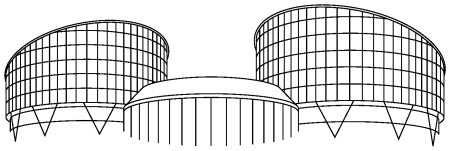

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF GUJA v. THE REPUBLIC OF MOLDOVA (No. 2)

(Application no. 1085/10)

JUDGMENT

STRASBOURG

27 February 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Guja v. the Republic of Moldova (no. 2),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Robert Spano, *President,*
Paul Lemmens,
Ledi Bianku,
Nebojša Vučinić,
Valeriu Grițco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 6 February 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 1085/10) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mr Iacob Guja ("the applicant"), on 19 October 2009.

2. The applicant, who had been granted legal aid, was represented by Mr V. Zamă, a lawyer practising in Chișinău. The Moldovan Government ("the Government") were represented by their Agent *ad interim*, Ms R. Revencu.

3. The applicant alleged, in particular, that his being dismissed from the Prosecutor General's Office once again after the Court had found a breach of his freedom of expression constituted a fresh violation of this right under Article 10 of the Convention.

4. On 31 May 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Application no. 14277/04 and the Court's judgment of 12 February 2008

5. The applicant was born in 1970 and lives in Sestaci.

6. The applicant is a journalist who, at the time of the events, was employed as Head of the Press Department of the Prosecutor General's Office. In January 2003 he sent to a newspaper two letters containing information about pressure put on the Prosecutor General's Office by a high-ranking politician. In one of the letters, the Vice-President of Parliament expressed discontent that several police officers were being criminally prosecuted for allegedly ill-treating and unlawfully detaining suspects. In another letter it was stated that one of those police officers had previously been convicted of similar offences, but had been exempted from serving a sentence and had soon been re-employed by the Ministry of Internal Affairs. Subsequently, the newspaper published an article on the basis of the letters. The applicant was then dismissed by the Prosecutor General for having violated the internal regulations of the Press Department. In proceedings for his reinstatement brought against the Prosecutor General's Office, he argued before the domestic courts that the disclosure of the letters had been in good faith and had pursued the aim of "fighting corruption and trading in influence". He argued that, in any event, the letters could not be classified as secret under domestic law. The domestic courts found in favour of the applicant's employer, on the grounds that the applicant had breached his duty of confidentiality by disclosing the letters, and that he had failed to consult other heads of departments before disclosing the letters to the newspaper.

7. On 30 March 2004 the applicant lodged an application with the Court.

8. In a judgment of 12 February 2008 the Grand Chamber of the Court held that the applicant's dismissal from his employment had infringed his right to freedom of expression guaranteed by Article 10 of the Convention (see *Guja v. Moldova* [GC], no. 14277/04, ECHR 2008).

9. The Court found that, for the purposes of Article 10 § 2, the measure taken against the applicant had constituted an interference with his right to freedom of expression, had been "prescribed by law", and had pursued a legitimate aim.

10. As to whether the measure had been "necessary in a democratic society" within the meaning of that provision, the Court noted firstly that the applicant had not had alternative channels for disclosing the letters, and that, in the circumstances of the case, external reporting, even to a newspaper, could be justified. Against that background, it also found that the information disclosed by the applicant was of major public interest, because it concerned such issues as the separation of powers, improper conduct by a high-ranking politician, and the government's attitude towards police brutality. Balancing the different issues involved, the Court also took into consideration the detriment caused to the Prosecutor General's Office by the disclosure. In doing so, the Court came to the conclusion that the public interest in having information about undue pressure and wrongdoing within the Prosecutor General's Office revealed was so important in a

democratic society that it outweighed the interest in maintaining public confidence in the Prosecutor General's Office. Lastly, the Court noted that the applicant had acted in good faith and that the most severe sanction possible had been imposed on him. In view of all the considerations, the Court came to the conclusion that the interference with the applicant's right to freedom of expression, in particular his right to impart information, had not been "necessary in a democratic society", and that there had been a breach of Article 10 of the Convention.

