

Vulnerability of Key Institutions of the Romanian State, a Matter of Morality or Legality?

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ABSTRACT: Based on extensive journalistic investigations, it was discovered that the high official of the Romanian State, accused of falsifying his baccalaureate diploma, not only did not graduate from high school, but never held the position of deputy director at ORNISS, the institution that certifies civilians and military to access and manage state secrets. His appointment as President of ORNISS was categorized as *“the biggest system error (at least the only one known) that has occurred to date in Romania”*, the position temporarily held by Laurentiu Baranga being made after careful checks attesting to moral and legal probity of those who occupy it, and for 10 years he worked in ORNISS, being one of the officials with high positions in the state who had to guard the State precisely from the occurrence of fraud situations. As a rule, access to classified information is made on the basis of a specialized guarantee that the individual is physically, intellectually, morally and characteristically capable of doing so, without being blackmailable, so as not to become a vulnerability to information security and security status. Art. 14 of the European Convention on Human Rights provides for the prohibition of discrimination, but through the text of art. 7 of Law 182 discrimination is instituted in favor of the persons mentioned in par. (4) and a visible inequity and discrimination is created against persons who are obliged to go through the flow provided by national standards, as well as an infinite number of vulnerabilities to national security and cooperation frameworks.

KEYWORDS: investigations, falsified, ORNISS, state secrets, moral probity, classified information, information security, discrimination, inequity, national security

Short presentation about the “Baranga case” and the impact it caused in society

Born in 1967, Laurențiu Baranga received his Baccalaureate degree at the age of 32, in 1999, at the Dimitrie Leonida Technical College in Bucharest. Starting with 2007, ie at the age of 40, Laurențiu Baranga obtained a degree in Management at the Ecological University of Bucharest, completed a doctorate at the University of Wallachia in Târgoviște and attended, among others, a postgraduate course at the Police Academy.

In 2008, at the age of 41, he became an University assistant doctor at Titu Maiorescu University, although, according to his CV, he had not worked anywhere before, and since 2009, Baranga has worked at the Office of the National Register of State Secret Information (ORNISS), where he held the position of Deputy Director for 11 years, according to his own declaration of assets.

ORNISS, a state institution with a leading role in the elaboration, coordination and implementation of the national system for combating money laundering and terrorist financing, was established by Government Emergency Ordinance no. 153 of November 7, 2002, published in the Official Gazette of Romania no. 826 of November 15, 2002, approved by Law no. 101/24.03.2003, published in the Official Gazette of Romania, Part I, no. 207 din 31.03.2003.

On September 4, 2020, Laurentiu Baranga was appointed President, with the rank of Secretary of State, of the National Office for Preventing and Combating Money Laundering (ONPCSB) for a term of four years, by a published Government Decision on the same day in the Official Gazette.

Shortly after he was installed as head of the most important public authority in Romania that monitors and coordinates national activities to prevent and combat money laundering,

more precisely on October 10, 2020, Baranga was detained for 24 hours and, subsequently, sent before the court with a proposal for pre-trial arrest, being investigated in a case of fraud for inducing and misleading several public institutions, by submitting to the employment file of forged study documents that have been abolished by the competent courts.

Specifically, he was accused that, based on forged study documents, he held an important position in a public institution, works in higher education institutions, and currently holds a high-ranking public office, the damage claimed until currently being over 640,000 lei, representing the gross allowances received from some employers, to be completed depending on the entire evidence to be administered in the case file.

Based on extensive journalistic investigations, it was discovered that the high official of the Romanian State, accused of falsifying his baccalaureate diploma, not only did not graduate from high school, but never held the position of deputy director at ORNISS, the institution that certifies civilians and military to access and manage state secrets (Sercan 2020, 1).

His appointment as President of ORNISS was categorized as “*the biggest system error (at least the only one known) that has occurred to date in Romania*”, the position temporarily held by Laurentiu Baranga being made after careful checks attesting to moral and legal probity of those who occupied it, and for 10 years he worked in ORNISS, being one of the officials with high positions in the state who had to guard the State precisely from the occurrence of fraud situations (Striblea 2020).

How did this absurd situation come about for the society in which we live.

In 2016, the Bucharest Court of Appeal definitively abolished Baranga’s baccalaureate diploma, bachelor’s degree, doctoral degree, but also other diplomas and certificates - a total of 19 documents. The motivation was unequivocal: “*The school documents found in the file of witness Baranga Laurențiu are false, based on a false baccalaureate diploma, so he did not meet the conditions to enroll and graduate from a faculty and, further, other courses or doctoral studies*” (Sercan 2020, 1).

In that case file, the court did not directly target the former head of ONPCSB - he was only a witness, but targeted the former rector of the University “Alexandru Ghica” in Alexandria, Teleorman County, accused of falsifying hundreds of educational documents.

The decision of the Court of Appeal was unequivocal: it annulled all the documents of Baranga on the basis of which he had built both his academic career and that of public administration. For four years, from the ruling of the Court of Appeal in June 2016 until Baranga was detained on October 10, no state institution seemed to know that his entire professional past was built on a big forgery (Sercan 2020, 1).

