

Press release issued by the Registrar

Chamber judgment
Not final¹

[Andreescu c. Roumanie](#) (application no. 19452/02)

**UNWARRANTED CONVICTION FOR REMARKS CONCERNING THE AGENCY
MANAGING THE INTELLIGENCE SERVICE'S ARCHIVES**

Unanimously

Violation of Article 6 § 1 (right to a fair trial)
Violation of Article 10 (freedom of expression)
of the European Convention on Human Rights

Principal facts

The applicant, Gabriel Andreescu, is a Romanian national who was born in 1952 and lives in Bucharest. He is a well-known human rights activist in Romania and a founding member of the Romanian Helsinki Committee as well as various non-governmental organisations. Mr Andreescu is also a senior lecturer in ethics and political science and a regular contributor to a number of publications. During the communist period he was placed under house arrest for criticising the regime and participating in peaceful protest actions.

The applicant was among those who campaigned for the introduction of Law no. 187/1999 between 1989 and its enactment in 1999. That Law gives all Romanian citizens the right to inspect the personal files held on them by the *Securitate* (the Romanian intelligence service under the former regime) and, with regard to civil society in general, allows access to information of public interest relating to persons in public office who may have been *Securitate* agents or collaborators. A public agency, the National Council for the Study of the Archives of the *Securitate* (*Consiliul Național pentru Studierea Arhivelor Securității*, CNSAS) is responsible for the application of Law no. 187, which sparked considerable political debate and ongoing media interest.

In 2000 Mr Andreescu submitted two requests to the CNSAS: one to be allowed access to the intelligence file on him and the other seeking to ascertain whether or not the members of

¹Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

the Synod of the Romanian Orthodox Church had collaborated with the *Securitate*. He received no reply.

In 2001 the applicant organised a press conference to voice his concern about the effectiveness of the remedy afforded by the 1999 Law and in particular his suspicions regarding the links to the former regime of A.P., a member of the college of the CNSAS. The applicant made reference, among other things, to some of A.P.'s past activities. His remarks received widespread media coverage.

A.P. made a criminal complaint against the applicant, accusing him of insult and defamation. In a judgment of 13 July 2001 the Bucharest District Court acquitted the applicant on the ground that the substantive and intentional elements of the offences had not been made out. The court observed that the value judgments expressed by the applicant, which were not insulting, had not overstepped the limits of acceptable criticism of public figures, that they had been made in the context of a particularly intense debate on a matter of public interest and that the applicant had merely voiced suspicions in all good faith.

When A.P. appealed to the Bucharest County Court on points of law, the court heard the pleadings of counsel for the applicant and his opponent but did not hear any evidence from the applicant, who was present at the hearing. In a judgment of 29 October 2001 the applicant was ordered to pay a criminal fine of 5,000,000 Romanian lei (ROL) together with ROL 50,000,000 in compensation for non-pecuniary damage. The court ruled that the applicant had not succeeded in demonstrating the truth of his assertion that A.P. had collaborated with the *Securitate*; a certificate issued by the CNSAS on 12 June 2001 stated that A.P. had not collaborated. No reference was made to the findings of the first-instance court in favour of the applicant's acquittal.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained about his conviction for defamation in criminal and civil proceedings as a result of the remarks he had made at a press conference on the subject of the remedy afforded by Law no. 187/1999. Under Article 6 § 1 (right to a fair trial), he complained that the appellate court had found him guilty without hearing evidence from him, after he had been acquitted by the first-instance court.

The application was lodged with the European Court of Human Rights on 29 March 2002.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), **President**,
Elisabet **Fura** (Sweden),
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Ineta **Ziemele** (Latvia),
Luis **López Guerra** (Spain), **Judges**,

and also Santiago **Quesada**, **Section Registrar**.

Decision of the Court

Article 6 § 1

The County Court, acting with full jurisdiction, had gone beyond a fresh interpretation as to the law and had reviewed the facts of the case, re-examining the existence of the essential elements of the offence of defamation. After overturning the first-instance judgment acquitting the applicant, it had found the latter guilty of defamation without hearing evidence from him in person, despite the fact that he had been present at the hearing. In the circumstances, the Court considered that the appellate court had been required to hear evidence from Mr Andreescu, even in the absence of an express request from him, or to at least afford him the opportunity of adding to the conclusions of his counsel, particularly since he had displayed an interest in the trial from the outset.

Accordingly, in view of the applicant's conviction without evidence being taken from him in person and especially after he had been acquitted at first instance, the Court held that there had been a violation of Article 6 § 1.

Article 10

The interference by the authorities with the applicant's freedom of expression had been prescribed by law – the provisions of the Criminal Code on defamation and those of the Civil Code governing liability in tort – and had pursued the legitimate aim of protecting A.P.'s reputation.

The applicant's speech had been made in the specific context of a nationwide debate on a particularly sensitive topic of general interest, namely the application of the law concerning citizens' access to the personal files kept on them by the *Securitate*, enacted with the aim of unmasking that organisation's nature as a political police force, and on the subject of the ineffectiveness of the CNSAS's activities. In that context, it had been legitimate to discuss whether the members of that organisation satisfied the criteria required by law for holding such a position.

The applicant's remarks had been a mix of value judgments and factual elements. Mr Andreescu had alerted his audience to the fact that he was voicing suspicions rather than certainties; the Court noted that those suspicions had been supported by references to A.P.'s conduct and to undisputed facts such as his membership of the transcendental meditation movement and the *modus operandi* of *Securitate* agents. The applicant had acted in good faith in an attempt to inform the public. In participating in the criminal proceedings against him and providing evidence the applicant had reaffirmed his good faith. Furthermore, the remarks had been made orally at a press conference, giving the applicant no opportunity of rephrasing, refining or withdrawing them.

Lastly, the County Court had paid no attention to the context in which the remarks in question had been made, the interests at stake or the fact that the applicant had been acquitted at first instance. It had not given "relevant and sufficient" reasons for concluding that the applicant had damaged A.P.'s reputation and for convicting him. Furthermore, the Court noted that the particularly high level of damages – representing more than 15 times the average salary in Romania at the relevant time – could be considered as a measure apt to deter the media and opinion leaders from fulfilling their role of informing the public on matters of general interest.

As the interference with the applicant's freedom of expression had not been justified by relevant and sufficient reasons, the Court held that there had been a violation of Article 10.

Article 41

Under Article 41 (just satisfaction), the Court held that Romania was to pay the applicant 3,500 euros (EUR) in respect of pecuniary damage, EUR 5,000 for non-pecuniary damage and EUR 1,180 for costs and expenses.

The judgment is available only in French. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its [website](#).

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***The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*