11. As to the application of Article 41, the Court ordered Moldova to pay the sum of 10,000 euros (EUR) for pecuniary and non-pecuniary damage, and EUR 6,000 for costs and expenses.

B. Subsequent proceedings before the Moldovan authorities

12. After the Court had delivered the above judgment, the applicant applied to the domestic courts to have the domestic judgments confirming his dismissal set aside. He was successful, and on 28 May 2008 the Supreme Court of Justice ordered his reinstatement. On the same day the applicant lodged an application for reinstatement with the Prosecutor General's Office.

13. According to the applicant, on 29 May 2008 he had a meeting with the Prosecutor General, who asked him to resign from his position. As the applicant refused, the Prosecutor General told him that "he had enough wits to force him to do that". He was told to go home and wait for his employment order. The Government disputed the above submissions.

14. On 5 June 2008 the Prosecutor General issued an order reinstating the applicant as Head of the Press Department and ordering that his salary arrears be paid. On the same date the Prosecutor General wrote to the head of the trade unions of the Prosecutor General's Office, seeking the trade unions' approval of the applicant's dismissal from his employment on the basis of section 14(8) of the Public Service Act (see paragraph 23 below). In accordance with the labour legislation in force, the trade unions' approval was a necessary step in dismissing the applicant, and it was obtained the next day.

15. On 6 June 2008 the applicant was invited to the Prosecutor General's Office and presented with the employment order. According to the applicant, he was, however, not allocated an office and not given a badge to access the building. Each morning he had to wait outside the building until one of his superiors allowed him to enter. Since he had no office, he stayed in the library or in the press office. However, when other employees from the press office had to leave the office, he was locked outside it with the explanation that his superiors had not allowed him access to sensitive information. The applicant was not given any tasks. The Government also disputed the above submissions.

16. On 16 June 2008 the applicant was presented with a dismissal order, effective as of 10 June 2008. The dismissal was based on section 14(8) of the Public Service Act. The reason for the applicant's dismissal was the appointment of a new Prosecutor General in 2007. According to the order, the trade unions had consented to his dismissal on 6 June 2008.

17. On 10 July 2008 the applicant contested the order of 16 June 2008 before the Chisinau Court of Appeal ("the Court of Appeal") and sought reinstatement. He presented details about his meeting with the Prosecutor General of 29 May 2008 and about his discussion with him (see paragraph 13 above). He also stated that since his re-employment on 6 June 2008 he had not received a badge to access the building, had not been given an office, and had not been given any tasks. Moreover, on the very day of his reinstatement, the Prosecutor General had obtained the trade unions' approval of his dismissal. He argued, *inter alia*, that since 2003 the Prosecutor General had changed twice, and that he was the first person to be dismissed on the basis of section 14(8) of the Public Service Act. The applicant also argued that that section was not applicable in the circumstances of the case, since the position of Head of the Press Department of the Prosecutor General's Office was not part of the cabinet of the Prosecutor General. He expressed the view that his dismissal constituted a failure on the part of the State to abide by the Court's judgment of 12 February 2008.

18. The Prosecutor General's Office did not contest the applicant's allegations about the Prosecutor General's discussion with him and about the treatment to which he had been subjected during his employment. It only submitted that labour-law provisions had been respected at the time the applicant had been dismissed.

19. On 17 December 2008 the Court of Appeal dismissed the applicant's action and ruled that his dismissal had been in accordance with the law. In particular, the court found that since the new Prosecutor General had been appointed in 2007, he had the power to terminate the applicant's employment on the basis of section 14(8) of the Public Service Act. The Court of Appeal considered that the Court's judgment of 12 February 2008 had been implemented once the domestic courts had revised the judgments confirming his dismissal in 2003. The Court of Appeal did not give any consideration to the applicant's arguments concerning his discussion with the Prosecutor General and/or his experience during the time of his employment.

