European Court of Human Rights: Andreescu v. Romania

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The applicant, Gabriel Andreescu, is a well-known human rights activist in Romania. He was among those who campaigned for the introduction of Law No. 187, which gives all Romanian citizens the right to inspect the personal files held on them by the Securitate (the former Romanian intelligence service and secret police). The law also 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 *Consiliul Naţional pentru Studierea Arhivelor Securităţii* (National Council for the Study of the Archives of the Securitate - CNSAS) is responsible for the application of Law No. 187. In 2000, Andreescu submitted two requests to the CNSAS: one to be allowed access to the intelligence file on him personally and the other seeking to ascertain whether or not the members of the Synod of the Romanian Orthodox Church had collaborated with the Securitate. He received no reply and organised a press conference at which he criticised A.P., a member of the CNSAS, making reference to some of A.P.'s past activities. Andreescu's remarks on A.P.'s past received widespread media coverage.

A.P. made a criminal complaint against Andreescu accusing him of insult and defamation. After being acquitted in first instance, Andreescu was ordered by the Bucharest County Court to pay a criminal fine together with a high amount in compensation for non-pecuniary damage. The appeal Court ruled that he had not succeeded in demonstrating the truth of his assertion that A.P. had collaborated with the Securitate. Furthermore, a certificate issued by the CNSAS had meanwhile stated that A.P. had not collaborated.

Relying on the European Convention of Human Rights and Fundamental Freedoms, Andreescu lodged an application with the European Court of Human Rights concerning his conviction for defamation. Although the interference by the Romanian authorities with Andreescu's freedom of expression had been prescribed by law and had pursued the legitimate aim of protecting A.P.'s reputation, the European Court considered that the sanction was a violation of Article 10 of the Convention. The Court held that Andreescu'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

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been legitimate to discuss whether the members of that organisation satisfied the criteria required by law for holding such a position. Andreescu's remarks had been a mix of value judgments and factual elements and he had especially alerted public opinion 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 with the transcendental meditation movement and the modus operandi of Securitate agents. According to the Court, Andreescu had acted in good faith in an attempt to inform the public. As his remarks had been made orally at a press conference, he had no opportunity of rephrasing, refining or withdrawing them. The European Court was also of the opinion that the Romanian court, by convicting Andreescu, had paid no attention to the context in which the remarks at the press conference had been made. It had certainly not given "relevant and sufficient" reasons for convicting Andreescu. The Court noted furthermore that the 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 Andreescu'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. It also found a breach of Article 6 § 1 of the Convention (right to fair trial) due to Andreescu's conviction without evidence being taken from him in person, especially after he had been acquitted at first instance. The Court held that Romania was to pay Andreescu EUR 3,500 in respect of pecuniary damage, EUR 5,000 for non-pecuniary damage and EUR 1,180 for costs and expenses.

Arrêt de la Cour européenne des droits de l'homme (troisième chambre), affaire Andreescu c. Roumanie, requête n°19452/02 du 8 juin 2010

Judgment by the European Court of Human Rights (Third Section), case of Andreescu v. Romania, No. no. 19452/02 of 8 June 2010

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