

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
GUJA v. MOLDOVA

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment¹ in the case of *Guja v. Moldova* (application no. 14277/04).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 10,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 8,413 for costs and expenses. (The judgment is available in English and French.)

1. Principal facts

The applicant is Iacob Guja who was born in 1970 and lives in Chişinău. He was Head of the Press Department of the Moldovan Prosecutor General's Office.

The case concerned his dismissal for giving a newspaper two letters received by the Prosecutor General's Office.

In January 2003 the President of Moldova, Vladimir Voronin, visited the Centre for Fighting Economic Crime and Corruption where there was a discussion on the problem of public officials placing pressure on law-enforcement bodies about pending criminal proceedings. The President stressed the need to fight corruption and called on law enforcement officers to disregard undue pressure from public officials. The President's statement was widely reported in the media.

A few days later the applicant gave the national newspaper *Jurnal de Chişinău* two letters received by the Prosecutor General's Office, neither of which bore any sign of being confidential.

The first – sent to the Prosecutor General by the Deputy Speaker of Parliament, Vadim Mişin, on 21 June 2002 – was written on the Parliament's official headed paper. It asked the Prosecutor General to “get personally involved in the case” of four police officers charged with illegal detention and ill-treatment of detainees. Mr Mişin stated that the police officers, who had asked for protection from prosecution, were part of one of the “best teams” in the Ministry of Internal Affairs (the Ministry) and were being prevented from working normally “as a result of the efforts of the employees of the Prosecutor General's Office”. He also asked in that context whether the “Vice Prosecutor General fights crime or the police”.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

The second letter – from a vice-minister in the Ministry, to a deputy prosecutor general – was written on official Ministry headed paper. It revealed that one of the police officers mentioned in the first letter had previously been sentenced only to a fine (which he was exempted from paying) and that he had been re-employed by the Ministry, despite being convicted, among other things, of illegal detention endangering life or health or causing physical suffering and abuse of power accompanied by acts of violence, use of firearm or torture.

On 31 January 2003 the *Jurnal de Chişinău* published an article entitled: “Vadim Mişin intimidates the prosecutors” describing the President’s anti-corruption drive and noting that abuse of power had become a widespread problem in Moldova. The paper cited Mr Mişin’s apparent attempts to protect the four police officers as an example, printing photographs of the two letters.

The applicant was subsequently asked by the Prosecutor General to explain how the two letters had come to be published by the press. On 14 February 2003 the applicant admitted having given the two letters to the newspaper, stating that he had acted in line with the President’s anti-corruption drive, in order to create a positive image of the Prosecutor’s Office, and that the letters were not confidential.

Prosecutor I.D., who was suspected of having given the applicant the letters, was later dismissed.

On 17 February 2003 the applicant informed the Prosecutor General that the letters had not been obtained from I.D. He also expressed concern about I.D.’s dismissal.

On 3 March 2003 the applicant was dismissed on the grounds, among other things, that the letters had been secret and that he had failed to consult the heads of other departments of the Prosecutor General’s Office before handing over the letters, in breach of the press department’s internal regulations.

On 21 March 2003 the applicant brought an unsuccessful civil action against the Prosecutor General’s Office seeking reinstatement, arguing, among other things, that the letters were not classified as secret and that he had not been obliged to consult other heads of department.

The newspaper unsuccessfully requested that a criminal investigation be brought into the alleged interference by Mr Mişin with an ongoing criminal investigation.

On 14 March 2003 the paper published a follow-up article, entitled “Mişin has launched a crackdown on prosecutors”. It stated that the Prosecutor General had bowed to pressure from Mr Mişin to identify and punish those responsible for disclosing his note to the press and that the Prosecutor General's Office had been guided by Mr Mişin and advisers to the President concerning who should be employed or dismissed. In the previous year alone, 30 experienced prosecutors had been dismissed from Chişinău Prosecutor's Office. The article also gave an account of the applicant's dismissal as a result of pressure from Mr Mişin, and reported that the Prosecutor General's Office had received numerous letters from Mr Mişin and other high-ranking public officials in connection with ongoing criminal investigations.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 30 March 2004. On 20 February 2007 the Chamber relinquished jurisdiction in favour of the Grand Chamber¹.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (French), *President*,
Christos **Rozakis** (Greek),
Nicolas **Bratza** (British),
Boštjan M. **Zupančič** (Slovenian),
Peer **Lorenzen** (Danish),
Françoise **Tulkens** (Belgian),
Giovanni **Bonello** (Maltese)
Josep **Casadevall** (Andorran),
Rait **Maruste** (Estonian),
Kristaq **Traja** (Albanian),
Snejana **Botoucharova** (Bulgarian),
Stanislav **Pavlovschi** (Moldovan),
Lech **Garlicki** (Polish),
Alvina **Gyulumyan** (Armenian),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina),
Mark **Villiger** (Swiss)²,
Päivi **Hirvelä** (Finnish), *judges*,

and also Erik **Fribergh**, *Registrar*.

3. Summary of the judgment³

Complaint

The applicant complained about his dismissal from the Prosecutor General's Office for divulging two documents which disclosed interference by a high-ranking politician in pending criminal proceedings. He relied on Article 10.

Decision of the Court

Article 10

The Court noted that neither Moldovan legislation nor the internal regulations of the Prosecutor General's Office contained any provision concerning the reporting of irregularities by employees. It appeared, therefore, that there was no authority other than the applicant's superiors to which he could have reported his concerns and no prescribed procedure for reporting such matters. It also appeared that the disclosure concerned the conduct of a Deputy Speaker of Parliament, who was a high-ranking official, and that, despite having been aware

¹ Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

² Judge elected in respect of Liechtenstein.

³ This summary by the Registry does not bind the Court.

of the situation for some six months, the Prosecutor General had shown no sign of having any intention to respond, instead giving the impression that he had succumbed to political pressure. The Court therefore considered that, in the circumstances of the applicant's case, external reporting, even to a newspaper, could be justified.

Having examined the note which Mr Mişin wrote to the Prosecutor General, the Court could not accept that it was intended to do no more than transmit the police officers' letter to a competent body. Moreover, in view of the context and of the language employed by Mr Mişin, it could not be excluded that the effect of the note was to put pressure on the Prosecutor General's Office, irrespective of the inclusion of the statement that the case was to be "examined in strict compliance with the law". Against that background, the Court noted that the President of Moldova had campaigned against the practice of interference by politicians with the criminal-justice system and that the Moldovan media had widely covered the subject. It also noted the reports of international non-governmental organisations (the International Commission of Jurists, Freedom House, and the Open Justice Initiative) which had expressed concern about the breakdown of separation of powers and the lack of judicial independence in Moldova. The Court found that the letters disclosed by the applicant had a bearing on issues such as the separation of powers, improper conduct by a high-ranking politician and the Government's attitude towards police brutality. There was no doubt that those were very important matters in a democratic society which the public had a legitimate interest in being informed about and which fell within the scope of political debate.

The Court further noted that it was common ground that the letters disclosed by the applicant to the *Jurnal de Chişinău* were genuine.

The Court considered that the public interest in the provision of information about undue pressure and wrongdoing within the Prosecutor's Office was so important in a democratic society that it outweighed the interest in maintaining public confidence in the Prosecutor General's Office. Open discussion of topics of public concern was essential to democracy and it was of great importance for members of the public not to be discouraged from voicing their opinions on such matters.

The Court found no reason to believe that the applicant was motivated by a desire for personal advantage, held any personal grievance against his employer or Mr Mişin, or that there was any other ulterior motive for his actions. He had therefore acted in good faith.

Finally, the Court noted that the heaviest sanction possible (dismissal) was imposed on the applicant, which not only had negative repercussions on the applicant's career, but could also have had a serious chilling effect on other employees from the Prosecutor's Office and discourage them from reporting any misconduct. In view of the media coverage of the applicant's case, the sanction could also have had a chilling effect on other civil servants and employees.

Given the importance of the right to freedom of expression on matters of general interest, of the right of civil servants and other employees to report illegal conduct and wrongdoing at their place of work, the duties and responsibilities of employees towards their employers and the right of employers to manage their staff, and having weighed up the other different interests involved in the applicant's case, the Court concluded that the interference with the applicant's right to freedom of expression, in particular his right to impart information, was not "necessary in a democratic society", in violation of Article 10.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Tracey Turner-Tretz (telephone: 00 33 (0)3 88 41 35 30)

Paramy Chanthalangsy (telephone: 00 33 (0)3 90 21 54 91)

Sania Ivedi (telephone: 00 33 (0)3 90 21 59 45)

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.