20. The applicant lodged an appeal on points of law with the Supreme Court of Justice in which he submitted, *inter alia*, that the Prosecutor General's Office had failed to prove wrong his contentions about its failure to issue him with a badge or an office and to give him tasks. After making reference to the Court's judgment of 12 February 2008, the applicant claimed that his reinstatement had been simulated, referring to it as "the

so-called reinstatement". He also contended that his dismissal had not been the result of an ordinary labour dispute, and that in fact the Prosecutor General's Office had acted in bad faith with a view to getting rid of an inconvenient employee (*salariat incomod*). However, the appeal on points of law was dismissed on 29 April 2009. Like the Court of Appeal, the Supreme Court did not make any assessment of the applicant's allegations about his discussion with the Prosecutor General and the treatment to which he had been subjected during his ten days of employment. The Supreme Court dismissed the applicant's argument about the State's failure to execute the Court's judgment of 12 February 2008 by finding that that judgment had been enforced once the domestic judgments had been reviewed and the applicant had been reinstated in his previous position.

C. Execution of the Court's judgment of 12 February 2008

21. The applicant informed the Department for the Execution of Judgments of the European Court of Human Rights about the developments described above, and alleged that his being dismissed once again and the outcome of the new reinstatement proceedings amounted to a failure by the State to comply with the Court's judgment of 12 February 2008. In an action report of 2 December 2016 (see DH-DD(2016)1446) the Government informed the Committee of Ministers about the general and individual measures taken in the course of implementing the Court's judgment of 12 February 2008, and expressed the view that that judgment had been enforced once the Supreme Court had reviewed and quashed its own judgment of 26 November 2003. They asked the Committee of Ministers to terminate the execution procedure in respect of that case.

22. At the time of issuing the present judgment, the procedure for supervising the execution of the judgment of 12 February 2008 is still ongoing before the Committee of Ministers.

II. RELEVANT DOMESTIC LAW AND NON-CONVENTION MATERIAL

A. Relevant domestic law and practice

23. Sections 14(8), 28(1)(h) and 28(2) of the Public Service Act, as in force at the material time, provided that personnel such as counsellors, aides, press attachés and secretaries from the President's cabinet, Parliament, Ministries and other public authorities should be employed by the head of those authorities, and should have their employment terminated when a new head of those authorities was appointed, by the newly appointed head.

B. Relevant non-Convention material

24. On 19 January 2000, at the 694th meeting of the Ministers' Deputies, the Committee of Ministers of the Council of Europe adopted Recommendation No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights. The main idea of the recommendation was that States would be invited to introduce mechanisms to achieve, as far as possible, *restitutio in integrum* (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 33, ECHR 2009).

25. Paragraph 35 of the Report by the Parliamentary Assembly of the Council of Europe on the execution of judgments of the European Court of Human Rights (doc. 8808, 12 July 2000) reads as follows:

> "Since the Court does not tell States how to apply its decisions, they must consider how to do so themselves. The obligation to comply with judgments is an obligation to produce a specific result – to prevent further violations and repair the damage caused to the applicant by the violation. ..."

26. Article 35 of the Draft Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (adopted by the General Assembly of the United Nations at its 53rd session (2001), and reproduced in *Official Records of the General Assembly*, 56th Session, Supplement No. 10 (A/56/10)) is worded as follows:

> **Article 35: Restitution**
>
> "A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:
>
> (a) is not materially impossible;
>
> (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

27. The applicant alleged that his second dismissal from his employment, after the Court had found a violation of his freedom of expression, constituted a violation of his freedom of expression under Article 10 of the Convention, which provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not

prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. The parties' submissions

28. The Government submitted that the Court was not competent *ratione materiae* to deal with allegations of non-enforcement of its judgment of 12 February 2008, because this task was within the competence of the Committee of Ministers of the Council of Europe.

