorities".

√ On 4 December 2006, a copy of the charges against Mohammad Munaf, as they were brought before the judges, was sent via diplomatic means to the Iraqi authorities. This document was also sent in an electronic format to the US Embassy in Baghdad.

√ On 19 December 2006, the Deputy Chief of the US Mission in Bucharest, Mark A. TAPLIN, was received, at his request, by the Head of I.L.T.D.. The American diplomat asked that, in future, the requests concerning the hearing of Munaf by way of videoconference should be sent exclusively through the US Embassy in Bucharest, without contacting the US Embassy in Baghdad by e-mail (this fact obviously hinders the communication).

√ On 29 December 2006, the Ministry of Justice – I.L.T.D. sent to the US Embassy in Bucharest, a new Verbal Note reiterating the request for support in order to hear Munaf.

√ On 2 February 2007, the Ministry of Justice sent a new Verbal Note to the US Embassy in Bucharest, asking for a swift answer to the Verbal Note of 29 December 2006.

ANNEX 5

Memo of Mr. Ciprian Nastasiu, Romanian public prosecutor at the
Department for Investigating the Crime of Terrorism and Organised Crime of
the Public Prosecutor's Office of the High Court of Cassation and Justice,
dated 22 February 2007

NOTĂ

Mohammad Munaf, în vârstă de 43 ani, născut la data de 29 noiembrie 1962, în IRAQ, provincia Deylla, fiul lui MUNAF și SUAT, cetățean american, cu reședință în România, București, str. Aleea Lunca Siretului nr. 1 A, bl. A39 B, sc. 2, etaj 2, apt. 25, sector 6.

- față de care s-a emis un mandat de *arestare preventivă în lipsă* pentru săvârșirea infracțiunilor de inițierea constituirii și sprijinirea prin finanțare a unei asocieri în scopul săvârșirii de acte de terorism, prev. de art. 35 alin. 2 din Legea 535/2004 cu referire la articolul 12 din Legea 535/2004, respectiv de complicitate la comiterea de acte de terorism, prev. și ped. de art. 26 C.p. rap. la art. 32 alin. 1 și alin. 2 lit. a din Legea 535/2004 rap. la art. 189 alin. 1 și 2 C.pen. cu aplicarea articolului 33 litera a codul penal; cu referire la art. 12 din Legea 535/2004, totul cu aplicarea art. 33 lit. a C.pen.;
- trimis în judecată prin rechizitoriul DIICOT din data de 14 octombrie 2005 pentru săvârșirea infracțiunilor indicate mai sus.

În Drept :

1.Fapta inculpaților Omar Hayssam și Munah Mohammad de a iniția constituirea unei asocieri din care au făcut parte Yussef Al Amin , Ibrahim Al Giuburi , Omar Jasam , Al Qasir Salam , Hakim Al Samarai , Abedal Jabbar (Hajji) și Khaled Al Akydyi (Abu Sahar) în scopul săvârșirii de acte de terorism întrunește elementele constitutive ale în infracțiunii prevăzute și pedepsite de articolul 35 aliniat 2 din Legea nr 535/2004 cu referire la articolul 12 aliniat 1 și 3 din Legea 508/2004 , modificată și completată prin O.U.G 7 /2005 .

2.Fapta inculpaților Omar Hayssam și Munaf Mohammad care , în baza unei înțelegeri prealabile cu gruparea teroristă condusă de Abu Sahar au hotărât lipsirea de libertate , prin răpire , a jurnaliștilor români pe o durat de 55 de zile ,pe perioada 28 martie 2005 – 22 mai 2005 , în vederea obținerii unui folos material sau alt avantaj și pe care gruparea teroristă iraqiană a transformat-o într-un actiune teroristă având ca scop realizarea unui obiectiv de natură politică (retragerea contingentului militar românesc din Iraq) întrunește elementele constutive ale înfracțiunii de complicitate la săvârșirea infracțiunii de

act de terorism prevăzut de articolul 26 Cod penal raportat la articolul 32 aliniat 1 litera a și pedepsită de aliniatul 2 din același articol, coroborat cu prevederile articolului 189 aliniat 1 și 2 din Codul penal, cu aplicarea articolului 33 litera a din Codul Penal, cu referire la articolul 12 liniat 1 și 3 literele a și d din Legea 508 /2004, modificată și completată prin O.U.G. 7/2005:

totul cu aplicare articolului 33 litera a din Codul Penal;

Fată de inculpatul Munaf Mohammad s-au aplicat dispozițiile prevăzute de articolul 19 din Legea nr 682/2002 privind protecția martorilor întrucât prin declarația pe care a dat-o în dosarul 628/2005 al Parchetului de pe lângă Înalta Curte de Casație și Justiție – Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism, având ca obiect cercetarea unor infracțiuni care aduc atingere siguranței naționale a României precum și a Fortei Multinationale din Iraq, a furnizat informații a facilitat identificarea și documentarea activității infracționale a mai multor persoane care aparțin unor organizații internaționale de criminalitate organizată și terorism (articolul 2 litera pet. 1 și art 19 din Legea 682 din Legea 682/2002).

La data de 18.11.2006, Munaf Mohammad a fost audiat de către procuror în baza americană Camp Crooper, în procedura actelor premergătoare în dosarul 628/D/P/2005 având ca obiect traficul internațional de armament. Munaf Mohammad a fost audiat în prezența avocatului iraqian ales BADIA AREF. Cu privire la declarația dată la 27 iulie 2005 privind implicarea lui OMAR HAYSSAM în sprijinirea entităților teroriste precum și în traficul internațional de armament, Munaf Mohammad a arătat că nu-și mai menține declarația.

În finalul declarației, Munaf Mohammad a arătat că nu are cereri de formulat autorităților judiciare din România în sprijinul său.

Aspecte procedurale privind investigațiile efectuate în cauză:

La data de 05.04.2005, Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism s-a sesizat din oficiu cu privire la săvârșirea de către inculpații Omar Hayssam și Munaf Mohammad a infracțiunii de mișcare constituției și sprijinirea unei asocieri în scopul săvârșirii de acte de terorism, prev. de art.35 alin.2 din Legea 535 2004, data sesizării fiind aceeași cu data rezoluției prin care procurorul a fost investit cu efectuarea urmăririi penale în cauză.

La data de 19.04.2005, Parchetul de pe lângă Înalta Curte de Casație și Justiție, D.I.I.C.O.T. a solicitat autorităților judiciare competente iraqiene efectuarea prin comisie rogatorie a mai multor acte procedurale printre care audierea în calitate de martori a persoanelor reținute și inculpate la Bagdad în urma acțiunilor întreprinse de forțele de securitate.

Întrucât între România și Iraq nu există o convenție internațională cu privire la cooperarea în materie penală, organele de anchetă de la Bagdad au trimis prin curier documentația care a stat la baza înculpării și arestării persoanelor de cetățenie iraqiană implicate în acțiunea de răpire a jurnaliștilor români.

La data de 13 mai 2005, în temeiul art 224 c.pr.pen. în procedura actelor premergătoare au fost consemnate în cadrul mai multor procese verbale declarațiile date de persoanele audiate la Bagdad, aceste declarații relevând indicii certe cu privire la săvârșirea infracțiunii reținute în cauză, în sarcina inculpatului Omar Hayssam.

La data de 17 mai 2005, în urma actelor premergătoare administrate în cauză, s-a dispus începerea urmăririi penale față de învinuții Omar Hayssam și Munaf Mohammad pentru săvârșirea infracțiunii prev. de art.35 alin.2 din Legea 535/2004. În urma acordului primit de la guvernul iraqian, care era condiționat de asigurarea unor condiții de securitate, la aceeași dată echipa investigatorilor români s-a deplasat la Bagdad în vederea audierii în calitate de martori a persoanelor inculpate pentru acte de terorism de autoritățile iraqiene, audiere care a avut loc în perioada 19-21 mai 2005, la sediul Unității de Crime Majore din Bagdad. Audierea martorilor: Al Ghubun Ibrahim, Al Qasir Salam, Omar Mahinoud, Samarai Hakim, Al Slemani Abedal Jabar, Al Amin Yousef și Omar Jasani, s-a realizat conform reglementărilor procesuale române, respectându-se însă cerințele impuse de autoritățile iraqiene.

În ceea ce privește valabilitatea actelor de urmărire penală întocmite la Bagdad, respectiv a audierii martorilor indicați anterior, în conformitate cu prevederile art.5 din Legea 302/2004, privind cooperarea judiciară internațională, în materie penală, în lipsa unei convenții internaționale, cooperarea judiciară se poate efectua în virtutea curtoaziei internaționale, în materie penală dacă aceasta se dovedește necesară datorită naturii faptei sau nevoii de a lupta împotriva anumitor forme grave ale criminalității.

