



Dismissal of civil servant who disclosed information to the press without his employer's permission: no violation of his right to freedom of expression

In today's Chamber judgment¹ in the case of [Catalan v. Romania](#) (application no. 13003/04) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the dismissal of a civil servant (Mr Catalan), who worked for the National Council for the Study of *Securitate* Archives (CNSAS), for disclosing information for the publication of an article claiming that a religious leader had collaborated with the *Securitate* (the former political police under the communist regime). Law no. 187/1999 had conferred on the CNSAS the role of informing the public about collaboration with the *Securitate* but the organisation had not yet stated its official position on the matter. Mr Catalan challenged his dismissal, but the domestic courts found that, by expressing himself publicly, he had breached his duty of discretion as a civil servant.

The Court held that, having regard to the duties and responsibilities of civil servants and having weighed up the various interests at stake, the interference with Mr Catalan's right to freedom of expression (his dismissal) had pursued two legitimate aims (to prevent the disclosure of confidential information and to protect the rights of others) and was necessary in a democratic society.

In particular, the Court took the view that Mr Catalan, who was a civil servant, was subject to a duty of discretion inherent in his post, and that he should therefore have shown greater care and particular moderation in his remarks. The Court also explained that the duty of discretion could not be negated by the public interest in matters arising from the application of Law no. 187/1999 or by access to the *Securitate* archives. On the contrary, the risk of manipulation of public opinion on the basis of a small number of documents extracted from a file added more weight to the duty of loyalty towards the CNSAS, whose role and function was to provide the public with reliable and credible information. The Court was therefore of the opinion that the CNSAS had been legitimately entitled to consider that the public position taken by its employee on a sensitive subject within his field of research had irretrievably compromised the relationship of trust that had to be maintained between the organisation and its official.

Principal facts

The applicant, Gabriel Catalan, is a Romanian national who was born in 1970 and lives in Bucharest.

On 1 September 2000 Mr Catalan was recruited to a position of adviser in the Archives Department by the National Council for the Study of *Securitate* Archives ("the CNSAS"). On 15 September 2000 he signed a confidentiality agreement.

On 22 March 2001 the national daily *Libertatea* published an article signed by Mr Catalan's brother, entitled "In his youth, T. [the patriarch of the Romanian Orthodox Church then in office] was probably gay". A heading at the top of the page read: "The archives of the former *Securitate* accuse the head of the Orthodox Church of 'unnatural practices' and collaboration with the former political

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.

police". The article reproduced, among other things, facsimile extracts from two unpublished documents from 1949 and 1957 in the *Securitate* archives: an internal summary note stating that T. had been a member of the "Legion" (an anti-Semitic fascist movement between the two world wars) and a document containing the transcript of an interview between a *Securitate* officer and an informer who recounted that T. was gay. The article explained that these documents had been made available to the newspaper by Mr Catalan, in his capacity as historian.

On 22 March 2001, in the morning, the CNSAS issued a press release in which it stated that it disapproved of Mr Catalan's allegations. The latter was then invited by his superiors to explain the circumstances of the publication. They wanted to know, in particular, in what capacity he had communicated this information to the press, how he had gained access to the material, and his opinion as to whether he had complied with the applicable legislation - but he refused to answer. In addition, he was summoned by the CNSAS Disciplinary Panel, which dismissed him for misconduct, finding that he had undermined the prestige and authority of the CNSAS. That decision took effect on 26 March 2001. Mr Catalan unsuccessfully challenged his dismissal in the Bucharest Court of Appeal and his appeal to the Supreme Court of Justice was dismissed in June 2003.

After his dismissal, Mr Catalan became a teacher in the national education system and continued to publish articles in the press.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Catalan complained about his dismissal on account of the opinions he expressed in the newspaper article of 22 March 2001.

The application was lodged with the European Court of Human Rights on 29 December 2003.

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

Ganna **Yudkivska** (Ukraine), *President*,
Vincent A. **De Gaetano** (Malta),
Faris **Vehabović** (Bosnia and Herzegovina),
Egidijus **Kūris** (Lithuania),
Iulia **Motoc** (Romania),
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

Article 10

The Court found that Mr Catalan's dismissal constituted interference with the exercise of his right to respect for his freedom of expression; that this interference was prescribed by law – namely by Article 45 (g) of the CNSAS rules governing the relationship of loyalty and trust between the CNSAS and its officials; and that it pursued two legitimate aims: to prevent the disclosure of confidential information and to protect the rights of others (in this case those of the CNSAS).