29. The applicant disagreed with the Government, and argued that the present case concerned new factual circumstances which had not been examined in application no. 14277/04, and which had arisen after the Court's judgment of 12 February 2008 had been issued.

2. The Court's assessment

30. According to Article 46 of the Convention, a respondent State found to have breached the Convention or its Protocols is under an obligation to abide by the Court's decisions in any case to which it is a party. In other words, a total or partial failure to execute a judgment of the Court can engage the State Party's international responsibility. The State Party in question will be under an obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to take individual and, if appropriate, general measures in its domestic legal order to put an end to the violation found by the Court and to redress the effects. As regards the individual measures to be taken in response to a judgment, their primary aim is to achieve *restitutio in integrum*, that is to put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded (see, among many other authorities, *Piersack v. Belgium* (Article 50), 26 October 1984, § 11, Series A no. 85; *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B; and *Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, § 85).

31. The States should organise their legal systems and judicial procedures so that this result may be achieved (see *Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, § 97, and Recommendation (2000) 2 of the Committee of Ministers). This reflects the principles of

international law whereby a State responsible for a wrongful act is under an obligation to make restitution, consisting of restoring the situation that existed before the wrongful act was committed, provided that restitution is not "materially impossible" and "does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation" (Article 35 of the Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts). In other words, while restitution is the rule, there may be circumstances in which the State responsible is exempted – fully or in part – from this obligation, provided that it can show that such circumstances obtain (see *Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, § 86).

32. The Court reiterates that findings of a violation in its judgments are in principle declaratory (see *Marckx v. Belgium*, 13 June 1979, § 58, Series A no. 31; *Lyons and Others v. the United Kingdom*, (dec.), no. 15227/03, ECHR 2003-IX; and *Krčmář and Others v. the Czech Republic* (dec.), no. 69190/01, 30 March 2004).

33. The Court has consistently emphasised that the question of compliance by the High Contracting Parties with the Court's judgments falls outside its jurisdiction if it is not raised in the context of the "infringement procedure" provided for in Article 46 §§ 4 and 5 of the Convention (see *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)*, nos. 41561/07 and 20972/08, § 56, 18 October 2011, and *Bochan v. Ukraine (no.2)* [GC], no. 22251/08, § 33, ECHR 2015). It has therefore refused to examine complaints concerning the failure by States to execute its judgments, declaring such complaints inadmissible *ratione materiae* (see *Fischer v. Austria* (dec.), no. 27569/02, ECHR 2003-VI; and *Egmez v. Cyprus (no. 2)* (dec.); no 12214/07, §§ 48-51, 18 September 2012).

34. Under Article 46 § 2, the Committee of Ministers is vested with the powers to supervise the execution of the Court's judgments and evaluate the measures taken by respondent States. It is for the Committee of Ministers to assess, in the light of the above principles of international law and the information provided by the respondent State, whether the latter has complied in good faith with its obligation to restore as far as possible the situation existing before the breach. While the respondent State in principle remains free to choose the means by which it will comply with this obligation, it is also for the Committee of Ministers to assess whether the means chosen are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta, v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, §§ 241-42; and *Savriddin Dzhurayev v. Russia*, no. 71386/10, §§ 247-49, ECHR 2013 (extracts)).

35. The Committee of Ministers' role in the sphere of execution of the Court's judgments does not prevent the Court from examining a fresh

application concerning measures taken by a respondent State in execution of a judgment if that application contains relevant new information relating to issues undecided by the initial judgment. Measures taken by a respondent State to remedy a violation found by the Court which raise a new issue undecided by the original judgment fall within the Court's jurisdiction and, as such, form the subject of a new application that may be dealt with by the Court (see *Liu v. Russia (no. 2)*, no. 29157/09, 26 July 2011; *Emre v. Switzerland (no. 2)*, no. 5056/10, 11 October 2011; *Egmez (no. 2)*, cited above, § 52; and *Bochan (no. 2)*, cited above, § 36; see also *Mehemi v. France (no. 2)*, no. 53470/99, § 43, ECHR 2003-IV, with references to *Pailot v. France*, 22 April 1998, § 57, *Reports of Judgments and Decisions* 1998-II; *Leterme v. France*, 29 April 1998, *Reports* 1998-III; *Rando v. Italy*, no. 38498/97, § 17, 15 February 2000).