Conform articolului 2 litera b) din Convenția Națiunilor Unite împotriva criminalității organizate adoptate la Palermo în anul 2000, prin expresia „infracțiune gravă” se înțelege un act care constituie o infracțiune pasibilă de o pedeapsă privativă de libertate al cărei maximum nu trebuie să fie mai mic de 4 ani sau de o pedeapsă mai grea, or „infracțiunea prev. de art.35 alin.2 din Legea 535/2004 intră în această categorie.

Convenția se aplică și infracțiunilor grave,cum sunt cele prevăzute la articolul 2 .in cazul in care sunt de natură transnațională implicând un grup infracțional organizat.Din materialul probator administrat în cauză .a rezultat că infracțiunea săvârșită de inculpații Omar Hayssam și Munaf Mohammad a avut un caracter transnațional și a presupus implicarea unei grupări teroriste cu o structură bine determinată . așa cum este delinită de art.4 pct 4 din Legea 535/2004.

În articolul 18 pct.1din același document se stipulează că „statele părți își acordă reciproc cea mai largă asistență judiciară posibilă cu prilejul anchetelor,urmăririlor și procedurilor judiciare , privind infracțiunile din această convenție”, iar la punctul 3 lit.a) se arată că asistența judiciară poate fi solicitată pentru strângerea de dovezi sau depoziii.

Convenția internațională contra-luării de ostatici,adoptată la New York la 17 decembrie 1979,la articolul 11 prevede că„statele părți își acordă intrajutorarea judiciară cea mai largă cu putință în orice procedură penală referitoare la infracțiunile prevăzute la articolul 1(omite infracțiunea de luare de ostatici ,oricine sechestrează o persoană sau deține și o amenintă că o va omorâ,o va răni sau că o va continua să o dețină pentru a constrânge o parte terță ,și anume un stat,o organizație internațională interguvernamentală ,o persoană fizică sau morală ori un grup de persoane,să îndeplinească un act oarecare sau să se abțină de la un asemenea act,ca o condiție explicită sau implicită a punerii în libertate a ostaticului),inclusiv în ceea ce privește comunicarea tuturor elementelor de probă de care dispun și care sunt necesare pentru scopurile procedurii.

România a aderat la această Convenție la data de 17 mai 1990 ,Statele Unite la data de 21 decembrie 1979,iar Iraqul a semnat actul la data de 14 octombrie 1980.

Prin rezoluția Adunării Generale O.N.U.48/122 din 14 februarie 1994 „Drepturile omului și terorismul” se exprimă îngrijorarea privind încălcarea gravă a drepturilor omului de către teroriști,în primul rând a dreptului la viață și se condamnă toate actele,metodele și practicile de terorism care aduc atingere drepturilor omului,libertăților fundamentale și democrației.O.N.U.,prin Adunarea Generală,a îndemnat comunitatea internațională să sporească colaborarea și lupta împotriva terorismului,la nivel național,regional și internațional.

Rezoluția Adunării Generale O.N.U.57/220 din 27 februarie 2003-„Luarea de ostatici”,condamnă toate operațiunile de luare de ostatici,reafirmând că luarea de ostatici,indiferent unde s-ar produce și indiferent de autori,reprezintă o gravă lezare a drepturilor omului,care nu poate fi justificată indiferent de circumstanțe.Potrivit rezoluției,statele sunt obligate să i-a măsurile necesare,în conformitate cu prevederile convențiilor internaționale pentru a preveni,combate și pedepsi actele de luare de ostatici.

Prin rezoluția numărul 1373 din 18 septembrie 2001, Consiliul de Securitate a a O.N.U., a decis ca toate statele să își acorde unele altora întregul sprijin în investigațiile și acțiunile penale asociate finanțării sau sprijinirii actelor teroriste inclusiv asistență în obținerea probelor pe care le dețin și care sunt necesare procedurii penale; să se asigure că orice persoană care participă la finanțarea, pregătirea sau comiterea actelor teroriste ori care sprijină aceste acte este adusă în fața justiției și să se asigure că în completarea oricăror altor măsuri de combatere a acestora, asemenea acte teroriste sunt calificate infracțiuni grave în legile și reglementările interne.

Ceea ce conferă deplina legalitate actelor de urmărire penală efectuate la Bagdad, este prevederea din articolul 10 din rezoluția numărul 1546 a Consiliului de Securitate a O.N.U., din data de 8 iunie 2004, prin care s-a dispus că Forța Multinațională va avea autoritatea să ia toate măsurile necesare pentru a contribui la prevenirea și combaterea terorismului, iar România, fiind parte a Forței Multinaționale, este îndreptățită să beneficieze de dreptul de a desfășura activități de investigare a infracțiunilor de terorism comise împotriva cetățenilor români aflați pe teritoriul iraqian și să desfășoare activități comune specifice, împreună cu Statele Unite și Iraq.

Cu privire la audierea inculpatului Munaf Mohammad la 30 și 31 mai 2005, conform condițiilor impuse de autoritățile militare americane, descrise în procesul verbal încheiat la baza militară americană Camp Crooper din Bagdad, declarația s-a luat în prezența lui Gary Nunn, avocat militar (procuror militar), care a fost garantul respectării drepturilor procesuale ale cetățeanului american Munaf Mohammad. Dreptul la apărare a acestui inculpat a fost respectat aducându-i-se la cunoștință, în conformitate cu codul de procedură penală român, faptul că a fost pus sub învinuire și totodată că a fost pusă în mișcare acțiunea penală împotriva sa, în cauză fiind emis un mandat de arestare în lipsă.

Din comunicarea datată 17 iunie 2005 rezultă că Munaf Mohammad a „cooperat complet și a răspuns de bună voie la întrebări iar asupra acestuia nu s-au exercitat presiuni fizice sau psihice în timpul anchetei, fiind tratat cu profundă demnitate și respect.” La audierile ulterioare, inculpatul a fost asistat de apărătorul ales, avocat Diana Budușan, ocazie cu care inculpatul a menționat și declarația din data de 30-31 mai 2005.”

Inculpatul Munaf Mohammad

În timpul urmăririi penale acesta a avut o atitudine sinceră recunoscând săvârșirea faptelor reținute în sarcina sa, iar prin declarațiile date coroborate cu probele administrate a contribuit la stabilirea adevărului în cauză.

Inculpatul Omar Hayssam a fost cercetat în stare de arest preventiv în baza mandatului numărul 2/UP din 27 mai 2005 emis de Curtea de Apel București pentru săvârșirea infracțiunii prevăzute de articolul 35 aliniatul 2 din Legea 535/2004 mandat ce a fost prelungit succesiv până la data de 18 octombrie 2005, inclusiv.

Față de inculpatul Munaf Mohammad s-a emis mandatul de arestare preventivă numărul 3/UP din data de 27 mai 2005, în lipsă, de Curtea de Apel București pentru aceeași infracțiune. Inculpatul se află în custodia autorităților militare americane din cadrul Forței Multinaționale din Iraq, fiind deținut în baza rezoluției 1546/2004 a Consiliului de Securitate a Organizației Națiunilor Unite.

Prin Ordonanța din data de 26 mai 2005 a fost pusă în mișcare acțiunea penală față de cei doi inculpați

Prin Ordonanța din 15 august 2005 s-a dispus extinderea cercetărilor și sub aspectul săvârșirii de către inculpați a infracțiunii de complicitate la comiterea de acte de terorism prevăzute de articolul 26 Cod penal, raportat la articolul 32 aliniat 1 litera a și pedepsit de aliniatul 2 litera a, raportat la articolul 189 aliniat 1 și 2 din codul penal, cu aplicarea articolului 33 litera a cod penal, iar prin rezoluția din 17 august 2005 s-a dispus începerea urmăririi penale pentru faptele susmenționate, urmând a se dispune punerea în mișcare a acțiunii penale.

Inculpatul Munaf Mohammad a fost audiat în calitate de inculpat la datele de 30.05.2005, 26 iulie 2005, 14, 15 septembrie 2005 și în procedura actelor premergătoare în dosarul 628 D/P/2005 având ca obiect traficul internațional de armament la datele de 27 iulie 2005 și 18 noiembrie 2006.

Cu ocazia audierilor repetate ale lui Munaf Mohammad în complexul militar american Camp Crooper, am observat că acesta era bine tratat și beneficiat de facilitățile necesare igienei personale și i s-au asigurat toate condițiile pentru o hrană corespunzătoare. Inculpatul în timpul audierilor nu s-a plâns de exercitarea de presiuni psihice sau fizice din partea militarilor americani și nici nu prezenta urmele unui astfel de tratament.

~~PROCUROR
NASTASIU CIPRIAN~~

NOTE

Mohammad Munaf, aged 43, born on 29 November 1962, in IRAQ, Deylla province, son of MUNAF and SUAT, American citizen, residing in Romania, in Bucharest, Aleea Lunca Siretului no 1A, bl. A39 B, Sc. 2, 2nd floor, Apartment no. 25, sector 6.