As to whether the interference was necessary in a democratic society, the Court first reiterated that the civil service required of its staff a duty of loyalty and discretion, and that certain manifestations of the right to freedom of expression that might be legitimate in other contexts were not legitimate in the workplace. It further noted that the present case raised a separate issue from those relating to whistleblowing by employees about unlawful conduct or acts witnessed at work, involving the disclosure of information or documents of which they had knowledge in the course of their duties.

As to the duty of discretion of civil servants and the risk of disclosure of confidential information, the Court found as follows:

First, Mr Catalan's interest in informing the public about the collaboration of religious leaders with the *Securitate* was confronted with another public interest: the interest in the CNSAS fulfilling its own role of informing the public on the question of collaboration with the *Securitate*, a competence conferred on it by Law no. 187/1999.

Secondly, after his dismissal, Mr Catalan was able to bring before the domestic courts an employment law dispute and submit any arguments he considered useful and relevant. The disciplinary procedure conducted by his employer had also been adversarial in nature.

Thirdly, Mr Catalan's allegations, being published in a national "sensationalist" newspaper, had not participated in an academic debate but were intended more for the "entertainment" press. Mr Catalan had also made his remarks as if they reflected certainty, before the CNSAS could verify the documents at issue and confirm or deny the suspicions of collaboration concerning T. In addition, Mr Catalan had not warned the public that he was making a subjective assessment of the facts and documents available to him.

The Court therefore took the view that Mr Catalan, who was a civil servant at the time of publication of the disputed article, was subject to a duty of discretion inherent in his post, and that he should therefore have shown greater care and particular moderation in his remarks. The Court also explained that the duty of discretion could not be negated by the public interest in matters arising from the application of Law no. 187/1999 or by the access to the *Securitate* archives. On the contrary, the risk of manipulation of public opinion on the basis of a small number of documents extracted from a file added more weight to the duty of loyalty towards the CNSAS, whose role and function was to provide the public with reliable and credible information.

As to the protection of the rights of others, the Court found as follows:

Firstly, the Court observed that, in view of the statutory powers conferred on the CNSAS, the sensitive nature of the question of collaboration with the former political police required that it be approached with caution and critical judgment. In the present case, Mr Catalan had chosen to take the place of the CNSAS and to disclose information falling within his employer's remit. The article had been published at a time when the CNSAS had not yet stated its official position. The Court found that in acting as he did Mr Catalan had undermined his employer's authority and shaken public trust in that institution.

Secondly, although Mr Catalan had not mentioned his status as a CNSAS employee in the article, he must have been aware of the impact of the publication on his employer. The press, which knew that he was a CNSAS official, had widely reported his remarks about T.'s alleged collaboration with the *Securitate*. His statement could therefore easily have been perceived by the public as the official position of the CNSAS or, at least, as emanating from that institution.

Thirdly, the domestic courts had held that, by expressing himself publicly, Mr Catalan had breached his duty of discretion as a civil servant and that, in disciplining him, the CNSAS had acted within the scope of its relevant powers. The Court found that this interpretation of the duties deriving from the status of civil servant was not unreasonable, as Mr Catalan had publicised information which, although obtained prior to his recruitment by the CNSAS, had fallen within the remit conferred on his employer by Law no 187/1999. The Court was therefore of the view that it had been in the interest of the CNSAS to dissociate itself from its official in order to preserve public confidence in this institution.

The Court therefore found that the reasons given by the CNSAS and the domestic courts to conclude that Mr Catalan had undermined the rights of that institution, and to discipline him, were relevant and sufficient. Moreover, the CNSAS had been legitimately entitled to consider that the public

position taken by its employee on a sensitive subject within his field of research had irretrievably compromised the relationship of trust that had to be maintained between the organisation and its official. Noting that Mr Catalan had been able to rejoin the civil service as a teacher after his dismissal, the Court concluded that the dismissal had not been a disproportionate sanction.

Accordingly, having regard to the duties and responsibilities of civil servants, the Court, after weighing up the various interests at stake, found that the interference with Mr Catalan's freedom of expression had been necessary in a democratic society. **It held that there had been no violation of Article 10 of the Convention.**

The judgment is available only in French.

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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.