36. The Court's case-law indicates that the determination of the existence of a "new issue" very much depends on the specific circumstances of a given case, and that distinctions between cases are not always clear-cut (see *Bochan (no. 2)*, cited above, § 34, and, for an examination of the case-law, see *Egmez v. Cyprus*, no. 30873/96, § 54, ECHR 2000-XII). The powers assigned to the Committee of Ministers by Article 46 to supervise the execution of the Court's judgments and assess the implementation of measures adopted by States under that Article are not encroached on where the Court has to deal with relevant new information in the context of a fresh application (see *Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, § 67). It is also immaterial whether the execution proceedings in the previous case are pending or terminated by the Committee of Ministers.

37. Turning to the facts of the present case, the Court notes that the proceedings adjudicated on by the domestic courts after the applicant's second dismissal from his employment were new in relation to the domestic proceedings forming the subject of the Court's judgment of 12 February 2008, and were subsequent to those proceedings. As for the applicant's complaint in the present case, the Court notes that it relates to his being dismissed once again and to the reasons given by the domestic courts for dismissing his reinstatement action. That being so, the applicant's second dismissal from his employment and the new proceedings concerning his reinstatement constitute new information in relation to the Court's previous judgment. Thus, the question of whether the applicant's second dismissal was compatible with the requirements of Article 10 of the Convention can be examined separately from the aspects relating to the execution of the judgment delivered by the Court on 12 February 2008 (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 54, ECHR 2017 (extracts)).

38. The Court further notes that a supervision procedure in respect of the execution of the judgment is still ongoing before the Committee of Ministers (see paragraphs 21-22 above), although that does not prevent the

Court from considering a new application in so far as it includes new aspects which were not determined in the initial judgment.

39. The Court therefore finds that Article 46 of the Convention does not preclude its examining the new complaint under Article 10 of the Convention. The Government's preliminary objection as to lack of jurisdiction *ratione materiae* must therefore be dismissed.

40. Furthermore, the Court finds that the complaint under Article 10 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It therefore declares the complaint admissible.

B. Merits

1. The parties' submissions

41. The applicant argued that his deficient reinstatement and his second dismissal had amounted to an interference with his right to freedom of expression as guaranteed by Article 10 of the Convention. That interference had not been prescribed by law, had not pursued a legitimate aim, and had not been necessary in a democratic society.

42. In support of the above submissions, the applicant argued that the Prosecutor General had not opposed his reinstatement on the basis of section 14(8) of the Public Service Act during the Supreme Court proceedings leading to the revision of the domestic court judgments of 2003. Section 14(8) had been relied on for the first time in the Prosecutor General's order of dismissal dated 16 June 2008.

43. The applicant further submitted that between 2003 and 2008 the Prosecutor General had changed twice, and nobody apart from him, including the head of the press department, had been dismissed on the basis of section 14(8) of the Public Service Act.

44. The Prosecutor General had never intended to abide by the Court's judgment of 12 February 2008 and the reviewed judgment of the Supreme Court of Justice, and had therefore exerted pressure on him. In particular, the applicant had not been allocated an office, had not been provided with a badge, and had not been given tasks.

45. The Government disagreed with the applicant and argued that the Moldovan authorities had complied with the Court's judgment of 12 February 2008 by reviewing the former court judgments and reinstating the applicant in his previous position. The Government further submitted that the applicant's second dismissal in 2008 was totally unrelated to the reasons for which he had been dismissed in 2003. They reiterated the position adopted by the domestic authorities and the courts: the applicant had been made redundant on the basis of section 14(8) of the Public Service Act, owing to the appointment of a new Prosecutor General. According to

the Government, the new Prosecutor General's approach was to promote a new team of people in whom he could have confidence. All of the applicant's rights had been respected, including his right to have the trade unions' approval before his dismissal. He had been paid all the salary which had been due to him, thus he had enjoyed full *restitutio in integrum*.

