



## The withdrawal of a journalist's accreditation to consult the *Securitate* archives did not breach the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Gafiuc v. Romania](#) (application no. 59174/13) 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 withdrawal of the accreditation granted to a journalist to study the archives of the *Securitate* in order to conduct research into sports activities under the communist regime. In June and July 2009 the journalist published several articles in which he disclosed information about certain well-known sports figures.

The Court noted that the obligation on the applicant to protect the personal data held by the public authorities had been foreseeable, and that the withdrawal of accreditation in the event of failure to comply with the strictly scientific use of the documents had been provided for in the regulations of the National Council for the Study of *Securitate* Archives (CNSAS).

The Court reiterated that the freedom of expression secured by Article 10 was not unlimited. It could be restricted in order to protect the rights and freedoms of others.

Thus, the Court considered it reasonable and legitimate for the CNSAS to have ruled that the applicant's failure to comply with his legal obligations had irremediably compromised the relationship of trust that ought to exist between that institution and the persons who were granted authorisation to consult its files. In the Court's view, the withdrawal of accreditation had not been disproportionate.

### Principal facts

The applicant, Justin Paul Gafiuc, is a Romanian national who was born in 1975 and lives in Bucharest. At the relevant time, Mr Gafiuc was a sports journalist with the newspaper *Gazeta Sporturilor*. The case concerns the withdrawal of the accreditation granted to him to study the archives of the *Securitate* in order to conduct research into sports activities under the communist regime.

In 2005 the National Council for the Study of *Securitate* Archives ("the CNSAS") authorised Mr Gafiuc to access its archives as a researcher for the purpose of studying sport in Romania during the communist era. In June and July 2009 Mr Gafiuc published six articles, in which he disclosed information about certain well-known sports figures.

On 21 July 2009 the management board of the CNSAS withdrew the applicant's accreditation, on the grounds that in some of the articles Mr Gafiuc had failed to comply with the legal obligation to protect the private and family life of the persons referred to in *Securitate* documents. Mr Gafiuc requested the board to reconsider its decision, without success.

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).

On 5 October 2009 Mr Gafiuc brought an administrative action in the Court of Appeal against the CNSAS's decision. The court dismissed the application as being unfounded and held that Mr Gafiuc had failed to comply with his obligations under Article 28 § 3 of Government Emergency Ordinance no. 24/2008 on citizens' access to their personal files and the disclosure (*deconspirarea*) of *Securitate* documents, and under Rule 39 §§ 1, 2, 5 and 7 of the CNSAS Rules. Mr Gafiuc appealed against that judgment.

In a final judgment of 14 March 2013 the High Court dismissed the applicant's appeal. It confirmed that the summary records contested by Mr Gafiuc constituted administrative acts, that Mr Gafiuc had not duly protected the private and family life of the persons referred to in the *Securitate* files and that the decision to withdraw his accreditation had a legal basis in the general provisions of Law no. 677/2001.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Gafiuc alleged that the withdrawal of the accreditation enabling him to access the CNSAS archives had constituted an infringement of his Convention rights.

The application was lodged with the European Court of Human Rights on 13 September 2013.

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),  
Branko **Lubarda** (Serbia),  
Carlo **Ranzoni** (Liechtenstein),  
Georges **Ravarani** (Luxembourg),  
Jolien **Schukking** (the Netherlands),

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

## Decision of the Court

### Article 10

The Court noted that it was clear from the CNSAS's summary record of 21 July 2009 and the Court of Appeal's judgment of 20 September 2011 that the decision to withdraw the accreditation had been based on Article 28 §§ 1 and 3 of Government Emergency Ordinance no. 24/2008 and on Rule 39 §§ 1, 2, 5 and 7 of the CNSAS Rules. Both the management board of the CNSAS and the High Court had also pointed out that the applicant had breached the provisions of General Law no. 667/2001 on the protection of individuals with regard to the processing of personal data. The Court noted that the provisions in the Government Emergency Ordinance and the CNSAS Rules imposed an obligation on individuals who were granted authorisation to access the *Securitate* archives to protect the private and family life of persons who had been persecuted by the State security bodies, in accordance with the provisions of Law no. 667/2001. The CNSAS regulations also provided for the withdrawal of accreditation from persons who used the documents made available to them for purposes that were not strictly scientific. Law no. 667/2001 ensured general protection of all the personal data held by the State authorities.

The Court saw no reason to call into question the findings of the domestic courts. In addition, it noted that section 5 §§ 1, 2 and 3 of Law no. 677/2001 indicated that personal data could only be processed with the express and unambiguous consent of the person concerned.

In consequence, the Court considered that the obligation on the applicant to ensure protection of the personal data held by the public authorities had been foreseeable and that the withdrawal of accreditation in the event of failure to comply with the instruction on strictly scientific use had been provided for in the CNSAS Rules.

The Court concluded that the interference had been “prescribed by law”.

With regard to the aim of the interference, the Court noted that the applicant in the present case had requested access to the *Securitate* archives in order to gather information for the purpose of historical research. The documents studied contained information about individuals who had been placed under surveillance by the political police or who had collaborated with it. The Court considered it reasonable for a public authority with responsibility for managing files containing information about private individuals to provide guarantees in its regulations, in order to protect the fundamental rights of those individuals. Furthermore, Law no. 677/2001 protected individuals with regard to the processing and free movement of personal data.

Accordingly, in view of the legal obligation on all public authorities to protect the personal data held by them, the Court considered that the Government were entitled to invoke the legitimate aim of the protection of the rights of others, although the persons concerned had not themselves lodged complaints.

With regard to the necessity of the interference, the Court noted that the applicant had disclosed in press articles material about individuals who had collaborated with the political police by providing information about various sports figures. The material disclosed to the public described actions relating to the private sphere or the moral integrity of those persons. Moreover, the applicant had named the individuals in question. The information did not relate to athletic performance, had not been made public by the persons concerned, and was not otherwise accessible to the public, who had no means of verifying its accuracy. Those persons were entitled to expect, both from the authorities and from the applicant who had been granted access to the information, protection of their right to respect for their private life.

The Court reiterated that the freedom of expression secured by Article 10 was not unlimited. It could be restricted in order to protect the rights and freedoms of others.

In the present case, the applicant had chosen not to carry out an academic study of the information obtained from the *Securitate* archives, but to disclose it in “raw” form, without assessing its relevance in the light of the declared aim of his research: sport in Romania under the communist regime. Rather than filtering this information, he had revealed to the public aspects of the private life of sports figures, information that could in no way contribute to a debate of public interest.

The applicant had been able to apply to the national courts to challenge the withdrawal of his accreditation. Those courts had found that he had breached his obligation to protect the private life of the persons persecuted by the *Securitate* and that he had departed from the aim of the research for which accreditation had been granted. The consequence of the applicant’s failure to comply with his legal obligations had been the withdrawal of his accreditation. The Court noted, however, that this had not prevented him from continuing to work as a journalist.

Thus, the Court considered it reasonable and legitimate for the CNSAS to have ruled that the applicant’s failure to comply with his legal obligations had irremediably compromised the relationship of trust that ought to exist between that institution and the persons who were granted authorisation to consult its files. In the Court’s view, the withdrawal of accreditation had not been disproportionate.

The Court considered that the interference with the applicant’s right to freedom of expression had been supported by relevant and sufficient reasons and that the authorities had struck a fair balance between the competing interests, thus acting within their margin of appreciation.

It followed 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.