

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Applications nos. 13003/04, 43826/05 and 837/06
Gabriel CATALAN
against Romania

The European Court of Human Rights (Third Section), sitting on 12 March 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges,*
Valeriu Griţco, *substitute judge,*

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above applications, lodged on 29 December 2003, 16 November and 23 December 2005 respectively,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Gabriel Catalan, is a Romanian national who was born in 1970 and lives in Bucharest. He was represented before the Court by Ms E. Crângariu, a lawyer practising in Bucharest.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Background information

3. The applicant is a historian who in 1999-2000 had access to the archives kept by the Romanian Intelligence Service (SRI) concerning the files kept by the former political police. He had access to these archives on the basis of a research permit issued by SRI. It appears that he studied mainly files concerning church leaders and that he was also allowed to make copies of certain documents.

2. Facts related to application no. 13003/04

4. On 1 September 2000 the applicant started working as a counsellor at the National Council for the Study of the Former Political Police (*Securitate*) archives (CNSAS). This organisation had as its main task the study of the files that the Securitate kept, with a view to identifying those who had collaborated with the political police, but also to provide access for private individuals to the files kept on them.

5. On 15 September 2000 the applicant signed a confidentiality agreement, which obliged him to keep all the information obtained by him as a result of his work for CNSAS confidential.

(a) Disciplinary sanctions

6. By an order of 5 March 2001 the applicant received a reprimand for displaying a disrespectful attitude towards his colleagues. By an order of 9 March 2001 the applicant's salary was cut by 10% for three months as a disciplinary measure, because he had been absent from work on one working day without justification.

7. The applicant contested the two disciplinary sanctions before the courts. His complaint was dismissed as unfounded in a final decision of the High Court of Cassation and Justice on 15 April 2004. The court found that the orders imposing disciplinary sanctions were lawful and had been adopted in accordance with procedural requirements.

(b) Dismissal

8. On 22 March 2001 an article was published in the national newspaper *Libertatea* concerning the Patriarch of the Romanian Orthodox Church. The article indicated that there was a national debate concerning the opportunity to study the files on religious leaders in Romania, held by the former political police, the *Securitate,* and that the Prime Minister had indicated that he did not agree with this initiative. It was further indicated that a

document had been found in the *Securitate* archives which stated that the Patriarch was known to have had homosexual relations. The article further described how the Orthodox Church in Romania has consistently been opposed to decriminalising homosexual acts, even though the Council of Europe has issued several recommendations in this respect. Nevertheless, it appeared that a document found in the SRI archives described the current Patriarch as a person who had been involved in the Legionary movement, had taken part in the destruction of a synagogue. Further, there was a reference to the applicant, a researcher, making the said document available to the newspaper. According to the applicant, he gained access to this document on the basis of a research permit for the SRI archives. He further stated that the "document... proved that T. [the patriarch] had collaborated with the *Securitate*. The *Securitate* made use of information they had concerning his homosexual tendencies, his history with the Iron Guards and his desire to pursue a career, in order to make use of him as they wished."

9. Following the publication of this article, on the same day several leading politicians, including the President and Prime Minister of Romania, made public statements rejecting the allegations against the head of the church and the attacks on an institution which they said should be respected.

10. On the same date, CNSAS issued a press release stating that it had started the process of reviewing the political police files on high-ranking church officials, but that the process was at an early stage and therefore they could not take any position as to the allegations contained in the article in question. It was further explained that the applicant's statements were based on information that he had obtained before he became an employee of CNSAS. The press release further stated that the applicant had been in breach of his duties as a public servant by indirectly involving CNSAS's name in a personal action, for which CNSAS bore no responsibility.

11. Later that day the applicant was summoned to appear before the Disciplinary Board of the CNSAS and was questioned about the article. The applicant submits that he was not informed that he was to appear before the Disciplinary Board, but only that he was being invited for a discussion. He was asked to explain in what capacity he had made the statement quoted in the article, when he had obtained access to the documents relied upon, and if he considered that he had breached the obligations imposed on him by the legislation regulating the activity of CNSAS.

12. The applicant asked for time to answer those questions. The next day the President of CNSAS declared on TV that the applicant's employment contract was to be terminated.