46. The Government also contested the applicant's submissions about his meeting with the Prosecutor General before his reinstatement and his lacking an office, a badge and tasks after his reinstatement. They submitted that, in view of the lengthy period of time which had elapsed since the events, they were not in a position to prove the contrary.

2. The Court's assessment

47. In interpreting and applying Article 10 of the Convention in the context of the workplace, the Court relied on the following general principles in *Guja* (cited above, §§ 69-78):

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> 70. The Court further reiterates that Article 10 applies also to the workplace, and that civil servants, such as the applicant, enjoy the right to freedom of expression (see paragraph 52 above). At the same time, the Court is mindful that employees have a duty of loyalty, reserve and discretion to their employer. This is particularly so in the case of civil servants since the very nature of civil service requires that a civil servant is bound by a duty of loyalty and discretion (see *Vogt*, cited above, § 53; *Ahmed and Others*, cited above, § 55; and *De Diego Nafría v. Spain*, no. 46833/99, § 37, 14 March 2002).
>
> 71. Since the mission of civil servants in a democratic society is to assist the government in discharging its functions and since the public has a right to expect that they will help and not hinder the democratically elected government, the duty of loyalty and reserve assumes special significance for them (see, mutatis mutandis, *Ahmed and Others*, cited above, § 53.) In addition, in view of the very nature of their position, civil servants often have access to information which the government, for various legitimate reasons, may have an interest in keeping confidential or secret. Therefore, the duty of discretion owed by civil servants will also generally be a strong one.
>
> 72. ... the Court notes that a civil servant, in the course of his work, may become aware of in-house information, including secret information, whose divulgation or publication corresponds to a strong public interest. The Court thus considers that the signaling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the employee or civil servant concerned is the only person, or

part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large.

...

73. In the light of the duty of discretion referred to above, disclosure should be made in the first place to the person's superior or other competent authority or body. It is only where this is clearly impracticable that the information could, as a last resort, be disclosed to the public (see, mutatis mutandis, *Haseldine*, cited above). In assessing whether the restriction on freedom of expression was proportionate, therefore, the Court must take into account whether there was available to the applicant any other effective means of remedying the wrongdoing which he intended to uncover.

74. In determining the proportionality of an interference with a civil servant's freedom of expression in such a case, the Court must also have regard to a number of other factors. In the first place, particular attention shall be paid to the public interest involved in the disclosed information. The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest (see, among other authorities, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). In a democratic system, the acts or omissions of government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the media and public opinion. The interest which the public may have in particular information can sometimes be so strong as to override even a legally imposed duty of confidence (see *Fressoz and Roire v. France* [GC], no. 29183/95, ECHR 1999-I, and *Radio Twist, a.s. v. Slovakia*, no. 62202/00, ECHR 2006-XV).

75. The second factor relevant to this balancing exercise is the authenticity of the information disclosed. It is open to the competent State authorities to adopt measures intended to react appropriately and without excess to defamatory accusations devoid of foundation or formulated in bad faith (see *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236). Moreover, freedom of expression carries with it duties and responsibilities and any person who chooses to disclose information must carefully verify, to the extent permitted by the circumstances, that it is accurate and reliable (see, mutatis mutandis, *Morissens v. Belgium*, no. 11389/85, Commission decision of 3 May 1988, DR 56, p. 127, and *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III).

76. On the other side of the scales, the Court must weigh the damage, if any, suffered by the public authority as a result of the disclosure in question and assess whether such damage outweighed the interest of the public in having the information revealed (see, mutatis mutandis, *Hadjianastassiou v. Greece*, 16 December 1992, § 45, Series A no. 252, and *Stoll*, cited above, § 130). In this connection, the subject matter of the disclosure and the nature of the administrative authority concerned may be relevant (see *Haseldine*, cited above).

