

## APPLICATION N° 26932/95

Louis ANDRE v/FRANCE

DECISION of 7 April 1997 on the admissibility of the application

---

**Article 13 of the Convention** : *Action to have erroneous information in a police file deleted (France). application to the CNIL and the Administrative Court.*

**Article 26 of the Convention** : *In France, regarding allegations of an infringement of the right to respect for private life due to a refusal to amend data in police files, an application to the Administrative Court for judicial review, or for damages, in respect of the decisions of the CNIL and the Intelligence Service can constitute an effective remedy.*

*In France, regarding allegations of an infringement of the right to respect for private life due to the alleged disclosure to unauthorised third parties of information held by the police, filing a criminal complaint with the public prosecutor or a complaint and concurrent application for damages with the senior investigating judge can constitute an effective remedy*

---

### THE FACTS

The applicant, a French citizen, born in 1936, is an engineer and lives in Paris.

The facts, as set out by the parties, may be summarised as follows.

On 17 February 1977 the applicant was dismissed by his firm

In 1982, the applicant, who was then a Belgian citizen, acquired French nationality

Despite sending off over a thousand job applications, the only employment he succeeded in finding was as a computer sales consultant from 1 August 1987 to July 1988, when he was dismissed

The applicant claims that, while job hunting, he was informed unofficially by various people that discouraging answers had been received to enquiries about him, which explained why the employers he had contacted had rejected his applications. The applicant also noticed that, according to certain articles in the press, companies recruiting managerial staff were increasingly investigating candidates, using private detectives or recruitment agencies, which were being given access for this purpose to files held by the Intelligence Service, a police department governed by the Ministry of the Interior.

The applicant therefore took steps to obtain access to the Intelligence Service's file on him.

On 7 January 1993, the applicant was allowed to consult certain documents in the Intelligence Service's file on him.

In the documents he was able to consult the applicant found unexplained erroneous information about himself. The documents in question indicated that he had been prosecuted in 1969 for fraud and in 1971 for violent and threatening behaviour. The applicant denies these assertions.

Furthermore, one document indicated that he had attempted to procure witnesses to give false evidence in a case against Paris University V. The applicant claims that it was in fact the director of an institute attached to that university who had attempted to bribe his own witnesses in a case which the applicant won and in which he was awarded one hundred thousand francs in damages by the *Conseil d'Etat* in a judgment of 27 May 1987.

The applicant set out his observations in a written note which was attached to the Intelligence Service's file on 19 February 1993.

The applicant wrote to the National Commission for Data Protection (*Commission nationale de l'informatique et des libertés* - "CNIL"), an independent administrative authority, on 10 January 1993, challenging the above erroneous information.

On 5 March 1993, the Director of the CNIL informed him that a member of that commission had checked the relevant files pursuant to section 39 (on the processing of data relating to state security, defence and public safety) of the Law of 6 January 1978. The director also pointed out that the *gendarmerie* did not have a file on him and that the Intelligence Service had allowed him to consult his file and attach his written observations on 7 January and 19 February 1993.

The Director of the CNIL ended his letter to the effect that the CNIL's enquiries were therefore complete.

On 27 May 1993, the applicant contacted the CNIL again

In a letter of 17 June 1993, the Director of the CNIL referred the applicant to his letter of 5 March 1993, reminding him of the guarantees provided by sections 34 and 39 of the Law of 6 January 1978 and specifying that a commission member had checked the files held by the criminal investigation police (*police judiciaire*) and the French Intelligence Service. He confirmed that the inquiries were therefore complete

In October 1994, the applicant wrote to the Prime Minister complaining about his situation. The Prime Minister informed him on 2 November 1994 that he had forwarded his letter to the Minister of the Interior. On 21 November 1994, the Minister of the Interior informed him that he had referred his complaint to the Head of the National Police. On 7 December 1994, the latter reminded the applicant that the matter was closed, as he had been able to consult the Intelligence Service's file and have his observations inserted

## COMPLAINTS

1 The applicant maintains that the information in the Intelligence Service's file on him is accessible to private detectives and persons hired by large companies or recruitment agencies to enquire into the background of potential candidates. He also claims that the information about him was deliberately distorted in order to injure him, resulting in a disastrous personal situation which he describes as inhumane and degrading. He invokes Article 3 of the Convention.