- against whom a provisional arrest warrant was issued *in absentia*, for committing the offences of constitution and financing of an association to perpetrate terrorist acts, incriminated by art 35 para. 2 of Law no. 535/2004 with reference to article 12 of Law no 535/2004, and, respectively, complicity to terrorist acts, incriminated and punished by art. 26 of the Criminal Code with reference to art. 32 para 1 and para. 2 (a) of Law no 535/2004 read together with article 33 (a) of the Criminal Code, with reference to art 12 of Law 535/2004, all read together with art. 33 (a) of the Criminal Code;
- tried on the basis of DIICOT¹ indictment of 14 October 2005, for the offences mentioned above.

As to the Law:

1. The act of the defendants Omar Hayssam and Munaf Mohammad to constitute an association involving Yussef Al Amin, Ibrahim Al Giuburi, Omar Jassam, Al Qasir Salam, Hakim Al Samarai, Abedal Jabbar (Hajji) and Khaled Al Akydyi (Abu Sahar), with a view to commit terrorist acts has the constitutive elements of the offence incriminated and punished by art. 35 para. 2 of Law no. 535/2004 with reference to art. 12 paras. 1 and 3 of Law 508/2004, as amended by Emergency Government Ordinance no. 7/2005.

2. The act of the defendants Omar Hayssam and Munaf Mohammad who, following a previous understanding with the terrorist group led by Abu Sahar, decided to deprive of freedom, by abduction, the Romanian journalists for a period of 55 days, between 28 March 2005 – 22 May 2005, for the purpose of obtaining a material profit or other benefits and which the terrorist Iraqi group changed into a terrorist act in order to attain a political goal (the retreat of the Romanian armed forces from Iraq) has the constitutive elements of the offence of complicity to the crime of terrorist acts incriminated by art. 26 of the Criminal Code read together

¹ Directorate for Investigation of Organized Crimes and Terrorism (translator's note)

with art. 32 para. 1 (a) and punished by para. 3 of the same article read together with the provisions of art. 189 paras. 1 and 2 of the Criminal Code, read together with art. 33 (a) of the Criminal Code with reference to art. 12 paras. 1 and 3 (a) and (d) of Law no. 508/2004, as amended by Emergency Government Ordinance no. 7/2005;

- all read together with article 33 (a) of the Criminal Code;

In respect to the defendant Munaf Mohammad the provisions of art. 19 of Law no 682/2002 on the protection of witnesses were applied, as, in the statement given with respect to file no 628/2005 of the Office of the General Prosecutor to the High Court of Cassation and Justice – Directorate for Investigation of Organized Crimes and Terrorism, mandated to investigate offences threatening the national security of Romania as well as that of the Multi-National Force in Iraq, he provided for information that facilitated the identification and gathering of information concerning the criminal activity of several persons belonging to international groups of organized crime and terrorism (art. 2 (l) and art. 19 of Law no 682/2002).

On 18.11.2006 Munaf Mohammad was heard by the prosecutor at the Camp Cropper American facility, in the framework of the preliminary proceedings with respect to file no. 628/D/P/2005 regarding international trafficking in arms. Munaf Mohammad was heard in the presence of his Iraqi chosen lawyer BADIA AREF. As to what he declared in the statement given on 27 July 2005, concerning the involvement of OMAR HAYSSAM in sustaining terrorist groups as well as in international trafficking in arms, Munaf Mohammad indicated that he did not maintain his statement.

In the final part of the statement, Munaf Mohammad indicated that he had no demands in his support to the judicial authorities in Romania.

Procedural aspects regarding the investigations undertaken in this case:

On 05.04.2005, the Directorate for Investigation of Organized Crimes and Terrorism initiated *proprio motu* the criminal investigation with respect to the commission by the defendants Omar Hayssam and Munaf Mohammad of the offence of constitution and support of a terrorist group, incriminated by art. 35 para. 2 of Law no. 535/2004.

On 19.04.2005 the Office of the General Prosecutor to the High Court of Cassation and Justice, DIICOT requested the competent Iraqi judicial authorities to undertake, by

letters rogatory, several acts of procedure among which the hearing as witnesses of the persons detained and indicted in Baghdad following the intervention of the security forces.

As there is no convention in force on cooperation in criminal matters between Romania and Iraq, the investigating authorities in Baghdad sent by courier the documentation on which the indictment and arrest of Iraqi citizens involved in the abduction of the Romanian journalists were grounded.

On 13 May 2005, pursuant to art. 222 of the Criminal Procedural Code, the statements made, during the preliminary proceedings, by the persons heard in Baghdad were set down in several records, these statements disclosing reliable evidence as to the perpetration of the offence the defendant Omar Hayssam had been charged of in the case.

On 17 May 2005, following the preliminary acts undertaken in the case, the criminal investigation was initiated against the accused Omar Hayssam and Munaf Mohammad for committing the offence incriminated by art. 35 para. 2 of Law no. 535/2004. Following the consent given by the Iraqi Government, which depended on certain security requirements, on the same day the team of Romanian investigators traveled to Baghdad in order to hear as witnesses the persons indicted for acts of terrorism by the Iraqi authorities; the hearing took place between 19-21 May 2005 at the headquarters of the Major Crimes Unit in Baghdad. The hearing of the witnesses Al Giuburi Ibrahim, Al Qasir Salam, Omar Mahmoud, Samarai Hakim, Al Slemani Abedal Jabar, Al Amin Yousef and Omar Jasam complied with the Romanian procedural rules and with the demands imposed by the Iraqi authorities.

As to the validity of the criminal investigative acts done in Baghdad, and respectively of the hearing of the witnesses mentioned above, according to the provisions of Law no. 302/3004 on international judicial cooperation in criminal matters, in absence of an international convention, the judicial cooperation may be undertaken by virtue of international courtesy, if proved necessary considering the nature of the crime or the need to fight against certain serious criminal activities.

In accordance with art. 2 (b) of the United Nations Convention against Organized Crime adopted in Palermo in 2000, the term "serious crime" means conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or by a more serious penalty; the offence incriminated by art. 35 para 2 of Law no 535/2004 falls within this category.

The Convention also applies to serious crimes, as the ones mentioned in art. 2, if they have a transnational character involving an organized criminal group. From the

evidence in the case resulted that the crime committed by the defendants Omar Hayssam and Munaf Muhammad had a transnational character and entailed the involvement of a terrorist group having a well defined structure, as stipulated by art. 4(4) of Law no 535/2004.

Article 18 (1) of the same document stipulates that "States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention" and at para. (3) (a) it is provided that legal assistance may be requested for taking evidence or statements.

Article 11 of the International Convention against the Taking of Hostages, adopted in New York on 17 December 1979, provides that "States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 1 (any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages), including the supply of all evidence at their disposal necessary for the proceedings."

Romania acceded to this Convention on 17 May 1990, the United States on 21 December 1979, and Iraq signed the document on 14 October 1980.

The UN General Assembly Resolution 48/122 of 14 February 1990 on "Human Rights and Terrorism" expresses the concern over gross violation by terrorists of human rights, particularly the right to life, and condemns all acts, methods and practices of terrorism affecting human rights, fundamental freedoms and democracy. The UN, through the General Assembly, has urged the international community to enhance the cooperation and fight against terrorism, at national, regional and international level.

The UN General Assembly Resolution 57/220 of 27 February 2003 on "Hostage taking" condemns all acts of hostage-taking, reaffirming that hostage-taking, wherever and by whomever committed, is a serious offence aimed at the destruction of human rights, and is, under any circumstances, unjustifiable. In accordance with the resolution, states have the duty to take all necessary measures, in accordance with the provisions of international conventions, to prevent, combat and punish acts of hostage-taking.

In Resolution no. 1373 of 18 September 2001 the UN Security Council decided that all States should afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for

the proceedings; to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.

The provision of article 10 of UN Security Council Resolution no 1546 of 8 June 2004, according to which the multinational force shall have the authority to take all necessary measures to contribute to the preventing and deterring of terrorism, confers full legality to the criminal investigative acts effected in Baghdad; Romania, being part of the multinational force, is entitled to benefit from the right to investigate the acts of terrorism committed against Romanian citizens on the Iraqi territory and to conduct joint specific activities, together with the United States and Iraq.

The statements of the defendant Munaf Mohammad on 30 and 31 May 2005 were given in accordance with the requirements of the American military authorities, described in the record done at the Camp Cropper American facility in Baghdad, in the presence of Gary Nunn, military attorney (military prosecutor) who guaranteed the respect of the rights of the American citizen Munaf Mohammad. The right to defense of the defendant was respected and he was advised, in accordance with the Romanian Criminal Procedural Code, that he was indicted and that the criminal proceedings against him were instituted, an arrest warrant having been issued *in absentia* in his case.

