



Moldovan civil servant whistle-blower wins rights violation case for second time

In today's Chamber judgment¹ in the case of [Guja v. the Republic of Moldova \(no. 2\)](#) (application no. 1085/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (right to freedom of expression) of the European Convention on Human Rights.

The case concerned the applicant's allegation of a continuing violation of his right to freedom of expression after an incident of whistle-blowing, despite a previous Grand Chamber judgment in his favour ([Guja v. Moldova](#)). He complained that the authorities had only simulated performance of that judgment by reinstating him in his job, but had then swiftly engineered his dismissal again.

The Court found that, despite purporting to abide by its earlier judgment, the Government of Moldova had never intended truly to reinstate the applicant. In reality, his second dismissal had been a continued retributory measure in response to his whistle-blowing of 2003. Furthermore, the domestic courts had contributed to the violation of the applicant's rights by refusing to examine his allegations and evidence, and by ignoring the principles set out in the earlier *Guja* case.

Principal facts

The applicant, Iacob Guja, is a Moldovan national who was born in 1970 and lives in Sestaci (the Republic of Moldova).

In 2003, whilst employed as head of the Press Department at the Prosecutor General's Office (PGO), Mr Guja sent evidence to a newspaper about the Vice-President of the Moldovan Parliament putting pressure on the Prosecutor General over matters involving police misconduct. The newspaper published an article and Mr Guja was dismissed for violating the PGO's internal regulations. He brought an action for reinstatement relying in particular on Article 10 of the Convention, but the domestic courts upheld his dismissal.

After a complaint by Mr Guja the Court's Grand Chamber found in February 2008 that his dismissal had breached his right to freedom of expression (in particular his right to impart information) guaranteed by Article 10 of the Convention, and awarded him 10,000 euros (EUR) in damages. In particular, the Court found that Mr Guja had acted in good faith, that no other reporting channel had been open to him, that the public interest in disclosing the information had outweighed the detriment caused to the PGO, and that he had been given the most severe sanction possible.

The PGO reinstated him in June 2008 after a Supreme Court of Justice (SCJ) decision, but the Prosecutor General simultaneously wrote to the head of the relevant trade union seeking approval for his dismissal. Mr Guja maintained that on his return to work he had not been made welcome, had not been issued with an access badge or office space, and had not been given tasks to perform, allegations denied by the Government. He was dismissed after 10 days on the grounds that a new Prosecutor General had been appointed, which meant such personnel changes were allowed.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Guja's challenge to his new dismissal was dismissed by the domestic courts. The SCJ held in April 2009 that the ECHR's judgment of February 2008 had been enforced once the domestic judgments had been reviewed, the applicant reinstated, and his salary arrears paid, and that the subsequent dismissal had been a distinct and justified matter under domestic law. The SCJ did not give any answer to the applicant's allegations that his reinstatement had been simulated.

Complaints, procedure and composition of the Court

This application was lodged with the European Court of Human Rights on 19 October 2009.

Relying again on Article 10 of the Convention (right to freedom of expression), the applicant complained that he had never been properly reinstated, and that his latest dismissal, along with the rejection of his reinstatement proceedings, amounted to new retaliatory measures for his whistle-blowing back in 2003 and to a deliberate failure by the State to comply with the Court's original judgment of February 2008.

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

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro),
Valeriu **Grițco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 10

The Court first determined that it had the power to deal with the new case, although the Committee of Ministers was still supervising enforcement of the first judgment. The Court noted that it could take such a step if the fresh application contained relevant new information relating to issues undecided by the initial judgment, which was the case with Mr Guja. Such relevant new information included the circumstances surrounding his second dismissal and the reasons given by the domestic courts for rejecting his reinstatement action.

The Court then turned to the substantive question of whether there had been a new violation of Article 10. It noted that the manner in which the authorities had implemented the SCJ's decision of May 2008 to reinstate Mr Guja and the treatment to which they had subjected him during the ten days of his employment allowed an objective observer to conclude that his new dismissal had not been the result of a new and unrelated labour dispute but was rather a continuation of the retaliatory measures for his whistle-blowing of 2003. The Court concluded that the new dismissal had constituted an interference with Mr Guja's right to freedom of expression.

Revisiting the general principles set out by the Grand Chamber in the original judgment, the Court decided to leave open the questions of whether that interference was in accordance with the domestic law and whether it had pursued a legitimate aim. However, for the same reasons as those in the original judgment, acting in good faith, strong public interest and so forth, the Court reached the conclusion that the new interference had not been "necessary in a democratic society" under Article 10 § 2. The Court's decision was this time reinforced by the fact that the domestic courts had ignored what appeared to have been the core of Mr Guja's defence, namely the allegations that his

reinstatement had not been genuine and that the PGO had continued its retaliatory measures against him for the whistle-blowing.

The Court found unanimously that Mr Guja's second dismissal had violated his right to freedom of expression, in particular his right to impart information, under Article 10.

Just satisfaction (Article 41)

The Court held unanimously that Moldova was to pay the applicant 10,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, and 1,500 euros (EUR) for costs and expenses incurred before the Court.

The judgment is available only in English.

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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.