77. The motive behind the actions of the reporting employee is another determinant factor in deciding whether a particular disclosure should be protected or not. For instance an act motivated by a personal grievance or a personal antagonism or the expectation of personal advantage, including pecuniary gain, would not justify a particularly strong level of protection (ibid.). It is important to establish that, in making the disclosure, the individual acted in good faith and in the belief that the information was true, that it was in the public interest to disclose it and that no other, more discreet, means of remedying the wrongdoing was available to him or her.

> 78. Lastly, in connection with the review of the proportionality of the interference in relation to the legitimate aim pursued, attentive analysis of the penalty imposed on the applicant and its consequences is required (see *Fuentes Bobo*, cited above, § 49)."

48. Turning to the facts of the present case, the Court considers it irrelevant to determine whether or not the Moldovan State had an obligation, in the light of the *Guja* judgment (cited above), to reopen the proceedings confirming the applicant's dismissal in 2003 and to reinstate him in his previous position. As stated above, it is for the State concerned to decide, under the supervision of the Committee of Ministers, what measures are most appropriate in the context of executing the Court's judgment in any given case. The Court takes note of both the decision to reopen the domestic proceedings and the order for the applicant to be reinstated in his previous position.

49. For the purposes of examining the present case, it is only what followed the applicant's reinstatement that is of relevance. The Court considers that the central issue here is determining whether or not the applicant's second dismissal from his employment constituted an attempt by the authorities to dispose of an employee whom they deemed inconvenient in the light of the events of 2003, in other words whether or not the applicant received the treatment he complained of as a result of his whistle-blowing in 2003. The determination of the existence of a new interference with the applicant's right to freedom of expression will depend on whether the answer to that question is affirmative.

50. It is the Government's position that the applicant's dismissal in June 2008 was unrelated to the exercise of his freedom of expression back in 2003. They contend that the State fully complied with the judgment of 12 February 2008 after paying the just satisfaction and after the Supreme Court reviewed the judgments confirming the applicant's dismissal in 2003.

51. The applicant argues the contrary and alleges that the State authorities only created appearances of reinstating him in the position he occupied before 2003, while in reality they continued the retributory measures against him.

52. The Court notes firstly that the applicant was dismissed from his employment in June 2008 on the basis of section 14(8) of the Public Service Act. As interpreted by the Court of Appeal in its decision of 17 December 2008 (see paragraph 19 above), that section gave the newly appointed Prosecutor General the power to dismiss the applicant, rather than imposed an obligation on him to do so. Moreover, as indicated by the applicant's submissions, which were not disputed by either the Government in the proceedings before the Court or by the Prosecutor General's Office in the domestic proceedings, the applicant was the first employee of the Prosecutor General's Office to be dismissed on the basis of that provision. Between 2003 and 2008 two new Prosecutor Generals were appointed, and nobody was dismissed on the basis of section 14(8).

53. The Court notes next that the Prosecutor General sought the trade unions' approval of the applicant's dismissal on the very day his reinstatement was ordered, on 5 June 2008 (see paragraph 14 above). The Court finds it unusual for an employer acting in good faith to employ a person and simultaneously seek his or her dismissal, in the absence of sudden and unexpected new circumstances. It does not appear from the Government's submissions that any such circumstances arose on 5 June 2008.

54. The Court further notes that the Government disputed the applicant's allegations about his discussion with the Prosecutor General and the treatment to which he had been subjected during the ten days of his employment in June 2008. Unlike the applicant, it was open to the Government to present at least some evidence in support of their position. In particular, they could have presented a copy of the applicant's badge permitting him access to the building of the Prosecutor General's Office, or any other documents proving that the applicant received a badge. Similarly, the applicant must have left traces of his work or work-related activities during his ten days of employment, which could have been presented in support of the Government's allegations.

