

802

27.10.2009

Press release issued by the Registrar

Chamber judgment**Haralambie v. Romania (application no. 21737/03)**

SIX YEARS TO ACCESS A PERSONAL FILE DRAWN UP BY THE SECRET SERVICES DURING THE COMMUNIST PERIOD

Violation of Article 6 (right to a fair trial)

Violation of Article 8 (right to respect for private life and family life)

of the European Convention on Human Rights

Under Article 41 (just satisfaction), the Court awarded the applicant 4,000 euros (EUR) in respect of pecuniary damage and EUR 2,000 in respect of non-pecuniary damage.

(The judgment is available only in French)

Principal facts

The applicant, Mr Nicolae Haralambie, is a Romanian national who was born in 1930 and lives in Bucharest.

He claimed that he continued to suffer the consequences of the persecution to which he was subjected after the communist regime was established in 1945. At the time this had taken the form, among other things, of the confiscation of agricultural land belonging to his mother. Following a final decision against him by a county court in 2003 concerning a request for restoration of those plots of land, Mr Haralambie asked the National Council for the Study of the Archives of the former Secret Services of the Communist Regime - the Securitate - ("the CNSAS"), whether he had been subjected to surveillance measures in the past.

On 28 March 2003 he was informed that a file in his name did exist but that, since the archives were held by the Romanian Intelligence Service, it was necessary to wait for his file to be transferred by that Service.

On 19 October 2005 a file in the applicant's name was transmitted to the CNSAS by the Romanian Intelligence Service.

On 19 May 2008 the CNSAS indicated that the date of birth in the file did not correspond to that of the applicant and that checks were therefore necessary. A few days later the CNSAS invited the applicant to come and consult the file created in his name by the Securitate, which he did on 23 June 2008. He was given a copy of the file, which bore the annotations "opened on 12 April 1983" and "the file was microfilmed on 23 July 1996".

A note indicated that Mr Haralambie had commented unfavourably on politics and on the economic situation. An undertaking by the applicant, dating from 1979, to collaborate with the Securitate had also been included, with official comments to the effect that he was evading his security work and that he would be placed under investigation and that his correspondence would be monitored.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 and Article 1 of Protocol No. 1, the applicant complained about the proceedings concerning the restoration of the land that had belonged to his mother. Under Article 8, he complained about the obstacles to his right of access to the personal file created on him by the former secret services.

The application was lodged with the European Court of Human Rights on 30 May 2003.

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

Josep Casadevall (Andorra), President,
Elisabet Fura (Sweden),
Corneliu Bîrsan (Romania),
Boštjan M. Zupančič (Slovenia),
Alvina Gyulumyan (Armenia),
Egbert Myjer (the Netherlands),
Luis López Guerra (Spain), judges,

and also Stanley Naismith, Deputy Section Registrar.

Decision of the Court

Article 6 § 1 – Article 1 of Protocol No. 1

The fact that Mr Haralambie's action concerning the location of the disputed land had been dismissed by the courts without an

examination of the merits of the case, on the ground that the administrative authorities had sole jurisdiction in that area, had impaired the very essence of his right of access to a court. Accordingly, the Court concluded unanimously that there had been a violation of Article 6 § 1. Having regard to this finding, the Court found it unnecessary to examine the cases under Article 1 of Protocol No. 1.

Article 8

The Court reiterated the vital interest for individuals who were the subject of personal files held by the public authorities to be able to have access to them and emphasised that the authorities had a duty to provide an effective procedure for obtaining access to such information.

A Romanian law, amended in 2006, had established an administrative procedure for access to the Securitate files, which set the time-limit for transfer of archives at 60 days. However, it was not until six years after his first request – and thus well beyond this time-limit – that Mr Haralambie was invited to consult his file. The legislative amendment in 2006 indicated the need for speed in such a procedure, a fact recognised by the Romanian authorities, especially since, in this particular case, the applicant was already elderly.

Mr Haralambie's file had been available since 1996 in the form of microfilms, and had been in the possession of the CNSAS since October 2005. The Court considered that neither the quantity of files transferred nor shortcomings in the archive system justified a delay of six years in granting his request. As the authorities had not provided Mr Haralambie with an effective and accessible procedure to enable him to obtain access to his personal files within a reasonable time, the Court concluded unanimously that there had been a violation of Article 8.

This press release is a document produced by the Registry; the summary it contains does not bind the Court. The judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Céline Menu-Lange (tel : + 33 (0)3 90 21 58 77) or
Stefano Piedimonte (tel : + 33 (0)3 90 21 42 04)
Tracey Turner-Tretz (tel : + 33 (0)3 88 41 35 30)
Kristina Pencheva-Malinowski (tel : + 33 (0)3 88 41 35 70)
Frédéric Dolt (tel : + 33 (0)3 90 21 53 39)

Nina Salomon (tel + 33 (0)3 90 21 49 79)

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.

1 Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.