13. On 26 March 2001 the applicant was asked to submit written explanations and he inquired whether he was still an employee of CNSAS, as there was no point in submitting those explanations if his contract had already been terminated, as had been reported by the media. The same day,

the CNSAS College issued an order dismissing the applicant for acting in a manner prejudicial to the reputation of his employer.

14. On 26 March 2001 some of the applicant's former colleagues wrote a letter of protest to CNSAS College, in which they indicated that the applicant had been requested by a newspaper to state his opinion as a researcher and not as an employee of CNSAS. They further indicated that CNSAS statements distancing the organisation from the applicant's allegations in the newspaper amounted to a malicious interpretation, and the organisation's attitude to the applicant amounted to a breach of the right to freedom of expression and the basic principles of research activities, which aim to uncover the historical truth.

15. On 12 April 2001 the applicant lodged a complaint against the dismissal order. He submitted that the order was unlawful, as he had not been informed that a disciplinary investigation had been initiated against him, and that the order breached his right to freedom of expression as a historian and Romanian citizen as well as his right and duty as a historian to impart information which was in the public interest. He further indicated that his statement included in the article did not make any reference to the fact that he was an employee of CNSAS, as he had made the statement in his capacity as a historian. He further indicated that the information conveyed by him had not been discovered while he worked for CNSAS but previously, while he was doing research on his own and he had a research permit for the SRI archives.

16. On 12 November 2001 the Bucharest Court of Appeal dismissed his action as unfounded. The court of appeal found that that the applicant had breached the regulations set up by his employer, that the dismissal order had been issued in accordance with the legal procedure, and that there was no evidence that his right to freedom of expression had been breached, as it was his duty as a public servant to moderate his public statements, which in any event did not have any real support.

17. The applicant lodged an appeal on points of law, complaining that the first-instance court had not provided any reasons for the conclusions it had reached.

18. He further indicated that although his employer was obliged by law to produce in court originals of all the documents pertaining to the dismissal order, they had failed to do so, and the copies they submitted were incomplete and contained blank spaces. He reiterated his arguments in support of a plea of nullity of the dismissal order. He further complained about the various statements made by CNSAS even before the official dismissal order had been issued, indicating that the broadcast and print media had already announced his dismissal before any formal decision had been taken. He further insisted that the article in question did not make any reference to the fact that he was an employee of CNSAS and that even his employer acknowledged that the information he imparted had not been

received while he was working for CNSAS. He emphasised that the confidentiality agreement signed by him referred to information obtained by virtue of his employment with CNSAS and therefore did not cover information obtained previously. He considered that his dismissal was a sanction for expressing his opinion as a historian and that he had merely exercised his right to reveal the historical truth about a public person who had assumed the role of arbiter of moral values.

19. His appeal was dismissed in a final decision of the Supreme Court of Justice delivered on 27 June 2003. The appeal court found that the first-instance judgement was well reasoned, that the applicant's right to defence had been respected, that enough evidence had been adduced, and that the dismissal order complied with all legal requirements.

20. On 27 May 2002 the file concerning the Patriarch was transferred from the SRI to the CNSAS. In 2008, by means of an emergency ordinance, the Government restricted the access of the public to the files concerning the church leaders.

3. Facts related to application no. 43826/05

21. On 12 March 2003 the applicant made a request to the Romanian Broadcasting Company (RBC), asking for a copy and a transcript of the television programme 'Scurt pe doi' (*Brief talk*) broadcast on 29 March 2001 on the main state television channel, as well as of news referring to CNSAS or to the Patriarch for the period 22-31 March 2001 and after 7 July 2001. The applicant also asked for access to various documents concerning the functioning and set-up of RADOR, a Romanian press agency. As he did not receive a reply to his request, he lodged a judicial action against RBC on the basis of Law no 544/2001 on access to information of public interest.