From the communication dated 17 June 2005 it falls out that Munaf Mohammad "fully cooperated and freely replied to the questions and that no physical or psychical pressure was used against him, he being treated with utmost dignity and respect". At the subsequent hearings, the defendant was assisted by his chosen counsel, lawyer Diana Budușan, and maintained the statement given on 30-31 May 2005.

The defendant Munaf Mohammad

During the criminal prosecution he acted sincerely, admitting to the commission of the offences he was charged of, and helped to the finding of the truth in the case by the statements he gave corroborated with the evidence that was taken.

The defendant Omar Hayssam was investigated while being provisionally detained on the basis of arrest warrant no 2/UP of 27 May 2005 issued by the Court of Appeal of Bucharest for committing the offence incriminated by art. 35 para. 2 of Law no 535/2004; the arrest warrant was successively extended until 18 October 2005, inclusively.

In respect of the defendant Munaf Mohammad, the provisional arrest warrant no. 3/UP of 27 May 2005 was issued, *in absentia*, by the Court of Appeal of Bucharest, for the same offence. The defendant is held in custody by the American military authorities belonging to the Multi-National Force in Iraq, in accordance with the United Nations Security Council Resolution no. 1546/2004.

By an Ordinance dated 26 May 2006 criminal action was instituted against the two defendants.

By the Ordinance of 15 August 2005 it was decided to extend the criminal investigation to the commission by the defendants of the offence of complicity to terrorist acts, incriminated by art. 26 of the Criminal Code read together with art. 189 paras. 1 and 2 of the Criminal Code, read together with art. 33 (a) of the Criminal Code, and by the resolution dated 17 August 2005 it was initiated the criminal prosecution with regard to the above mentioned offences, to be followed by the institution of criminal action.

The defendant Munaf Mohammad was heard on 30 May 2005, 26 July 2005, 14 and 15 September 2005 as defendant and on 27 July 2005 and 18 November 2005, in the context of the preliminary acts done with respect to file 628/D/P/2005 concerning international trafficking in arms.

On the occasion of the repeated hearings of Munaf Mohhamad at the American military compound at Camp Cropper I noticed that he was well treated, that he benefited from all amenities necessary for personal hygiene and that all requirements for an appropriate diet were assured. During the hearings the defendant never complained of any physical or psychical pressure exercised against him by American soldiers nor did he show any sign of such treatment having been applied against him.

PROSECUTOR
NĂSTĂSIU CIPRIAN
[signature]

ANNEX 6

Letter of the Head of the Department for Investigating the Crime of Terrorism and Organised Crime of the Public Prosecutor's Office of the High Court of Cassation and Justice addressed to the Romanian Ministry of Foreign Affairs, dated 6 February 2007



ROMANIA
MINISTERUL PUBLIC
PARCHETUL DE PE LÂNGĂ ÎNALȚA
CURTE DE CASAȚIE ȘI JUSTIȚIE
DIRECȚIA DE INVESTIGARE A INFRAȚIUNILOR
DE CRIMINALITATE ORGANIZATĂ ȘI TERORISM
628/D/P/20005

06.02.2007

MINISTERUL AFACERILOR EXTERNE

Având în vedere solicitarea de relații în cazul Munaf Mohammad, necesare pentru elaborarea poziției României în fața Comitetului ONU pentru Drepturile Omului, vă comunicăm următoarele:

-cu ocazia audierilor repetate ale inculpatului MUNAF MOHAMMAD în cadrul complexului militar american CAMP CROOPER, nu s-au exercitat violențe psihice sau fizice față de persoana cercetată, împrejurare consemnată în actele de procedură penală semnate de către MUNAF MOHAMMAD și apărătorul său ales;

-la fiecare audiere, echipa de investigatori din cadrul Direcției de Investigare a Infrațiunilor de Criminalitate Organizată și Terorism a semnat un memorandum cu privire la condițiile în care se permite accesul și interogarea inculpatului, una dintre aceste condiții fiind înregistrarea audio/video a interogatoriilor precum și prezența reprezentanților oficialităților americane din cadrul Forței Multinaționale din IRAQ;

-la data de 14/15 septembrie 2005, MUNAF MOHAMMAD a cerut ca măsură de protecție față de familia sa, acordarea permisiunii la cerere, a soției inculpatului Mohamad Georgeta de a se stabili împreună cu cei 3 copii minori în Statele Unite ale Americii. Nu a fost formulată o astfel de cerere din partea familiei și de fapt nici nu ar fi fost necesară o astfel de cerere, având în vedere faptul că Mohammad Georgeta și cei trei copii minori sunt cetățeni americani;

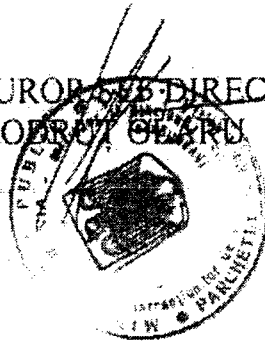
-cu ocazia interogatoriilor luate de procurorii români, Munaf Mohammad nu s-a plâns că ar fi fost supus torturilor de către autoritățile militare americane;

-la sfârșitul audierilor s-au eliberat certificate prin care se specifica faptul că avocații militari din cadrul contingentului american au asistat la audieri și

au constatat că au fost respectate drepturile civile ale cetățeanului american Munaf Mohammad, "acesta fiind tratat cu respect și deferență";

-fiind reaudiat de procuror la data de 18 noiembrie 2006 ,în calitate de martor în dosarul 628/D/P/2005 ,Munaf Mohammad a declarat în prezența apărătorului iraqian ales că nu are nicio pretenție față de autoritățile judiciare din România; declarația a fost scrisă în limba română,tradusă din limba engleză în limba română iar cu martorul s-a vorbit în limba română pe care o vorbește și o înțelege ; la această activitate procesuală au asistat și oficiali ai armatei SUA din cadrul Forței Multinaționale din IRAQ.

PROCUROR SUB-DIRECTIE
COBLETI, G. ARN



Romania
Public Ministry
Office of the Public Prosecutor to the High Court of Cassation and Justice
Directorate of Investigation of Organized Crime and Terrorism
628/D/P/20005

6.02.2007

To the Ministry of Foreign Affairs

Considering your request for information in the case of Munaf Mohammad, necessary for the argumentation of the position of Romania in front of the Human Rights Committee, we inform you of the following:

- on the occasion of the repeated hearings of the accused MUNAF MOHAMMAD at the CAMP CROPPER American military complex, no physical or psychical violence was exercised on the person under investigation, as stated in the criminal procedural acts signed by MUNAF MOHAMMAD and his chosen lawyer;

- on every hearing, the team of investigators from the Directorate of Criminal Investigation of Organized Crime and Terrorism signed a memorandum with the conditions for access and interrogation of the accused, one of these conditions being the audio/video taping of the hearings as well as the presence of the representatives of the American officials from the Multi-National Force in IRAQ;

- on 14-15 September 2005, MUNAF MOHAMMAD requested, as a measure of protection for his family, the granting of permission at the request of the wife of the accused, Mohammad Georgeta, to settle, together with their 3 underage children, in USA. No such request was formulated by the family, and, in fact, such a request would not have been necessary since Mohammad Georgeta and her three underage children are American citizens;

- on the occasion of the interrogations by the Romanian prosecutors, Munaf Mohammad never complained that he had been subjected to torture by the American military authorities;

- after the interrogations, certificates were issued attesting that military lawyers from the American contingent were present at the hearings and that they noticed that the civil rights of the American citizen Munaf Mohammad were respected, and that "he was treated with respect and consideration";

- on 18 November 2006 when he was interrogated again by the prosecutor, as witness in file nr. 628/D/P/2005, Munaf Mohammad stated, in the presence of his chosen Iraqi lawyer, that he has no claim against the Romanian judicial authorities; his statement was written in Romanian language, translated from English into Romanian, and the Romanian language was spoken with the witness, a language which he knows and understands; at this procedural activity assisted officials from the US Army within the Multi-National Force in Iraq.

Prosecutor-in-Chief of the Directorate
CODRUT OLARU
Signature and Seal

ANNEX 7

**Letter of the Romanian Ministry of Defense regarding the deployment of the
Romanian troops in Iraq and their competences**



SECRETAR DE STAT

SECRET
N. 856 / 2802.07

Nr. P/1019
din 17 FEB 2007

Domnului

ADRIAN VIERIȚA
SECRETAR DE STAT
MINISTERUL AFACERILOR EXTERNE

La comunicarea dumneavoastră nr. H2 743 referitoare la apărarea României în cazul Mohammad Munaf, vă informez următoarele:

1. În perioada 01.01.2005 – 12.06.2006, Ministerul Apărării nu a avut personal sau trupe dislocate în Camp Cropper;
2. În Camp Cropper funcționează mai multe facilități, separate (centru de detenție, spital militar);
3. Începând cu 12.06.2006, un număr de 8 cadre medicale au fost dislocate la spitalul militar. Conform celor comunicate de locțiitorul șefului Direcției Medicale din Ministerul Apărării, personalul român nu a avut acces în sectorul / centrul de detenție;

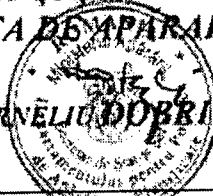
Menționez că Ministerul Apărării nu a avut niciodată personal sau trupe la centrul de detenție din Camp Cropper.

Vă rog să primiți, domnule secretar de stat, asigurarea înaltei mele considerații.

Cu deosebit respect și considerație,

**SECRETAR DE STAT ȘI ȘEF AL DEPARTAMENTULUI
PENTRU POLITICĂ DE APĂRARE ȘI PLANIFICARE**

CORNELIU DOBRITOIU



2358

1.03.07

ROMANIA
MINISTRY OF DEFENCE
Department for Defence Policy and Planning
Seal
SECRETARY OF STATE

Public document
Copy no. 2

No. P1079
Of 27 February 2007

To Mr ADRIAN VIERITA
SECRETARY OF STATE
MINISTRY OF FOREIGN AFFAIRS

Regarding your address nr. H2/743 on Romania's position in the case concerning Mohammad Munaf, I inform you on the following:

1. During 01.01.2005-12.06.2006, the Ministry of Defence did not have any troops or personnel in Camp Cropper;
2. Within Camp Cropper there are several separate facilities (detention centre, military hospital);
3. As of 12.06.2006, 8 persons from the medical staff were sent to the military hospital. According to the deputy coordinator of the Medical Unit of the Ministry of Defence, the Romanian personnel did not have access to the detention centre/part;

I underline that the Ministry of Defence never had personnel or troops in the detention centre at Camp Cropper.

Please accept, Mr. Secretary of State, the assurance of my highest consideration.

With outmost respect and consideration,

SECRETARY OF STATE AND HEAD OF THE DEPARTMENT FOR DEFENCE POLICY
AND PLANNING

CORNELIU DOBRITOIU
Signature and seal

Bucharest, Izvor Street no. 3-5, sector 5, code 50561 ***Phone 319 57 19 Fax: 312 08 62

ANNEX 8

Gardner Declaration

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAISOON MOHAMMED, *et al.*,)

Petitioners,)

v.)

Civil Action No. 06-1455 (RCL)

FRANCIS J. HARVEY, *et al.*,)

Respondents.)

DECLARATION OF JOHN D. GARDNER

I, Major General John D. Gardner, pursuant to 28 U.S.C § 1746, hereby declare and say as follows:

1. I currently serve as the Deputy Commanding General for Detainee Operations (DCG-DO) Multi-National Force-Iraq (MNF-I). In this capacity, I am charged with the responsibility for oversight in several areas, including:

- Safeguard and secure all persons who are in custody at the MNF-I detention centers and protected areas.
- Operation and focus of the MNF-I Joint Interrogation and Debriefing Center to provide high-quality actionable strategic, operational, and tactical intelligence to the warfighters.
- Maximize efficiency and provide due process in the referral of security internees and detainees to the Iraqi legal system.
- Integrate Iraqi leadership and partnership in all facets of Detainee Operations.

make these statements based upon my personal knowledge and upon information made available to [redacted] in the performance of [redacted] official duties.

MNF-I is a coalition force consisting of approximately twenty-seven different nations that operates in accordance with the mandate of United Nations Security Council Resolutions (UNSCR) 546 (2004) and 637 (2005). Resolution 637 extended the mandate of MNF-I for another year on behalf of and at the request of the Iraqi government. MNF-I is authorized "to take all necessary [redacted] to contribute to the maintenance of security and stability in Iraq." Such measures include the ability to detain individuals "where this is necessary for imperative reasons of security.

Mr. Mohammed Munaf Mohammed (Munaf), a citizen of Iraq, Romania, and the United States, is in MNF-I custody pursuant to UNSCR 546 and 637 which allows MNF-I to intern individuals who [redacted] considered to be an imperative threat to the security of Iraq. He was captured by Coalition Forces on May 23, 2005.

4. Munaf was captured on May 23, 2005 during a targeted raid. He was detained by Coalition Forces for his suspected involvement in the kidnapping of foreign nationals (three Romanian journalists).

Following Munaf's capture, on July 8, 2005 a panel of three Military officers, acting in their capacity as members of MNF-I, conducted a comprehensive review of Munaf's status and detention. The panel reviewed the facts and circumstances surrounding the capture, interviewed witnesses, and considered available intelligence information. Munaf was present at the hearing and had the opportunity to hear the basis on which he was being detained, to make a statement, and to call witnesses who were

immediately available. The panel determined that Munaf was considered security internee and should be further interned.

6. Subsequently, Munaf case was referred to the Central Criminal Court of Iraq (CCCI) for adjudication. U.S. authorities indicated objection to Iraqi plans to prosecute Mr. Munaf in the CCCI

The CCCI in Baghdad is the only court in Iraq with nationwide jurisdiction, thereby eliminating venue and jurisdictional issues across the various courts of session among the 8 provinces. The CCCI has discretionary investigative and trial jurisdiction all crimes that threaten the sovereignty of Iraq and crimes against Coalition Forces, including acts of terrorism. The CCCI operates under the Iraqi Penal Code of 1969 and the 1975 Iraqi Law Criminal Proceedings. It is an Iraqi court under Iraqi governance and is comprised of Iraqi judges who have attended the Iraqi Judicial School and is administered by the Iraqi Higher Juridical Council.

8. The CCCI operates using modified continental, inquisitorial judicial process, and not the English adversarial judicial system. The CCCI is divided into two chambers— an investigative court and felony trial court. Under this system, the investigative judge conducts an investigative hearing in chambers to determine if there is sufficient evidence to warrant trial. Witnesses provide sworn testimony and the investigative judge questions the witnesses to clarify their testimony. Defense counsel is allowed to present questions to the court for review. If the investigative judge accepts any question, he asks the question of the witness. Upon the conclusion of evidence presentation, the investigative judge questions the defendant, who is not required to respond. The investigative judge makes the determination of whether there sufficient grounds to

forward the case to the Trial Court. If he finds there is sufficient evidence, he forwards a report of the investigative proceeding and recommends charges to the Trial Court.

9. The Trial Court sits in panels of three judges, who review the findings of the investigative judges and listen to any additional evidence in a formal courtroom setting. After a case is forwarded for trial, a Trial Panel may return the case for further investigation before a date is set for trial. Trial Panel judges may ask questions, similar to the process used in the investigative hearing. Upon the conclusion of the case, the Trial Panel judges enter a verdict and either release the defendant or sentence him, which can include a prison term. Sentences imposed by the Trial Court are those prescribed in the Iraqi Penal Code as amended by CPA orders. Sentences may be reduced at the discretion of the Chief Judge of the Trial Court while appeals are made to the Iraqi Court of Cassation.

10. Defendants are represented at the investigative hearing by counsel retained at their own expense or, more typically, by court-appointed defense counsel. Defense counsel at the investigative hearing functions primarily to ensure the defendant's procedural rights are not violated. The defendant is also entitled to court-appointed defense counsel for trial. Munaf is represented by his own Iraqi counsel.

11. Munaf admitted on camera, in writing, and in front of an Iraqi Investigative Hearing Judge that on 28 March 2005 he participated as an accomplice in the kidnapping of three Romanian journalists. Munaf was assisted by Ibrahim Al Giuburi (Munaf's brother-in-law) (Ibrahim), Omar Hayssam (the alleged mastermind of the kidnapping plan) (Hayssam), and Omar Mahmmod (Hayssam's brother).

2. Munaf has made several confessions in writing, on camera, and in front of an Iraqi Investigative Hearing Judge outlining the kidnapping plan he was involved in. According to Munaf's multiple statements he first met with Hayssam in January 2005 to discuss the kidnapping plans. The first plan was to kidnap the Romanian Senator Vasile Ion, Romanian businessman. Hayssam had close relationship with Senator Ion. Munaf allegedly refused to participate in this plan. The entire motivation for Hayssam wanting to conduct kidnapping stems from his intention to gain the support of the Romanian President Traian Basescu to develop new business in Romania. It appears that Hayssam was going to covertly help kidnap the victims, and then increase his own stature by negotiating their release.

According to Munaf, Hayssam developed another plan to kidnap Marie Jeanne Ion (the daughter of Senator Vasile Ion) and two other journalists when they traveled to Iraq. He came up with this plan after allegedly seeing the Al Jazeera story of the Italian journalists being kidnapped and held for ransom. In this plan, Munaf was to travel with Marie and the other two to Iraq ostensibly as their guide and translator and help facilitate the kidnapping. Hence, Munaf would act as though he was a kidnap victim too.

