



## Rejection of civil defamation suit, brought by shareholder of Tuzla Airport management company, did not breach Convention

The case concerned the rejection of a civil action that the applicants had brought for the protection of their reputation against a number of journalists, on account of statements made in 2014 during several television programmes and in a newspaper article. The applications were lodged by the company Regional Air Services S.R.L, which is responsible for the management of Tuzla Airport in Romania, and by Mr Ivaşcu, who is, through another company, one of its two shareholders.

In today's **Chamber** judgment<sup>1</sup> in the case of [Regional Air Services S.R.L. and Ivaşcu v. Romania](#) (applications nos. 76549/17 and 76756/17) the European Court of Human Rights, unanimously:

- **Held that there had been no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, in respect of Mr Ivaşcu's complaint.** The Court found that the domestic courts had duly weighed in the balance Mr Ivaşcu's right to respect for his private life, on the one hand, and the journalists' right to freedom of expression, on the other, having assessed them in the light of the criteria developed by the Court's case-law.

- **Declared the applicant company's complaint inadmissible, considering it manifestly ill-founded.** The Court noted in particular the domestic courts' finding that the applicant company had not suffered any damage. In the absence of sufficient evidence to prove the direct impact of the statements about the company's business that had been made during the programmes or in the article, the Court could not speculate as to the existence of such damage.

### Principal facts

The applications were lodged by Regional Air Services S.R.L. (a company incorporated under Romanian law with its head office in Tuzla, Romania), and by Mr Dorin Ivaşcu (a Romanian national who was born in 1954 and lives in Bucharest).

The applicant company is responsible for the management of Tuzla Airport (Romania). Mr Ivaşcu is, through another company, one of its two shareholders.

In 2014 several television programmes and a newspaper article looked at, in particular, the creation of a new customs post at Tuzla Airport, the maintenance of two aircraft involved in air accidents and Mr Ivaşcu's alleged links with the *Securitate* (former secret police).

In 2015, arguing that these statements were defamatory, the applicant company and Mr Ivaşcu brought a civil action before Bucharest County Court against the journalists concerned and claimed damages.

In 2016 the court dismissed the action, holding that the statements at issue were not of such a nature as to cause damage to the applicants even though they were "relatively aggressive" in content. The applicants appealed.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In 2017 the Bucharest Court of Appeal dismissed the applicants' appeal, finding that they had not proved that they had suffered any damage. It confirmed the public interest of the statements regarding the opening of a customs post at Tuzla Airport and the circumstances of the air accidents in question. It considered that the national importance of the issues discussed was decisive for identifying the permissible limits of freedom of expression. It took the view that the connotation given to the word "securist" in the TV programmes in question had not been deliberately defamatory.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), the applicants complained that the national authorities had failed to fulfil their positive obligations to secure respect for their private life and that their image had been tarnished by the media campaign.

The applications were lodged with the European Court of Human Rights on 19 October 2017.

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

Yonko **Grozev** (Bulgaria), *President*,  
Faris **Vehabović** (Bosnia and Herzegovina),  
Iulia Antoanella **Motoc** (Romania),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Pere **Pastor Vilanova** (Andorra),  
Jolien **Schukking** (the Netherlands),  
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 8 \(right to respect for private and family life\)](#)

#### ***Complaints raised by Mr Ivaşcu (application no. 76756/17)***

The Court noted the domestic courts' finding that the issues discussed in the TV programmes and newspaper article at issue were of general interest. It also observed that the journalists had not written about any intimate or personal aspects of Mr Ivaşcu's private life, referring only to his professional activity.

The journalists had stated that he had been connected to the *Securitate*, the former political police under the communist regime, and had used the term "securist" in that context. The Court had previously held that to accuse someone of having been a member of the *Securitate* was, in the specific context of Romania, a serious matter and that it was for the domestic courts to investigate whether there was a factual basis for such a claim.

The domestic courts had examined whether there was a sufficient factual basis for the assertion that Mr Ivaşcu had been connected to the *Securitate*. They had examined the applicant's career in a procedure that allowed him to make representations. They had taken into consideration the posts he had held abroad during the communist regime and had expressed the view that only persons with links to the *Securitate* could have held such posts. Furthermore, the Court of Appeal had stated that the question of Mr Ivaşcu's collaboration with the *Securitate* had already been discussed by the media before the facts of the present case had arisen. In this connection, the Court noted that Mr Ivaşcu had not provided any details before it and had not disputed the fact that this matter had already been discussed by the media. It also noted that, in reaching their conclusion, the domestic courts had relied on the fact that it was well known in Romanian society that individuals who had

held posts abroad during the communist regime had been connected with the *Securitate*. The Court could not question this conclusion, as the domestic courts were in principle better placed than an international court to pass judgment on local needs and contexts.

The Court noted that the domestic courts had taken into consideration a certificate from the CNSAS<sup>2</sup> that Mr Ivaşcu had produced during the judicial proceedings, but that they had examined it in the light of the other evidence in the case-file and had based their decisions more on the details about his professional career during the communist regime and on information already in the public domain. In carrying out a comprehensive examination of the evidence and providing a detailed explanation of their conclusion that there was a sufficient factual basis for the claim that the applicant had had links with the *Securitate*, the domestic courts had acted within their margin of appreciation.

Lastly, as regards any repercussions of the journalists' statements, the Court noted the domestic courts' finding that Mr Ivaşcu had not suffered any damage, in particular as a result of the public debate, which had taken place prior to the relevant events, concerning his links with the *Securitate*.

Consequently, the Court considered that the domestic courts had duly weighed in the balance Mr Ivaşcu's right to respect for his private life, on the one hand, and the journalists' right to freedom of expression, on the other, having assessed them in the light of the criteria developed by the Court's case-law. In view of the margin of appreciation enjoyed by the Contracting States, it saw no serious reason to substitute its own opinion for that of the Romanian courts. It could not therefore be said that the domestic courts, by refusing to allow Mr Ivaşcu's action, had failed to fulfil the positive obligation of the Romanian State to protect his right to respect for his private life within the meaning of Article 8 of the Convention. There had not therefore been any violation of this provision.

***Complaints raised by applicant company (application no. 76549/17)***

The Court took the view that it was not necessary to address the question whether the reputation of a commercial company fell within the notion of "private life" for the purposes of Article 8 § 1 of the Convention for the following reasons.

It noted the domestic courts' finding that the article and programmes had dealt with matters of general interest and were newsworthy for Romanian society. They had also considered that the opening of a customs post in Tuzla was even a matter of national security because of the proximity of the border with Ukraine. The Court saw no reason to call into question the conclusion thus reached.

The applicant company had argued that the manner in which the information had been disseminated had tarnished its reputation. On this point the Court noted the domestic courts' conclusion that no such damage could be established. It reiterated that it drew a distinction between damage to the commercial reputation of a business, which had no moral dimension, and damage to the reputation of an individual, which concerned his or her status and implicitly his or her dignity. In the present case, in the absence of sufficient evidence of any direct impact on the applicant company's business as a result of the statements made during the broadcasts or in the article, the Court could not speculate as to whether such damage had indeed been sustained. Consequently, the national authorities had not overstepped their margin of appreciation and had not failed to fulfil their positive obligation to secure the applicant company's right to effective respect for its reputation. The applicant company's complaint was thus manifestly ill-founded and had to be rejected.

*The judgment is available only in French.*

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<sup>2</sup> National Council for the study of *Securitate* archives

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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.