22. In a final decision of 19 May 2005 the Bucharest Court of Appeal dismissed his action, considering that the information that he required, namely copies of transcripts of specific TV shows, was subject to the rules on intellectual property and did not enter into the sphere of information in the public interest. The court of appeal further held that the applicant could ask for this evidence to be adduced in the proceedings concerning the complaint for defamation lodged by the applicant against the director of SRI (see chapter 4, below). In respect of the information request concerning the functioning of RADOR, the court of appeal found that this information had already been supplied to the applicant while the proceedings were pending.

4. Facts related to application no. 837/06

23. On 29 March 2001 R.T., the director of SRI at the time, was invited on to a chat show broadcast on the main Romanian state television channel. According to the applicant, during this programme R.T. stated that the documents revealed to the press by the applicant had been stolen by the

latter from the SRI archives. On the days which followed, print media reported on this interview. For example, in its 31 March/1 April 2001 edition, *Cotidianul*, a national newspaper, printed on its front page that R.T. was continuing his war against CNSAS, accusing its employees of stealing files and papers from the files of SRI archives and using the applicant's case as an example. Similar reports were published in other newspapers.

24. On 30 May 2001 the applicant, who did not have a recording of the television programme, but considered that R.T.'s statements during it defamed him, lodged a criminal complaint, joining it with a civil action, against the latter.

25. The case was quashed twice before being referred for investigation to the prosecutor attached to the High Court of Cassation and Justice. It appears that during this stage of the proceedings R.T. submitted a transcript of the chat show in question.

26. On 22 December 2004 the prosecutor dismissed the applicant's complaint as unsubstantiated. It was held that R.T. had stated on the television programme that information on the content of political police files had been leaked by employees of CNSAS and that he was only disputing the applicant's entitlement to release such information and suspected him of obtaining access to the information by illegal means. Nevertheless, taking into account that the applicant had released that information to the media and that it was beyond doubt that he could only have acquired that information by illegal means, there appeared to be no reason why he should feel defamed by the impugned statements.

27. In a first-instance judgment of 4 April 2005 the High Court of Cassation and Justice, in a panel of three judges, dismissed his complaint against the prosecutor's decision as unsubstantiated. It held that in 1999 the applicant had received authorisation from SRI to study its archives and that during this time he also studied files concerning the patriarch. Information from these files was later published in a national newspaper, which expressly stated that the information had been provided by the applicant.

28. Checking the transcript of the chat show submitted by R.T., the court found that R.T. had not made any specific reference to the applicant, but that it was the chat show moderators who had mentioned his name. R.T. could not be held responsible for the way the print media reported later on the programme. Therefore, it concluded that R.T. had not made any direct statement concerning the applicant and could not be held liable for defamation.

29. The applicant lodged an appeal on points of law, indicating that he had constantly questioned the authenticity of the transcript and that he had asked that the television station be ordered to provide an original copy of the transcript of the programme. He further indicated that he had tried to obtain a copy of it, but that his request had been refused (see chapter 3, above). He further indicated that he had submitted statements by two

witnesses who had watched the show and who confirmed that R.T. had accused him of stealing the document. He indicated that the first-instance court had ignored all his submissions in this respect.

30. In a final decision of 4 July 2005 the High Court of Cassation and Justice, in a panel of nine judges, dismissed his appeal. It held in this respect that all the evidence indicated that R.T. had not made any specific comments relating to the applicant, and that the prosecutor and the first-instance court had correctly determined the factual situation and established that no criminal act could be imputed to R.T.

COMPLAINTS

A. Complaints related to application no. 13003/04

31. The applicant complained under Article 6 of the Convention that the domestic courts reviewing his complaint against the dismissal decision had not delivered reasoned decisions and had not ruled on his requests for evidence. He further submitted that the proceedings were not fair because the domestic courts had given preference to his employer, a public institution.

32. Relying on Articles 9 and 10 of the Convention, he complained that he had been sanctioned for exerting his right to freedom of expression, despite the fact that he had not made the impugned statements in his capacity as an employee of CNSAS, but in his capacity as a researcher and historian. He further submitted that his dismissal was also the consequence of pressure exerted by high-ranking Government officials and the SRI.

33. Relying on Article 14 of the Convention, the applicant complained that he had been discriminated against on account of his statements as a historian.