14. Munaf stated that he was contacted by Hayssam on March 21, 2005, and asked to follow the kidnapping plan. Munaf claims that he opposed the plan but that he agreed to it after much pressure was put on him to go along. Munaf met with Ibrahim in Iraq a few days before the kidnapping and received a more detailed description of the kidnapping plan. The kidnapping was to take place on March 28, 2005, at an arranged location about 70 kilometers outside of Baghdad. According to Munaf, the morning

of March 28, Munaf met with Ibrahim and a man named Hagji (the apparent contracted kidnapper). Hagji asked for \$30,000 – half to be paid before the kidnapping, and half to be paid after the kidnapping. Munaf only had \$14,000 at the time, so he called Hayssam to send him the rest. Hayssam said that his brother (Samir) would send the rest of the money the next day. The kidnapping was conducted at the appointed place on March 28th. The kidnappers blocked passage of the victims' car and took hostage Munaf, Marie Jeanne Ion, and the two other journalists.

15. Munaf has appeared at four investigative hearings at CCCI (23 Nov 2005, 19 Jan 2006, 15 Feb 2006, 28 Feb 2006.) Two appearances were made as a witness against the other defendants and two appearances were made as a defendant. Although Munaf remains in the physical custody of MNF-I, the government of Iraq has control over the disposition of Munaf's case because the criminal proceedings before the CCCI already have been initiated.


16. At both sets of investigative hearings, acting as both a witness and a defendant, Munaf positively identified the other kidnappers and admitted to his role in the original kidnap scheme. The Iraqi Judge presiding over Munaf's investigative hearing has determined that sufficient evidence exists to bring Munaf's case to a Trial Panel as a defendant. In addition, Munaf is also involved in another trial as a victim. The Iraqis docketed both trials for September 10, 2006, but they were postponed until September 19, 2006. Munaf will likely be charged with kidnapping and an accomplice to kidnapping at his trial.

17. MNF-I maintains physical custody of detainees while their cases are being heard by the CCCI. They are held as security internees in accordance with UN Security

Council Resolutions 1546 and 1637 until the case is resolved. If they are convicted and sentenced to a term of imprisonment, the Trial Court will issue an Order, which is sent to the Task Force 134. There is no set time frame for when Iraqi Trial Courts formally document convictions. Generally, this occurs within a few days of trial. Once the original formal Trial Court documentation is received and processed, we will issue a subsequent transfer order releasing the detainee to an Iraqi Ministry of Justice facility. Once we formally direct transfer from MNF-I to the Iraqi Ministry of Justice, the normal administrative period for actual transfer, which may be affected by myriad factors, is approximately two to three weeks.

declare under penalty of perjury that the foregoing is true and correct.

Executed on the 15th day of September 2006.


JOHN D. GARDNER
Major General, U.S. Army
Deputy Commanding General
Detainee Operations

ANNEX 9

MNF-I Rules for Questioning Mohammed Munaf Mohammed,
dated 22 July 2005



FACT SHEET

SUBJECT: Rules for Questioning Mohammed Munaf Mohammed (Munaf)

1. Romanian and Iraqi criminal investigators may have access to Mohammed Munaf Mohammed (Munaf) for criminal investigative questioning. Such questioning may be conducted successively or concurrently as directed by the Commander, TF 134.
2. Questioning of Munaf will take place at Camp Cropper, Iraq, unless otherwise directed by the Commander, TF 134. The date and time of the questioning will be approved by the Commander, TF 134.
3. Questions and answers will be translated in either Arabic or English, at the preference of the investigator, and will be recorded by US, Iraqi, or Romanian personnel.
4. In accordance with the Law of Administration for the State of Iraq during the Transitional Period (TAL), no due process rights advisement is required to be given in connection with questioning by Iraqi investigators. Romanian Law shall apply to rights advisements in connection with questioning by Romanian investigators.
5. At all times, Multi-National Force- Iraq (MNF-I) will continue to maintain physical and legal custody of Munaf.
6. During all questioning, a representatives from MNF-I, Office of the Staff Judge Advocate, TF 134 (CCCI) and the Joint Interrogation and Debriefing Center (JIDC) shall be present.
7. Iraqi and Romanian investigators will comply with all directions issued by MNF-I custodial personnel while at Camp Cropper.

Prepared by LTC Jeff Walker, Chief, Operations, Judicial and Legal Policy, 822-2504
Released by COL James M. Coyne, Staff Judge Advocate, MNF-I.

ANNEX 10

Memorandum for Record, dated 17 June 2005, issued by
the Office of the Commanding General – Task Force 134 – MNF-I and

Memorandum for Record, dated 27 June 2005, issued by
the Office of the Commanding General – Task Force 134 - MNF-I



DEPARTMENT OF DEFENSE
OFFICE OF THE COMMANDING GENERAL-TASK FORCE 124
MULTI-NATIONAL FORCE-IRAQ
200 AB 10047

REPLY TO
ATTENTION OF

MEMORANDUM FOR RECORD

17 June 2005

This is to officially document that I observed the questioning of Mohammad Munaf Mohammad by the Romanian officials on May 30 and 31, 2005 concerning his part in the kidnapping of certain Romanians. I was there only as an observer for the U.S. Army. I am a Judge Advocate (Military Attorney). I was present during his questioning and Mohammad Munaf Mohammad was completely cooperative and willing to answer questions. I saw no form of mental or physical coercion. He was treated with the utmost dignity and respect. I also observed and signed as a witness to the personal handwritten statement of Mohammad Munaf Mohammad.

GARY D. NUNN
Lieutenant Colonel, U.S. Army
Staff Judge Advocate



MULTI-NATIONAL FORCE – IRAQ
TASK FORCE 134
JOINT INTERROGATION AND DEBRIEFING CENTER
FOB ABU GHURAYB, IRAQ, APO, AE 09342

AFQV-JIDC-CDR

27 July 2005

MEMORANDUM FOR RECORD

SUBJECT: INTERVIEW OF DETAINEE MUHAMMAD MUNAF MUHAMMAD

1. Detainee US9IZ 200175, Muhammad Munaf Muhammad, was interviewed by a team of Romanian lawyers at the Camp Cropper facility of Baghdad International Airport (BIAP) on 26 and 27 July 2005
2. The interview was conducted in accordance with MNF-I policy regarding detainee treatment. The detainee was neither abused nor denied any privileges afforded other detainees. However, as the interview was conducted entirely in Romanian, a language I am unfamiliar with, I cannot attest to the content of the discussion.
5. POC for this memorandum is Jonathan Brookshire, JIDC Analyst, Cropper Detachment at DSN/VOIP 318-822-3439

JONATHAN M. BROOKSHIRE
ANALYST- JIDC
CROPPER DETACHMENT

ANNEX 11

3 Pieces of news issued in October 2006 reflecting the statements of the Romanian Minister of Justice, the Romanian Ambassador to Iraq and the spokesperson of the Romanian Ministry of Foreign Affairs concerning the lack of knowledge of the Romanian authorities of the Iraqi trial of Mr. Munaf, as well as the absence of any authorization given by the said Romanian authorities to any US officer

INTERNATIONAL
Herald Tribune

Romania not informed of Iraq trial of suspect in kidnapping of Romanian journalists

The Associated Press
Saturday, October 14, 2006

BUCHAREST, Romania

Romania has not been informed of the trial and sentencing to death of an Iraqi-American accused of helping in the kidnapping of three Romanian journalists in Iraq, Justice Minister Monica Macovei said Saturday.

Macovei said Romania had asked Iraq to extradite Mohammad Munaf, who has denied any role in the kidnapping of the journalists, who were held hostage for 55 days last year in Iraq. Munaf was their guide and translator.

Iraqi authorities have only informed their Romanian counterparts that they can't send Munaf to Romania because he was under investigation there, Macovei said.

Munaf was convicted and sentenced to death by an Iraqi judge this week on charges he helped in the 2005 kidnapping, according to court papers filed in the U.S. by his lawyers.

Munaf's U.S. attorneys appealed Friday in U.S. federal court to keep the man in American custody, preventing his death.

Iraqi-born Munaf, a naturalized U.S. citizen since 2000, maintains his innocence. If handed over to Iraqi authorities, he could be put to death.

In the request filed Friday by Munaf's attorneys, they claim his rights to a fair trial in Iraq were violated when he was convicted without being able to present evidence to defend himself or to see the evidence against him.

No Romanian officials attended Munaf's trial in Iraq, according to the papers filed by his attorneys. But two U.S. military officials, including a soldier claiming to represent the Romanian Embassy, demanded that Munaf should be found "guilty and should be executed," the court papers say.