Moreover, the Prime Minister of Romania got on September 5 to sign his appointment to the highest position that a civil servant can hold - that of President with the rank of Secretary of State of an institution of strategic importance for the State Romanian: National Office for Prevention and Combating Money Laundering.

However, after the press reported extensively about Baranga’s appointment to ORNISS, about the fact that he obtained his baccalaureate degree at the age of 32, and the first job mentioned in his CV he occupied it at the age of 41, an invisible wheel of the system was set in motion. This wheel made the General Prosecutor's Office to notify themselves and open the case file, which will certainly reveal some of the most shocking information about the degree of complicity, passivity and even tolerance of the State in front of a case of widespread imposture.

The “Baranga case” once again highlights a phenomenon that is happening in Romania and sets the tone for the social process. It is the place where the political class, author and actor of the organized absurdity, evading the rule of law, norms and presents as normal an onerous way of access to public affairs (Rusu 2020).

The culture of secrecy, respectively of the state monopoly on sensitive information, is not a new one. As early as the second half of the eighteenth century, out of military and intelligence needs, General George Washington and other commanding officers of the Land Forces inscribed on specific documents *secret* or *confidential* in communications between commandments. Further, through the organizational measures taken, General Washington became the gray eminence that outlined in the years 1777-1778 the anti-British espionage system (Rusu 2020).

Among the first regulations regarding the field of classified information seem to be those adopted in 1912 by the War Department General Orders (USA), when the documents registered "*confidential*" became accessible only *to the officer to whom intrusted*. Here is also a fundamental principle, valid even today, the need to know. However, the activity acquires normed forms in the modern era and appears as a "response" to the establishment of the norms of access to public information, which also requires the maintenance of limited, controlled access on some of them (Rusu 2020).

Beyond the possible and sometimes revealed arbitrariness, the information that mattered should remain the prerogative of places that do not "spread dangers". Objectively justified censorship strives to act so as not to create vulnerabilities. Classified information that hides crimes, administrative errors, illegalities, etc. cannot be located here, a fact registered in the dedicated legal provisions, and similar provisions are also included in the legislation of other states (Rusu 2020).

To the average person, uninterested in the field, it may seem that classified information is only the subject of military confrontations, but this is not the case at all. For example, providing evidence that a person or organization is carrying out terrorist activities (we can replace the phrase *terrorist* with *drugs*, *counterfeiting money* or any other under the sign of a major criminal sanction) or supporting such organizations is, of course, a worthwhile job, but if the information is not classified so as not to reach anyone or to be found out without knowing who those people are, we may face situations where the life of that person is endangered, the necessary, legally, neutralization missions can easily fail, and in the event that another person holds such information, he will prefer to remain silent so as not to endanger his life (Rusu 2020).

Naturally and necessarily, it is necessary to classify the information obtained from sources that may, as a result of the provision of data, endanger the security of the source and/or the family. The domains that hold and convey classified information are diverse. Some may indicate the location, quantity and quality of resources of strategic importance. Others may refer to elements of special interest to the state. Archival legislation also has provisions requiring some documents not to be made public for several decades or even longer. Some historical documents can only be accessed on a special basis. Likewise, no one imagines that anyone and anytime can see all the cash flows of the country (Rusu 2020).

The information classification system is usually similar, especially when it comes to European countries. However, correspondence, equivalence, etc. are established through specific agreements. They are based, more than "*linguistic resonance*", on the level of harm that would result from the disclosure of information. There are also information classification systems that take into account specific association considerations (between states). An example is *the Traffic Light Protocol*, a system developed by G8 countries for the exchange of "sensitive information" between government agencies and corporations. This protocol has been accepted as a model for the exchange of reliable information by over 30 other countries. The protocol provides for four levels of information sharing for the management of sensitive information (red, amber, green and white).

In order to ensure a climate of mutual trust, States establish a standardized framework so as to provide guarantees to their own citizens as well as to international partners, and policies on classified information are subject to strict regulations adopted by each country.

As a rule, access to classified information is based on a specialized guarantee that the individual is physically, intellectually, morally and characteristically capable of doing so, without being blackmailable, so as not to become a vulnerability to information security and security status. The acceptance of the Designated Security Authority (DSA) records a “Full Exercise Capacity”, established over a period of time, for a certain level and for a certain category of information (national, EU, NATO, etc.). The one who receives a level of access to classified information cannot consult all the documents from that level, making available only those considered necessary to solve, usually punctually, a situation, according to the principle of the need to know (Rusu 2020).

In Romania, ORNISS has the quality of ADS, which exercises regulatory, authorization, evidence and control attributions in accordance with the provisions of Law no. 182/2002 on the protection of classified information, of the *National Standards for the protection of classified information in Romania*, approved by Government Decision no. 585/2002, and of the *Norms regarding the protection of the classified information of the North Atlantic Treaty Organization in Romania*, approved by the Government Decision no. 353/2002. To this end, ORNISS, among others, ensures compliance with national and NATO standards for the management of classified documents and approves the issuance of security certificates for access to national classified information.