34. Relying on Article 1 of Protocol No. 1 to the Convention, he complained that he had lost his income as a public servant and that it was now impossible for him to continue working as a researcher. He also complained that the sanction applied to him in the form of a reduction in salary for three months amounted to a breach of his right to property.

B. Complaints related to application no. 43826/05

35. The applicant complained under Article 6 § 1 of the Convention that the proceedings against the Romanian Broadcasting Company were unfair, that the domestic courts had not addressed all his arguments and that they had interpreted the national legislation wrongly.

36. He complained that the refusal to provide him with the information he had requested amounted to a breach of Article 10 of the Convention.

37. He complained under Article 14 of the Convention that he had been discriminated against.

C. Complaints related to application no. 837/06

38. The applicant complained under Article 6 § 1 of the Convention that the proceedings were unfair in so far as the defendant was not properly summoned, the prosecutor did not take any investigative measures and the judges failed to respond to his procedural requests and in particular to his repeated request that the master copy of the transcript of the television programme be supplied to the case file.

39. Relying on Articles 9 and 10 of the Convention, he complained that the statements given by the defendant on national television were defamatory and had caused him great material and non-pecuniary damage.

40. He complained under Article 14 of the Convention that he had been discriminated against.

41. Relying on Article 1 of Protocol No. 1 to the Convention, he complained that he had been deprived of the income to which he would have been entitled if he had continued working as a public servant and a researcher.

THE LAW

A. Application no. 13003/04

42. The applicant complained under Articles 6, 10 and 14 of the Convention and under Article 1 of Protocol No. 1 to the Convention that he had been dismissed for making use of his right to freedom of expression and that the ensuing proceedings against the dismissal order were unfair because of several procedural irregularities. He further complained that following the disciplinary sanctions he had lost the income as a civil servant. He also considered that he had been subjected to discriminatory treatment.

43. The Court considers that it cannot, on the basis of the case file, determine the admissibility of the complaint raised under Article 10 and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

44. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that all the

other complaints raised under this application do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

45. It follows that these complaints must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

B. Application no. 43826/05

46. The applicant complained under Article 10 of the Convention that by dismissing his request for access to information, the domestic courts had violated his right of access to information. Relying on Articles 6 and 14 of the Convention, the applicant further complained that the proceedings concerning his request for access to information were unfair and that he had been discriminated against.

47. The Court considers that it cannot, on the basis of the case file, determine the admissibility of the complaint raised under Article 10 and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

48. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that all the other complaints raised by the applicant under this application do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

49. It follows that these complaints must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Application no. 837/06

50. The applicant complained under Article 6 of the Convention that the proceedings concerning his action for defamation were unfair because he was not allowed to adduce evidence and because several other procedural irregularities.

51. The applicant also complained under Article 9 and 10 of the Convention that the statements made by R.T. on national television were defamatory and damaging to his reputation.

52. Finally, he complained that Articles 14 of the Convention and 1 of Protocol No. 1 to the Convention had been breached.

53. The Court recalls that it has already been accepted that a person's right to protection of his or her reputation is encompassed by Article 8 as being part of the right to respect for private life (see *Pfeifer v. Austria*, no. 12556/03, § 35, ECHR 2007-XII, *Gurgenidze v. Georgia*, no. 71678/01, § 40, 17 October 2006, *Petrina v. Romania*, no. 78060/01, §§ 27-29 and 34-36, 14 October 2008). Therefore, the Court considers that the complaint

under Articles 9 and 10 falls within the ambit of Article 8 of the Convention.

54. That being so, the Court considers that it cannot, on the basis of the case file, determine the admissibility of the complaints raised under Article 6 of the Convention concerning the possibility to adduce evidence and under Article 8 concerning the applicant's right to protection of his reputation. Therefore it is necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

55. Furthermore, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that all the other complaints raised by the applicant do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

56. It follows that these complaints must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the complaints raised by the applicant in respect of applications nos. 13003/04 and 43826/05 under Article 10 (dismissal for allegedly having exerted his right to freedom of expression and restriction of access to information), and in respect of application no. 837/06 under Articles 6 and 8 of the Convention (the possibility to adduce evidence and the allegedly failure to protect his reputation);

Declares the remainder of the applications inadmissible.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President