The Romanian ambassador to Iraq, Mihai Stuparu, however, denied any knowledge of the trial, saying he contacted U.S. and Iraqi authorities to ask for information but was unsuccessful.

The freed journalists have said they believe Munaf was held with them, but they don't know if he had any role in their abduction.

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Locotenentul Robert Pirone nu a reprezentat statul român la procesul lui Munaf

Sâmbătă 21 Octombrie 2006, 11:15



Ministerul Afacerilor Externe susține că nu i-a cerut locotenentului Robert Pirone să reprezinte statul român la procesul în care Mohammad Munaf a fost condamnat la moarte, a declarat purtătorul de cuvânt Corina Vințan. Ofițerul, care aparține Pazei de Coastă americane, a declarat sub jurământ că a reprezentat Ambasada României de la Bagdad și că a avut documente legalizate în acest sens, anunță agenția NewsIn.

Locotenentul Robert Pirone a fost oficialul militar american care a depus în procesul lui Mohammed Munaf plângerea oficială pentru răpire în numele Guvernului român, se arată în motivarea deciziei date joi de judecătorul Royce Lamberth și publicată pe site-ul Curții districtuale din

Columbia.

Sean Riordan, avocat la firma de avocatură care îl reprezintă pe Munaf în SUA, a declarat sub jurământ că avocatul irakian al lui Munaf i-ar fi spus că doi oficiali militari americani au asistat la audierea din 12 octombrie, când inculpatul a fost condamnat la moarte de către un Tribunal din Bagdad.

Potrivit aceluiași avocat, unul dintre cei doi americani a declarat curții că ar fi venit, la cererea Ambasadei României la Bagdad, pentru a solicita pedeapsa cu moartea pentru Munaf. În ceea ce-l privește pe celălalt oficial militar american, acesta i-ar fi spus judecătorului că toți inculpații trebuie să fie condamnați la moarte.

Pirone afirmă însă că niciun alt reprezentant al Forței Multinaționale, în afara lui, nu a participat la proces și că orice alt membru al coaliției prezent la proces a avut calitatea de observator sau de gardian. Mai mult, Pirone spune că niciun reprezentant al Forței Multinaționale nu a stat cu judecătorii pe durata deliberării.

Autoritățile române nu au fost informate despre procesul lui Munaf din Irak

Luni 16 Octombrie 2006, 19:27

Autoritățile române sunt surprinse de decizia Tribunalului de la Bagdad.

Ambasadorul României în Irak, Mihai Stuparu, a declarat, pentru Realitatea TV, că nu a primit informații oficiale despre sentință. Nici ministerul Justiției nu are mai multe informații despre procesul lui Munaf.

"Dacă ambasadorul României în Irak nu a fost informat, noi cu atât mai puțin. Suntem surprinși", a declarat Răzvan Radu, director în Ministerul Justiției.

La rândul său, ministrul Justiției, Monica Macovei, a declarat că Ministerul pe care îl conduce nu cunoaște acuzațiile oficiale pentru care Mohammad Munaf a fost judecat și condamnat la moarte.

Informațiile deținute de autoritățile române cu privire la situația judiciară a lui Mohammad Munaf sunt ca și inexistente, a reieșit din declarațiile făcute de ministrul justiției, Monica Macovei.

Ea a explicat că în acest moment se fac verificări, cu ajutorul autorităților române de la Bagdad, pentru a obține confirmarea oficială a faptului că Mohammad Munaf, inculpat la București pentru răpirea la Bagdad a trei jurnaliști români, a fost condamnat la moarte prin spânzurare.

Ea a respins orice acuzație privind eventuala responsabilitate a Ministerului Justiției în chestiunea refuzului irakienilor de a-l extrăda pe Munaf în România.

Pentru cei care vor să studieze corespondența purtată de oficialii români cu omologii lor irakieni, oficialii români au atașat, pe site-ul Ministerului Justiției, toate explicațiile pentru demersurile făcute în sensul aducerii în țară a inculpatului Mohammad Munaf.

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Lieutenant Robert Pirone did not represent Romania at the trial of Munaf

Saturday, 21 October 2006, 11:15

The Ministry of Foreign Affairs declares that it did not ask Lieutenant Robert Pirone to represent Romania at the trial in which Mohammad Munaf was sentenced to death, stated the spokesperson Corina Vintan. According to NewsIn Agency, the officer, who belongs to the American Coastal Guard, declared under oath that he represented the Romanian Embassy in Baghdad and that he had official documents in that regard.

Lieutenant Robert Pirone was the American military official who introduced in the name of the Romanian Government, in the trial of Mohammad Munaf, the official complaint for kidnapping, as shown in the argumentation of the decision delivered on Thursday by Judge Royce Lamberth and posted on the website of the District Court of Columbia.

Sean Riordan, lawyer at the law firm representing Munaf in US, declared under oath that the Iraqi lawyer of Munaf had allegedly told him that two American military officials were present during the hearing on 12 October, when the accused was sentenced to death by a Tribunal in Baghdad.

According to the same lawyer, one of the two Americans told the Court that he had allegedly come, at the request of the Romanian Embassy in Baghdad, to ask for the death sentence for Munaf. As far as the other American military official is concerned, this apparently had told the judge that all the accused must be sentenced to death.

Pirone asserts, however, that, apart from him, no other representative of the Multi-National Force participated at the trial and that any other member of the coalition assisting at the trial was merely an observer or a guardian. Moreover, Pirone says that no representative of the Multi-National Force was together with the judges during deliberations.

<http://www.realitatea.net/index.php?printstire=20940>

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The Romanian authorities were not informed about the trial of Munaf in Iraq

Monday, 16 October 2006, 19:27

The Romanian authorities are surprised by the decision of the Tribunal in Baghdad.

The Romanian Ambassador to Iraq, Mihai Stuparu, declared, for Realitatea TV, that he did not receive any official information about the sentence. Nor the Ministry of Justice has any additional information about the trial of Munaf.

"If the Romanian Ambassador in Irak was not informed, what can I say about us. We are surprised", said Razvan Radu, director in the Ministry of Justice.

On her part, the Minister of Justice, Monica Macovei, said that the Ministry she runs does not know the official accusations for which Mohammad Munaf had been tried and sentenced to death.

The knowledge of the Romanian authorities with regard to the situation of the proceedings concerning Mohammad Munaf is inexistent, according to the declarations of the Minister of Justice, Monica Macovei.

She explained that, presently, there are investigations under way, with the help of the Romanian authorities in Baghdad, in order to obtain the official confirmation of the fact that Mohammad Munaf, accused in Bucharest for the kidnapping in Baghdad of the three Romanian journalists, was sentenced to death by hanging.

She denied any responsibility of the Ministry of Justice for the refusal of the Iraqi authorities to extradite Munaf to Romania.

For those wishing to study the correspondence between the Romanian officials and their Iraqi counterparts, the Romanian officials posted on the website of the Ministry of Justice all the explanations of the demarches undertaken to bring the accused Mohammad Munaf into the country.

<http://www.realitatea.net/index.php?printstire=20264>

ANNEX 12

The list of the existing Romanian-Iraqi bilateral agreements

IRAQ

1. Agreement on cultural cooperation between the People's Republic of Romania and the Republic of Iraq
 - Signed in Baghdad, 4/08/1959
 - Entry into force: 17/08/1960
 - Validity: undetermined
 - Ratified by Decree no. 3 of 7 January 1960
 - Published in the Official Bulletin no. 1 of 1 February 1960, Notified to UN/Vol. 502.

2. Understanding between the Government of the People's Republic of Romania and the Government of the Republic of Iraq on visas for unlimited number of journeys for the members of the diplomatic missions
 - Signed in Baghdad, 1/03-23/06/1965;
 - Entry into force: on the date of signature
 - Validity – undetermined.

3. Long-term commercial agreement between the Government of the Socialist Republic of Romania and the Government of the Republic of Iraq
 - Signed in Bucharest, 12/05/1975
 - Entry into force: 22/10/1975
 - Validity: 5 years with extension for successive periods of 1 year;
 - Approved by Decision of the Committee of Ministers no. 570 of 12 June 1975;
 - Published in the Official Bulletin no. 64 of 23 June 1975.

NOTE: This agreement replaced the Commercial Agreement of 24 December 1968.
As of 22/04/2007 this agreement will be terminated.

4. Agreement on technical and economic cooperation between the Government of the Socialist Republic of Romania and the Government of the Republic of Iraq
 - Signed in Bucharest, 12/05/1975
 - Entry into force: 22/10/1975
 - Validity: 10 years with extension for successive periods of 5 years
 - Approved by Decision of the Committee of Ministers no. 570 of 12 June 1975
 - Published in the Official Bulletin no. 64 of 23 June 1975

NOTE: This agreement will be terminated on 22/04/2010, in accordance with the exchange of verbal notes between the two parties.