2 The applicant also considers that preventing him from finding employment by using such methods is tantamount to depriving him of his freedom. He invokes Article 5 of the Convention.

3 The applicant complains that he was unable to have the erroneous information deleted from the Intelligence Service's file. He invokes Article 8 of the Convention.

4 The applicant considers, lastly, that he has no means of having the erroneous information in the Intelligence Service's file rectified. He invokes Article 13 of the Convention.

## THE LAW

1 The applicant complains about an infringement of his right to respect for his private life, alleging that files on him contain erroneous information which he cannot have rectified and which has damaged his career. He invokes Article 8 of the Convention which is worded as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The respondent Government raise a preliminary objection that domestic remedies have not been exhausted. They claim that the applicant could have applied to the administrative courts for judicial review, or indeed for damages, in respect both of the CNIL's decisions and those of the Intelligence Service. The Government produce decisions of the *Conseil d'Etat* which declare admissible applications relating to files held by the Intelligence Service and review decisions relating to the disclosure and rectification of information contained in files.

As regards the alleged disclosure to private companies of information in these files, the Government note that this practice is prohibited under sections 226(17) and 226(22) of the Criminal Code. Accordingly, they consider that the applicant could have filed a complaint with the public prosecutor, or indeed a complaint and concurrent application for damages with the senior investigating judge.

The Government contend, in the alternative, that there was no interference with the right to respect for the applicant's private life, since the information was merely stored and not disclosed to unauthorised third parties. In any event, the Government consider that files such as these, which are strictly regulated by law, are created in furtherance of a legitimate aim and are necessary in a democratic society.

The applicant considers that the remedies referred to by the Government were ineffective and would only have exacerbated the mental torture to which he has been subjected for eighteen years. He considers that there has been an interference with his right to respect for his private life which has been confirmed by certain events.

The Commission recalls that it may only deal with the matter after domestic remedies have been exhausted, in accordance with the provisions of Article 26 of the Convention.

In the instant case, the Commission notes that there were several means by which the applicant could have brought his complaints before the domestic courts: he could have applied to the Administrative Court for judicial review of the decisions of the CNIL or the Intelligence Service, or, if applicable, have brought an action for damages; further, as the disclosure of confidential information to unauthorised third

parties constitutes a criminal offence, the applicant could either have filed a criminal complaint with the public prosecutor or a complaint and concurrent application for damages with the senior investigating judge

Accordingly, the Government's objection that domestic remedies have not been exhausted must be allowed, since the applicant has failed to exercise the remedies available to him under French law

It follows that this complaint must be rejected for failure to exhaust domestic remedies, pursuant to the provisions of Articles 26 and 27 para 3 of the Convention

2 The applicant also complains that he is unable to have the erroneous information in his file deleted. He invokes Article 13 of the Convention, which provides

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government note that the applicant was able to consult the entire file held by the Intelligence Service and that the CNIL intervened on his behalf. Additionally, the Government recall that the applicant had effective remedies before the administrative courts, but failed to use them.

The applicant considers that he still has no means of obtaining redress.

The Commission notes that two remedies were available to the applicant: firstly, an application to an independent administrative authority, the CNIL, secondly, an application for judicial review, or even for damages (given the alleged loss) to the Administrative Court.

It follows that this complaint must be rejected as manifestly ill-founded, in accordance with the provisions of Article 27 para 2 of the Convention.

3 The applicant alleges, lastly, a violation of Articles 3 and 5 of the Convention.

In so far as the allegations have been supported and the Commission is competent to examine them, it has not found any appearance of a violation of the rights and freedoms guaranteed by the above-mentioned provisions.

It follows that this part of the application must be rejected as manifestly ill-founded, in accordance with Article 27 para 2 of the Convention.

For these reasons, the Commission, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE**