

LAW

on the access to the personal file and the disclosure of the Securitate as a political police*

During the communist dictatorship was exerted, especially through the organs of the state Securitate as a political police, a permanent terror against the country's citizens, their fundamental rights and liberties. This justifies the access to the personal file and the disclosure of the Securitate as a political police, under the provisions of the present law.

Art. 1. – (1) Any Romanian citizen or foreign citizen who, after 1945, acquired Romanian citizenship, has the right of access to the personal file drawn up by the Securitate organs, as a political police.

This right is exercised, on request, and consists of a direct study of the file, the remittance of copies of the file's documents, and of those documents providing evidence about the contents of the file.

(2) At the same time, the person, as subject of a file from which it results that he/she had been followed by the organs of the state Securitate, shall have the right, on request, to find out the identity of the Securitate agents and of the collaborators who contributed with information at the completion of that file.

(3) From the rights stipulated in par. (1) and (2) benefit the surviving spouse, and the relatives of the deceased person up to the second degree included, except the case when the deceased decided otherwise.

(4) The exercising of the rights stipulated in par. (1) – (3) is done personally or by a representative with a special and authenticated proxy.

* The Law No. 187/7 December 1999 – Law on the access to the personal file and the disclosure of the Securitate as a political police – was published in „Monitorul Oficial“ (Official Gazette of Romania), Part I, Nr. 603 of 9 December 1999.

Art. 2. – In order to ensure the right of access to information of public interest, any Romanian citizen residing in the country or abroad, as well as the written and audio-visual press, the political parties, the non-governmental organizations legally established, the public authorities and institutions have the right to be informed, on request, in connection with the position of agent or collaborator of the Securitate organs, as a political police, of the persons who occupy or aspire to be elected or appointed to the following dignities or offices:

- a) President of Romania;
- b) deputy or senator;
- c) member of the Government, secretary of state, under-secretary of state, secretary-general, deputy secretary-general in the Government and in the ministries, director in a ministry and those holding comparable positions;
- d) secretaries-general and deputy secretaries-general of the Chambers of Parliament, directors of the departments of the two Chambers, presidential and state advisers;
- e) prefect, sub-prefect, secretary-general and director in the prefecture, secretary-general of the county council and of the General Council of the Municipality of Bucharest, mayor, vice-mayor, county counsellor, counsellor in the General Council of the Municipality of Bucharest, the heads of decentralised services in the counties;
- f) the director and his deputies in the Romanian Intelligence Service, the Foreign Intelligence Service, the Protection and Guard Service and the Special Telecommunications Service;
- g) chief police inspector, deputy chief inspector, general manager, manager, departmental head and head clerk at central and county level, as well as the other officers and non-commissioned officers employed by the Ministry of the Interior.
- h) the persons holding management positions, at national and county level, in the Financial Guard and in the customs organs;
- i) the judges and assistant magistrates at the Supreme Court of Justice and the Constitutional Court, the public prosecutors at the Public Prosecutor's Office attached to the Supreme Court of Justice, the judges, public

prosecutors and prime clerks of the court at the civil and military public prosecutor's offices, the lawyers and the notaries public;

- i) the diplomatic and consular personnel, except those holding technical or administrative positions;
- j) the president, vice-presidents, judges, counsellors of accounts, financial prosecutors and the prime clerk of the Court of Audit;
- k) president and division president at the Legislative Council, members of the Legislative Council, persons with management positions in the State Property Fund, presidents and members of the Competition Council, of the National Securities Commission, of the National Commission for Statistics, and of the National Agency for Cadastre, Geodesy and Cartography;
- l) the ombudsman and his deputies;
- m) member in the National Council of Radio and Television;
- n) member in the boards of directors of the public radio and television corporations, employer, director, chief editor, editor in the public or private television, radio or written press services, political analysts and the comparable categories, as the case may be;
- o) the governor of the National Bank of Romania, the president, vice-president and members of the board of directors in the banking sector;
- p) member, corresponding member, honorary member or secretary of the Romanian Academy;
- r) chancellor, vice-chancellors, scientific secretary of the university senate, and deans in the state and private higher education institutes;
- s) chief or deputy inspector, specialized inspector at the county school inspectorate, headmaster at a high school or a school complex, as well as director in cultural institutions at national, county and municipal level;
- ș) president, vice-president, secretary-general, and the other members of the statutory leading organs of the political parties, at national and county level, or of a non-governmental organization and those holding comparable positions;

t) the military and civil personnel with management positions in the Ministry of National Defence and in the general staff of the categories of the army forces, as well as the commanders of units or the equivalents;

ț) the hierarchs and heads of the religious cults recognized by law, up to the level of priest inclusive, as well as the comparable ones from the parishes in the country and abroad;

u) the president, vice-president and secretary-general of employers' associations and trade-union organizations, representative at national level, and those holding comparable positions, as well as the other members of the respective executive management;

v) manager of the post and telecommunications department, heads of the post and telecommunications section, heads of telephone exchange;

x) persons in management positions from the county health departments, from the public health departments of the counties and the Municipality of Bucharest, from the College of Physicians of Romania, from the health insurance offices, the hospital managers, as well as the psychiatrists, pathologists, and forensic experts;

y) persons with management positions, including that of member of the board of directors from the self-managed public companies, national and trading companies dealing with activities of public or strategic interest, as well as members of the management of foundations, associations and subsidiaries which operate on the territory of Romania, including their founders;

z) the persons holding the title of revolutionary or fighter with special merits in the 1989 December Revolution.

Art. 3. – (1) The persons aspiring to be elected or appointed to one of the dignities or positions provided under Art. 2 are obliged to make an authentic statement, on his/her own responsibility, according to the penal law, regarding the belonging or non-belonging, as an agent or collaborator, to the Securitate organs as a political police. Before the election or appointment, a verification *ex officio* shall be done for the persons who aspire to be elected or appointed to the dignities or positions provided

under Art. 2 letters a) – c); likewise, the verification is also compulsory for the persons who were elected or appointed to those dignities or public positions, including those who are in the exercise of the respective dignities or positions on the date of the coming into force of the present law, in case this was not done during the candidature.

(2) The statement provided under par. (1) shall be submitted together with the application for appointment or the statement of acceptance of candidature.

(3) Verifications shall cease if the person who is in the exercise of one of the dignities or positions listed in Art. 2 resigns, or, as the case may be, gives up the candidature or the appointment within 15 days from the date of communication or request of these verifications.

(4) For the candidates, the verification is made, compulsorily, in the order of their presence on the list. The results of the verification shall be immediately published in the Official Gazette of Romania and shall be put at the disposal of the mass media.

(5) With a view to the verification, the Central Electoral Bureau, or the local one, as the case may be, shall transmit within 24 hours the lists containing the candidates for the College of the National Council for the Study of the Securitate Archives, which shall send the result within 7 days.

Art. 4. – (1) The requested verifications shall be made by respecting the following priorities:

a) persons standing for the election, in the order provided under Art. 2;

b) persons who are to be appointed to one of the positions and dignities provided under Art. 2, at national level;

c) persons who are to be appointed in one of the positions and dignities provided under Art. 2, at local level.

(2) Considering the above mentioned priorities, by the specific functioning regulation of the National Council for the Study of the Securitate Archives shall give an order of priorities for all the positions and dignities provided under Art. 2.

Art. 5. – (1) By political police are understood all those structures of the Securitate, set up for the establishment and maintenance of the totalitarian communist power, as well as for the suppression or restriction of the fundamental human rights and liberties.

(2) In the sense of the present law, agent of the Securitate organs, as a political police, is any person who had the position of operative worker of these organs during 1945–1989, undercover inclusive.

(3) In the sense of the present law, collaborator of the Securitate organs, as a political police, is the person who:

a) was remunerated or otherwise compensated for his activity in this capacity;

b) held a conspiratorial house or a meeting house;

c) was a resident of the Securitate, in the sense of the present law;

d) any other person who gave information to the Securitate, through which were affected, directly or through other organs, the fundamental human rights and liberties. The information comprised in the declarations given during the investigation by the person held or arrested for political reasons regarding the case for which he/she was investigated, tried and sentenced are not the object of this provision.

(4) A collaborator of the Securitate organs, as a political police, is also considered the person who passed on or facilitated the passing on of information, notes, reports or other documents, by which the activity or attitudes against the totalitarian communist regime were denounced, liable to affect the fundamental human rights and liberties.

(5) Assimilated to the collaborators provided under par. (3) are the persons who had decision, legal or political competence or who, by abuse of the political power, took decisions at central or local level, regarding the activity of the Securitate, or of other repressive structures of the totalitarian communist regime.

(6) The implication in the activity of political police of the persons provided under Art. 2 is established on the basis of the data, proofs and indications existing in the files which are the object of investigation, as well as by

any other documents submitted by any person interested in the case of absence, alteration or rendering incomplete of a file.

Art. 6. – The provisions under Art. 45 par. 2 in the Law No. 14/1992 regarding the organization and functioning of the Romanian Intelligence Service, as well as those under Art. 20 par. 2 and Art. 22 regarding the Annex No. 6 of the National Archives Law No. 16/1996 are not applicable to the files to which refers Art. 1 and to the data requested on the basis of Art. 2 in the present law, which cannot be considered to concern Romania's national security.

Art. 7. – (1) In order to apply the provisions of the present law, the National Council for the Study of the Securitate Archives, as a political police, is established, with the seat in the Municipality of Bucharest, hereinafter called the Council.

(2) The Council is an autonomous organ, a juristic person, subject to the control of Parliament. Annually, or at the Parliament's request, the Council submits reports.

Art. 8. – (1) The Council is headed by a college made of 11 members.

(2) The members of the College of the Council are appointed by Parliament, at the proposal of the parliamentary groups, according to the political configuration of the two Chambers, on the basis of a joint report, drawn up by the legal committees of the Chamber of Deputies and of the Senate, in joint sitting, for a mandate of 6 years. The mandate may be renewed only once.

(3) The nominal proposals for the College of the Council are submitted to the Standing Bureaus of the Chamber of Deputies and of the Senate by the leaders of the parliamentary groups, within the limits of the number of seats established according to par. (1) and (2), in no more than 10 calendar days from the date of coming into force of the present law, and which shall send them to the legal committees. The proposals shall be accompanied by a curriculum vitae, the fair copies of the records containing the penal antecedents, statements on the own responsibility of the candidates, in the sense that

they are no part of the stipulations of Art. 5 par. (2)–(5), that, respectively, they did not belong to and did not collaborate with the Securitate organs.

(4) The legal committees of the Chamber of Deputies and of the Senate shall hear in joint sitting and shall verify the fulfilment of the conditions set to the candidates by the present law; the candidatures shall be individually advised. The joint report containing the result of the hearings is sent to the Standing Bureaus of the two Chambers within 10 calendar days from the reception of the lists containing the candidates.

(5) The candidates who do not meet the conditions stipulated under the present law shall be replaced, at the request of the legal committees of the two Chambers, by the parliamentary groups that proposed them. The new proposals are forwarded to the parliamentary groups within 5 days from the communication made by the Standing Bureaus of the two Chambers. The seats vacated as a result of non-submitting of the proposals of the two Chambers to the parliamentary groups within 5 days are redistributed among the rest of the parliamentary groups, in accordance with the configuration provided under par. (2).

(6) The Chamber of Deputies and the Senate, convened in joint sitting, on the basis of the joint report of the legal committees shall decide by vote on the list comprising the candidates for the College of the Council, within maximum 10 calendar days from the date of submitting the report to the legal committees. The vote is expressed by nominal call.

(7) The College of the Council elects, out of its members, a president, vice-president and a secretary within 5 days from its establishment. The College of the Council works in the presence of at least two thirds of the number of members and adopts decisions with the majority vote of the members present. The debates of the College of the Council are not public.

(8) To the Council and the College of the Council cannot belong the agents and collaborators of the Securitate organs, as defined in the present law, those of other foreign secret services, of other internal and foreign intelligence services, and of other organizations which

carried out and are carrying out activities which contravene to the fundamental human rights and liberties. Likewise, cannot belong persons who suffered sentences for common law infractions, even if they were amnestied or rehabilitated. The capacity of member of the College of the Council cannot be granted to the persons who were or are members of political parties.

(9) The Council operates on the basis of a regulation drawn up by the College of the Council within 30 days from the date of its establishment adopted by decision of the Parliament within 15 days from the intimation, and which shall be published in the Official Gazette of Romania, Part I.

(10) Upon investiture to their position, the members of the College of the Council shall take the following oath to Parliament: “I pledge to respect the Constitution and laws of the country, the fundamental human rights and liberties, to carry out conscientiously, with honour and without bias, the obligations assigned to me in the capacity of member of the College of the Council. So help me God!”

Art. 9. – (1) In the case in which, subsequent to the election of the Council, it is found out that one of its members does not meet the conditions provided by the present law, the mandate is revoked and a new election takes place. The verification of the fulfilment of the conditions is done, at the request of any person, by the Supreme Court of Justice.

(2) The revocation is pronounced by the Supreme Court of Justice, in a panel of 3 judges, by summoning the parties. The decision pronounced may be attacked with appeal within 10 days from pronouncement. The appeal is tried in a panel of 7 judges, by summoning the parties. In both phases, the Supreme Court of Justice settles these cases, with celerity.

Art. 10. – (1) The Council drafts its own budget of incomes and expenses, and submits it to the Government with a view to including it in the state budget.

(2) The president of the College of the Council is the chief accountant of credits.

Art. 11. – (1) The Council is organized at national level and operates in a unique structure.

(2) Within 30 days from the date of coming into force of the present law the General Council of the Municipality of Bucharest shall ensure the necessary spaces for the carrying out of the Council's activity.

Art. 12. – In order to achieve the right of access to the personal file, the entitled person, according to Art. 1 par. (1), calls on the Council by a written application. The Council shall answer the request within 30 days.

Art. 13. – (1) The entitled persons may request the Council, in accordance with the provisions of Art. 1 par. (1), under the conditions of the present law, the following:

- a) consulting of the files or of any materials drawn up before December 22, 1989, by the Securitate organs;
- b) delivery of some copies of the documents in these files or of other materials;
- c) delivery of certificates regarding the membership or non-membership, collaboration or non-collaboration with the Securitate organs.

(2) No copies of such documents from the file are delivered, the contents of which may greatly affect a third person, except for the following conditions:

- a) with the written consent of the person who may be greatly affected or of the legal inheritors;
- b) by ensuring a copy which does not include the paragraphs regarding a third person who may be greatly affected.

Art. 14. – (1) The contents of the certificates issued according to Art. 13 par. (1) letter c) may be contested at the College of the Council within 30 days from the communication.

(2) The legal contest shall be settled by the College of the Council within 60 days from the registration.

The decision of the College of the Council may be attacked, within 30 days from the communication, at the court of appeal in the competence of which the contestant has his domicile.

Art. 15. – (1) The right of access to the information of public interest provided under Art. 2 is exercised by the entitled natural person or juristic person, by applying to the Council.

(2) By this application one may request the delivery of a document which could prove whether someone did or did not have the capacity of agent or collaborator of the Securitate organs, regarding the persons who hold or are proposed to be appointed to the positions listed in Art. 2.

(3) The verifications may also be started at the request of the persons who hold the positions listed in Art. 2, for their own files.

(4) On the basis of the applications received according to par. (1) the Council verifies the available proofs, irrespective of their form, and immediately advises the person, with a view to exercising the rights provided for in Art. 3.

(5) The position of agent or collaborator of the Securitate organs is established by the Council on the basis of proofs existing in the records of the Securitate organs, corroborated with proofs such as: the commitment written and signed by the one involved, reports, information syntheses, holograph documents and proofs, irrespective of the support they may have, from the Securitate archives.

(6) Within 30 days from the reception of the applications, the Council shall cite, with a view to hearing, the person who requested, as well as the person with regard to whom verifications have been requested, according to the procedure established by regulation. The opening and the finalization of the requested verifications may also be made in the absence of the legally cited persons.

(7) After finalizing the verifications, which cannot last more than 60 days from the reception of the application, the Council informs in writing the applicant whether the person for whom a verification had been requested was or was not an agent or collaborator of the Securitate organs, in the sense of the present law.

Art. 16. – (1) Against the communication issued according to Art. 15 par. (4) the applicant or the person for whom a verification was requested may apply to the College of the Council with a contestation, within 15 days from the reception of the communication. The College of the Council re-examines the documentation on which was

based the communication, and within 30 days from the lodging of the contestation adopts a decision which shall be sent within 10 days both to the applicant, as well as to the person with regard to whom verifications have been carried out, irrespective of the author of the contestation. The decision of the College of the Council may be contested within 30 days from the date of communication to the court of appeal, the civil division, in the competence of which the contestant has his domicile.

(2) The court of appeal tries in secret sitting in a panel of 3 judges. The participation of the prosecutor is compulsory. The decision is final and irrevocable. The documents and contents of the files have a secret regime.

(3) In view of adopting the decision, the College of the Council hears the person with regard to whom verifications were requested and uses the documentation submitted by that person or by the applicant. The initial documentation may be completed. The person about whom verifications are carried out has the right to consult the documents which were at the basis of the contested communication. The absence of the legally cited person does not prevent the adoption of a decision.

Art. 17. – (1) The Council ensures the publication in the Official Gazette of Romania, Part III, of the communications remained final by non-contestation, or by a decision of the court of appeal.

(2) The Council ensures the publication in the Official Gazette of Romania, Part III, of the identity data, including the conspiratorial name and the positions held by the Securitate officers and non-commissioned officers, active or undercover, who carried out activities of political police.

(3) The Council publishes the information and the documents which attest the implication of the Securitate organs and of other political and repressive structures of the totalitarian communist régime in carrying out severe offences against the life, physical or psychological integrity and liberties of persons, as well as actions of treason of national interests.

(4) The provisions of par. (2) are applicable accordingly, also with regard to the persons listed in Art. 5 par. (5).

Art. 18. – In the unsolved cases, of deaths or disappearings about which there are indications that they occurred in connection with the activity of the Securitate organs, the Council offers information by its own initiative or on the basis of a written application on the part of the presumed inheritors of those declared as disappeared, or of the successors of the deceased.

Art. 19. – With a view to establishing the historic truth, the College of the Council puts at the disposal of the researchers, authorized to this end by the Council, documents and complete information concerning the structure, methods and activities of the Securitate organs, in the conditions of the law and of the Council regulation.

Art. 20. – (1) The College of the Council is granted the administration of all the documents regarding the exercising of the rights provided by the present law, except those concerning national security, according to the law.

(2) From the date of coming into force of the present law, until the date of taking over, the members of the College have unrestricted access to the documents provided for in par. (1), as well as to any copies of those which, at this time, are being kept and studied at the holders' premises.

(3) The Romanian Intelligence Service, the Ministry of the Interior, the Ministry of Justice, the Ministry of National Defence, the National Archives, and any other public or private institutions, as well as the natural persons who hold such documents are obliged to ensure this right of access and to hand them over immediately to the College of the Council.

(4) The rights and obligations provided for in par. (1) – (3) also refer to the audio and video recordings, floppy disks, photos, films and microfilms.

(5) Non-fulfilment of the obligations provided for in the previous paragraphs brings about, as the case may be, the penal, administrative, civil or disciplinary responsibility of the leaders of the organs, institutions and of the respective natural persons, as the case may be.

(6) The concrete establishing of the files regarding national security, provided for in par. (1), shall be done, by mutual agreement, by the Council, together with the

holding institutions. In case of dispute, the decision shall be adopted by the Supreme Council for the Defence of the Country.

Art. 21. – The seat of the Council, as well as the seat of its own archives benefit from permanent guard, free of charge, ensured by the Gendarmes Troops Command.

Art. 22. – The Council carries out its activity for a period of 6 years, with the possibility of extension, by the law.

Art. 23. – (1) When the Council ceases its activity, the archives and documentary fund, set up on the basis of the present law, are handed over for keeping to the National Archives.

(2) The seats and equipment of the Council shall also be transferred to the National Archives.

Art. 24. – (1) Non-observance of the provisions of the present law by other persons than those provided for in Art. 20 brings about also the penal, civil, administrative or disciplinary responsibility, as the case may be.

(2) The purloin, hiding, falsification, counterfeit, deterioration or destruction of the files, records and of any documents of the Securitate are punished according to the penal law, the maximum punishment being increased by 2 years.

(3) Delivery of certificates, documents or copies of these from the files or information about these, in other conditions than those provided for in the present law, represents an offence and is punished with prison from 6 months to 5 years.

(4) The handing for publicity of certain data or information from the files, non-corresponding to the truth, liable to infringe on the life, dignity, honour or reputation of a person, represents an offence and is punished with prison from 3 months to 3 years.

(5) The misrepresentation of the data from the Securitate file, in order to discredit or not to disclose, represents an offence and is punished with prison from 6 months to 5 years and the barring of the right to ever work in the field of archives.

Art. 25. – The Romanian Intelligence Service, the Foreign Intelligence Service, the Ministry of National Defence, the Ministry of the Interior, the Ministry of Justice and the Public Ministry have the obligation to put at the disposal of the legal committees of the Chamber of Deputies and of the Senate, the materials requested with regard to the candidates running for the first College of the Council, set up in accordance with the provisions of Art. 8.

Art. 26. – No other legal provision regarding the regime of the documents may be interpreted in such a way as to hinder the enforcement of the provisions of the present law.

SUMAR

LEGE privind accesul la propriul dosar și deconspirarea securității ca poliție politică	5
---	---

SOMMAIRE

LOI sur l'accès au propre dossier et le démasquage de la Securitate comme police politique.....	21
---	----

CONTENTS

LAW on the access to the personal file and the disclosure of the Securitate as a political police.....	39
--	----

Editor: Regia Autonomă „Monitorul Oficial“, București

Bun de tipar: 17 martie 2000. Apărut: 2000

Tipografia „Monitorul Oficial“, București, str. Izvor nr. 2-4, Palatul Parlamentului, sectorul 5

E-mail: ramomrk@bx.logicnet.ro, Internet: www.monitoruloficial.ro