55. The Court also notes that the same allegations were made by the applicant in the domestic proceedings. In particular, he informed the courts about his discussion with the Prosecutor General and the fact that he had not been issued with a badge or allocated an office and had not been given any tasks. It appears from the material in the case file that the Prosecutor General's Office did not dispute those allegations, let alone adduce any evidence to the contrary.

56. In describing the aim pursued in dismissing the applicant, the Government submitted that the Prosecutor General had wanted to promote a new team of people in whom he could have confidence. The Court notes that no such explanation was given by the Prosecutor General during the domestic proceedings, and that it was the Government which presented it for the first time during the Court proceedings. This submission must therefore be treated with caution, especially in the absence of any form of substantiation (see *Nikolov v. Bulgaria*, no. 38884/97, § 74 et seq., 30 January 2003).

57. In view of the above and on the basis of the material before it, the Court considers that there are sufficiently strong grounds for drawing an inference that the applicant's second dismissal from his employment was not related to an ordinary labour dispute, but had all the characteristics of another act of retaliation for his disclosing the letters in 2003. The manner in which the events unfolded and their timing could make an independent observer reasonably conclude that the applicant's second dismissal was not unrelated with the events of 2003. In fact, the Prosecutor General did not even attempt to maintain the impression of a simple labour dispute. Instead,

he acted in such a way as to make it obvious to the applicant and others that the applicant was no longer welcome to work at his old workplace. Here the Court wishes to stress that the obligation to reinstate does not preclude future dismissal on another, justified ground unrelated to the original dismissal (see, *mutatis mutandis*, *Sidabras and Others v. Lithuania*, nos. 50421/08 and 56213/08, §§ 107-12, 23 June 2015).

58. With the above in mind, the Court considers that the applicant's dismissal from his employment in June 2008 amounted to an "interference by a public authority" with his right to freedom of expression under the first paragraph of Article 10 of the Convention. Such interference will constitute a breach of Article 10 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2 and was "necessary in a democratic society" for the achievement of those aims.

59. The Court does not find it necessary to decide whether the above interference was "prescribed by law" and whether it pursued a legitimate aim. With regard to whether it was "necessary in a democratic society", the Court does not see any reason to depart from its findings in *Guja* (cited above, §§ 80-97). Moreover, what is of great importance for the Court in the present case is the fact that the domestic courts did not react in any way to the applicant's allegations that his dismissal was in fact an attempt by the authorities to dispose of an employee whom they deemed inconvenient in the light of the events of 2003. The courts paid no attention at all to the applicant's allegations concerning the treatment to which he had been subjected during his ten days of employment. They did not examine whether the dismissal constituted an interference with the applicant's rights guaranteed by Article 10, or whether the decision to dismiss the applicant again under section 14(8) of the Public Service Act was justified under Article 10 § 2 of the Convention, bearing in mind the events of 2003 and the *Guja* judgment.

60. Instead of fulfilling their primary role under the Convention protection system by examining factors which were central and essential under the Convention, the domestic courts limited their examination of the case to verifying whether formalities such as the approval by the trade unions had been obtained, and whether section 14(8) of the Public Service Act was applicable to the applicant's situation. An issue as important as the alleged repeated failure to observe the applicant's rights as found to have been breached in *Guja* (cited above) was not among the questions examined by the domestic courts, in spite of the fact that that issue was at the heart of the applicant's defence.

61. In the light of the above, the Court comes to the conclusion 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". There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

63. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

64. The Government contested the claim and argued that the applicant's claims were ill-founded and excessive.

65. The Court considers that the applicant must have suffered pecuniary and non-pecuniary damage as a result of his dismissal. Making its assessment on an equitable basis, it awards him EUR 10,000.

B. Costs and expenses

66. The applicant also claimed EUR 1,500 for costs and expenses incurred before the Court.

67. The Government maintained that the claim was excessively high.

68. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the entire amount claimed for costs and expenses.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President