



EVIL LIBRARIES

"A story of human guilt, human weakness, sometimes courage."

ECtHR [Antoneta Tudor v. Romania](#) - Article 8 European Convention on Human Rights (right to respect for private and family life)

Roundup by Marc de Werd

This week's case of [Antoneta Tudor v. Romania](#) (French only) concerns the applicant's inability to obtain access to all the documents kept by the former secret services under the communist regime (the Securitate) relating to her deceased father. [The Securitate](#) was the popular term for the Departamentul Securității Statului, the secret police agency of Communist Roumania. Founded on August 30, 1948, with help from the Soviet NKVD, the Securitate was abolished in December 1989, shortly after President Nicolae Ceaușescu was ousted. The Securitate was, in proportion to Romania's population, one of the largest secret police forces in the Eastern bloc. In the 1980s, the Securitate launched a massive campaign to stamp out dissent in Roumania, manipulating the country's population with vicious rumors (such as supposed contacts with Western intelligence agencies), machinations, frameups, public denunciations, encouraging conflict between segments of the population, public humiliation of dissidents, toughened censorship and the repression of even the smallest gestures of independence by intellectuals.

The chief investigator for the [National Council for the Study of the Securitate Archives](#) called the archive "an evil library". "You can find anything," [she says](#). "It's a story of human guilt, human weakness, sometimes courage." The Council however has been accused of being toothless. According to [Mircea Vasilescu](#), "former communist functionaries, in new democratic guise, still purport to be protecting "national interest".

"From the start, the functioning of the Council encountered a major obstacle: a clause in its constitution (inserted by a senator later unmasked as having collaborated with the *Securitate*) mentioned the "political police". Accordingly, the Council could reveal only the cases of collaboration with the communist secret services with a "political police" connection, as opposed to cases that were about "defending the national interest". We are in a land of metaphors: in practice, it was very difficult to distinguish "political" from other forms of collaboration with the *Securitate*."

Back to Ms Tudor's case - In 2001 she obtained access from the National Council for the Study of the Archives of the *Securitate* to the files concerning her father, who had died several years previously in suspicious circumstances while he was under investigation by the *Securitate*. She applied unsuccessfully to the Council and to the Romanian Intelligence Service for access to two further files concerning him. In 2003 and 2004 the actions brought by Ms Tudor seeking access to the documents were dismissed by the Bucharest Court of Appeal and the High Court of Cassation and Justice respectively. In 2011, following requests for information made by the Romanian Government's Agent, the Council informed the applicant that it was in possession of one of the two files, and invited her to come and consult it.

The Court found that the hindrance of her right of access to the documents amounted to a violation of Ms Tudor's right to respect for private and family life. That does not surprise because the Court decided earlier that Romanian authorities violated Article 8 of the Convention because it had not fulfilled its positive obligation to provide an effective and accessible procedure enabling the applicants to have access to information that was relevant for the applicants [Haralambie](#) and [Jarnea v. Romania](#) (all in French). Last year in the case of [Joanna Szulc v. Poland](#) (13 November 2012) the Court summarised its case law on this subject:

"84. (-) in addition to the primarily negative undertakings in Article 8 of the Convention, there may be positive obligations inherent in effective respect for private life. In determining whether or not such a positive obligation exists, it will have regard to the fair balance that has to be struck between the general interest of the community and the competing interests of the individual concerned, the aims in the second paragraph of Article 8 being of a certain relevance (-).

85. With regard to access to personal files held by the public authorities, with the exception of information related to national security considerations (-), the Court has recognised a vital interest, protected by the Convention, of persons wishing to receive information necessary to know and to understand their childhood and early development (-), or to trace their origins, in particular the identity of one's natural parents (-) or information concerning health risks to which interested persons were exposed (-).

86. In those contexts, the Court has considered that a positive obligation arose for the respondent State to provide an "effective and accessible procedure" enabling the applicant to have access to "all relevant and appropriate information" (-).

87. In *Haralambie v. Romania*, the Court extended this obligation to information about a person's records created by the secret services during the period of a totalitarian regime (-). The Court confirms this approach in the present case. In respect of a person, like the applicant, who sought full access to her file created by the communist secret services with a view to refuting any allegation of her supposed collaboration with those services, the State should secure an "effective

and accessible procedure" before the authority currently holding those files. It is important to underline that the procedure referred to above should enable an interested party to have access to all relevant and appropriate information which would allow that party to effectively counter any allegations of his or her collaboration with the security services (see, *mutatis mutandis*, in the context of lustration proceedings (-). The procedure should equally provide for a possibility to correct any erroneous entries in the relevant files."

Just as it did previously the Court concludes in this week's *Tudor v. Romania* case that the Romanian state did not fulfil its positive obligation to provide an effective and accessible procedure, enabling the applicant to have access to information that was relevant. It held that the state:

"39. (-) n'a pas satisfait à l'obligation positive qui lui incombait d'offrir à la requérante une procédure effective et accessible lui permettant d'avoir accès dans un délai raisonnable à l'ensemble des informations recueillies à propos de feu son père par l'ancienne Securitate et qui se trouvaient encore en possession des autorités publiques."