5. Sanitary-veterinary convention between the Government of the Socialist Republic of Romania and the Government of the Republic of Iraq
 - Signed in Bucharest, 3/10/1975
 - Entry into force: 29/02/1976
 - Validity: undetermined
 - Ratified by Decree no. 27 of 3 February 1976
 - Published in the Official Bulletin no. 11 of 10 February 1976

NOTE: This agreement will be terminated in accordance with the exchange of verbal notes between the two parties.

6. Agreement on cooperation in the field of scientific research and technologic development between the Government of the Socialist Republic of Romania and the Government of the Republic of Iraq

- Signed in Baghdad, 10/11/1976
- Entry into force: 22/01/1977
- Validity: 5 years with extension by tacit reconduction for successive periods of 5 years
- Approved by Decision of the Committee of Ministers no. 1 of 4 January 1977
- Published in the Official Bulletin no. 2 of 10 January 1977

7. Agreement on civil air transports between the Socialist Republic of Romania and the Republic of Iraq

- Signed in Bucharest, 18/11/1976
- Entry into force: 2/05/1977, with provisional application from the day of signature
- Validity: undetermined
- Approved by Decision of the Committee of Ministers no. 73 of 4 April 1977
- Published in the Official Bulletin no. 29 of 9 April 1977

8. Consular convention between the Socialist Republic of Romania and the Republic of Iraq

- Signed in Bucharest, 13/03/1981
- Entry into force: 13/05/1982
- Validity: 5 years with extension by tacit reconduction for successive periods of 1 year
- Ratified by Decree no. 342 of 26 November 1981
- Published in the Official Bulletin no. 94 of 28 November 1981

9. Agreement between the Socialist Republic of Romania and the Republic of Iraq on international road transport of persons and merchandise

- Signed in Bucharest, 24/03/1981
- Entry into force: 19/11/1981
- Validity: 1 year with extension by tacit reconduction for successive periods of 1 year
- Approved by Decision of the Committee of Ministers no. 76 of 24 June 1981
- Published in the Official Bulletin no. 43 of 29 June 1981

10. Agreement between the Government of the Socialist Republic of Romania and the Government of the Republic of Iraq on tourism cooperation

- Signed in Baghdad, 11/12/1981
- Entry into force: 16/05/1982
- Validity: 5 years with extension by tacit reconduction for successive periods of 5 years
- Approved by Decision of the Committee of Ministers no. 55 of 28 April 1982
- Published in the Official Bulletin no. 46 of 4 May 1982

11. Agreement on long-term development of technical-economic cooperation and trade between the Socialist Republic of Romania and the Republic of Iraq

- Signed in Baghdad, 17/06/1982
- Entry into force: -
- Validity: 5 years with extension for one period of 5 years;
- Ratified by Decree no. 404 of 1 November 1982;
- Published in the Official Bulletin no. 99 of 2 November 1982 and in *A policy of peace, collaboration and friendship with all peoples*, Politic Publishing House, 1983, vol. II, p. 499.

NOTE: the parties agreed by exchange of verbal notes that this agreement would not enter into force any more

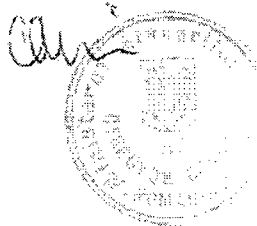
12. Protocol between the Government of the Socialist Republic of Romania and the Government of the Republic of Iraq on the re-scheduling of the debt of the Republic of Iraq towards Romania

- Signed in Baghdad, 7/11/1987
- Entry into force: -
- Validity: until 31/12/1990;
- Ratified by Decree no. 34 of 1 February 1988.

13. Bilateral agreement between the Government of Romania through the Ministry of Public Finances and the Republic of Iraq through the Ministry of Finances

- Signed in Amman, 18/08/2005
- Entry into force: 16/05/2006.
- Validity: until the execution of the obligations of the parties;
- Approved by Government Decision no. 260 of 22/02/2006
- Published in the Official Monitor no. 207 of 7/03/2006.

The Ministry of Foreign Affairs of Romania – the General Department for Legal Affairs – hereby certifies that this is the accurate and complete list of the bilateral Romanian-Iraqi agreements.



2 March 2007

ANNEX 14

Extracts from the Iraqi Law on criminal proceedings with amendments

LAW ON CRIMINAL PROCEEDINGS WITH AMENDMENTS

Number 23 of 1971

Decree number 230

In the name of the People

The Revolutionary Command Council

Based on the provisions of the 42nd article, sub-paragraph a, of the temporary Constitution, and derived from the submissions of the Minister of Justice.

The Revolutionary Command Council has decided, in its session held on 14 February 1971, to issue the the following law:

Number 23 of 1971

LAW ON CRIMINAL PROCEEDINGS

BOOK ONE

CRIMINAL PROCEEDINGS¹

Chapter One

Paragraph 1

- A. The initiation of **criminal proceedings** for an oral or written complaint is submitted to the examining magistrate or the investigator or any official in the police station or any member of the judicial system acting on behalf of the injured party or any person taking his place in law, unless the law stipulates otherwise. In the event of a witnessed offence the complaint may be submitted to whichever police officers or their delegates are present.
- B. The offence is considered witnessed if it was witnessed whilst being committed or a shortly afterwards or if the victim followed the perpetrator afterwards or if shouting crowds followed him afterwards or if the perpetrator was found a short while later carrying the equipment or weapons or goods or documents or other things pointing to the fact that he was a perpetrator or participant in the offence or if traces or signs indicate this at the time.

Paragraph 2

The complaint may not be dropped, cancelled or withdrawn from nor can the judgement issued on it be withdrawn from or not executed, except under the circumstances explained in the law.

Paragraph 3

- A. The complaint can only be set in motion on the basis of a complaint from the aggrieved party or someone taking his place in law in relation to the following offences:
 - i. Adultery or polygamy in contravention of the law of personal circumstances.
 - ii. Slander, verbal abuse, spreading false information, oral threats or slight injury provided ~~that the offence was not committed against someone in the performance of a public service.~~
 - iii. Theft, rape, breach of trust, fraud, or acquisition of items by these means, if the aggrieved party is a spouse or relative of the perpetrator and these items were not seized legally or administratively or legally transferred to another person.
 - iv. Damage to property or sabotage, other than that involving state property, if the offence is not subject to aggravating circumstances.
 - v. Violation of the sanctity of property, entering or passing through land that has been cultivated, prepared for cultivation or contains crops or allowing animals to go into such land
 - vi. Throwing stones or other items at means of transport, houses, buildings, gardens or compounds.

- vii. Other offence which the law stipulates cannot be set in motion except on the basis of a complaint by the injured party.
- B. No **criminal** complaint can be set in motion in relation to offences that took place outside the Republic of Iraq except with the permission of the Minister of Justice.

Paragraph 4

- A. If the aggrieved parties in the offences referred to in the previous paragraph are numerous, it is sufficient to have the complaint submitted by one of them.
- B. In the case that there are numerous persons accused, and the complaint was submitted against one of them, it is considered to have been submitted against the other persons accused, except in the offence of adultery where the complaint is not set in motion against the alleged perpetrator unless it is also submitted against the adulterous husband or wife.

Paragraph 5

If there is a conflict of interests between the aggrieved party and the person representing him, or if he does not have anyone to represent him, the examining magistrate or the court must appoint someone to represent him.

Paragraph 6

A complaint, as detailed in paragraph 3 of this law, will no longer be accepted once 3 months has passed from the date when the aggrieved party became aware of the offence or from the disappearance of any compelling excuse which prevented the submission of the complaint; and the right to submit the complaint will be dropped in the in the event of the death of the aggrieved party unless the law stipulates to the contrary.

Paragraph 7

If the aggrieved party passes away after submitting the complaint, this death will have no effect on the processing of the complaint.

Paragraph 8

If the law on setting in motion a case stipulates that a complaint must be submitted, no action may be taken against the perpetrator of the offence until the complaint has been submitted.

Paragraph 9

- A. The submission of the complaint should include the claim for **criminal** justice which is an application that penal measures be taken against the perpetrator of the offence and for the ~~penalty to be imposed on him. The written complaint includes the claim for civil justice as long as the plaintiff does not declare otherwise.~~
- B. The **criminal** court will not consider civil justice claims other than in accordance with **criminal** justice claims
- C. The person who submitted the complaint has the right to withdraw from it. If a number of persons submitted the complaint and some of them withdraw, this does not invalidate the rights of the others.
- D. If a person who had the right to submit the complaint dies, the right to submit the case does not transfer to his heirs.
- E. If there are many persons accused and the complaint against one of them is withdrawn, this does not extend to the others, unless the law stipulates otherwise.
- E. If the plaintiff withdraws his complaint, he will, as a consequence, lose his to **criminal** justice