The relations between access to public information and access to classified information are established by normative acts, so as to satisfy the priorities related to the rule of law and human rights versus priorities of state existence, as well as those related to protecting the life and integrity of persons who provide information! This requires specific classifications of information, which in Romania are regulated by Law no. 182 of April 12, 2002 on the protection of classified information. According to art. 1 of this Law, the purpose for which the Law was adopted is the protection of classified information and confidential sources that provide this type of information, and the protection of this information is done by establishing the national information protection system.

Through art. 7 (1) of Law no. 182/2002 on information protection, it was established that “Persons who will have access to information classified as state secret will be verified, in advance, regarding their honesty and professionalism, regarding the use of this information”. The requirement is in accordance with the international ones (EU and NATO) and is covered by the requirements of articles 157 - 160 of the *National Standards for the protection of classified information in Romania* (Rusu 2020).

According to art. 157 of these *National Standards*, the decision on approving the issuance of the security certificate/access authorization shall necessarily take into account the indisputable loyalty of the person, as well as the character, habits, relationships and discretion of the person, to provide certain guarantees established by the same *National Standards*.

At the same time, in art. 159 and 160 of the *National Standards* are listed a series of incompatibilities for the access of any applicant to state secret information, among which we mention: the existence of criminal records or contraventional sanctions for deeds that indicate criminal tendencies; current or past existence of physical or mental illness that may cause him or her to have deficiencies in discernment; current or past manifestation of immoral behaviors or deviations from behavior that may generate the risk of the person being vulnerable to blackmail or pressure; excessive consumption of alcoholic beverages or addiction to alcohol, drugs or other substances prohibited by law that cause addiction; the possibility of being subjected to pressure from relatives or close persons that could generate exploitable vulnerabilities by the intelligence services whose interests are hostile to Romania and its allies

Given that some of the political decisions also require the consultation of classified information, the countries of the world have provided access in the field for people from political staff. Specific for our country is the fact that the persons mentioned in Art. 7 (4) of Law 182/2002 (President of Romania, Prime Minister, ministers, deputies, senators, judges,

prosecutors, assistant magistrates of the High Court of Cassation and Justice) may have access to classified information “... *without fulfilling the procedures provided in par. (1) - (3), respectively to art. 28, based on internal procedures of the institutions of which they are part, endorsed by the Office of the National Register of State Secret Information [...]*”.

Thus, instead of an objective evaluation by a specialized structure (which may even determine membership in an anti-Romanian espionage network and deny access), it was preferred to “validate” those persons *guaranteed by the trust of those who voted for them* (as it results from the statement of reasons for the adoption of Art. 7 (4))! It seems that it can also be about trusting a party list, people who have never seen each other, etc. (Rusu 2020).

Beyond inequity, major vulnerabilities are created for the activity of information protection, and the provision of classified information of the persons covered by Art. 7 (4) becomes one that creates dangers for the security of the country and not only. There is a positive discrimination in favor of the mentioned persons which is also visible by comparison with Art. 21 (1) of the EU Charter of Fundamental Rights: “*Discrimination of any kind, based on sex, race, color, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, membership of a national minority, wealth, birth, disability, age or sexual orientation is prohibited.*” (Rusu 2020).

The situation created by the derogating provisions of Art. 7 (4) of Law 182 compared to those of Art. 16 (2) of the Constitution (No one is above the law), corroborated with the provisions of Art. 157-160 of G.D. 585/2002 (*National Standards on the Protection of Classified Information*) gives rise to security vulnerabilities. Also, Art. 14 of the European Convention on Human Rights provides for the prohibition of discrimination, but through the text of art. 7 of Law 182 discrimination is instituted in favor of the persons mentioned in par. (4) and a visible inequity and discrimination is created against persons who are obliged to go through the flow provided by national standards, as well as an infinite number of vulnerabilities to national security and cooperation frameworks (Rusu 2020).

Conclusions

Lex ferenda, it would be necessary first of all to modify the provisions that allow certain categories of persons to obtain access to classified information only through the prism of the official position held in the Romanian State, so that, even if they were entitled to such information, there should be however a procedure for verifying the loyalty, character and relations of each individual by an authorized body (perhaps SRI, perhaps another entity independent of the temporary political control of the country’s elected officials). In this way, a greater control would be ensured over the persons who come in direct contact with the classified information of the Romanian State and the positive discrimination we were talking about before would be eliminated, Romania being obliged to respect and apply with priority both provisions of the Universal Declaration of Human Rights, as well as the other treaties to which it is a party in accordance with art. 20 of the country’s Constitution.

Secondly, the people in charge of the key institutions of the Romanian State should be rigorously checked in such a way that the problems that came to light in the “Baranga case” are notified and reported in time, before these people be appointed to the respective position and cause serious image damage both to Romania and to those who appointed them to those positions.

Last but not least, an important role in preventing these vulnerabilities is played by both the intelligence services and the Prosecutor’s Offices, which should work effectively with the information they have or obtain during specific investigations, especially when these forgeries are also proven by the courts as it happened in the “Baranga case”, being unimaginable that a character who used a whole series of forgeries in his academic career could not be stopped in time from the criminal activity that he knowingly carried out for so many years and based on which he obtained significant illegal income from public and private institutions in Romania.

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