CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

GRAND CHAMBER

CASE OF GUJA v. MOLDOVA

(Application no. 14277/04)

JUDGMENT

STRASBOURG

12 February 2008

In the case of Guja v. Moldova,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President*,
Christos Rozakis,
Nicolas Bratza,
Boštjan M. Zupančič,
Peer Lorenzen,
Françoise Tulkens,
Giovanni Bonello,
Josep Casadevall,
Rait Maruste,
Kristaq Traja,
Snejana Botoucharova,
Stanislav Pavlovschi,
Lech Garlicki,
Alvina Gyulumyan,
Ljiljana Mijović,
Mark Villiger,
Päivi Hirvelä, *judges*,
and Erik Fribergh, *Registrar*,

Having deliberated in private on 6 June 2007 and 9 January 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 14277/04) 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 Mr Iacob Guja (“the applicant”) on 30 March 2004.

2. The applicant was represented by Mr V. Gribincea and Mr V. Zamă, lawyers practising in Chişinău and members of the non-governmental organisation Lawyers for Human Rights. The Moldovan Government (“the Government”) were represented by their Agents, Mr V. Pârlog and Mr V. Grosu.

3. The applicant alleged a breach of his right to freedom of expression under Article 10 of the Convention, in particular the right to impart information, as a result of his dismissal from the Prosecutor General’s Office for divulging two documents which in his opinion disclosed interference by a high-ranking politician in pending criminal proceedings.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 28 March 2006 a Chamber of that Section decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. On 20 February 2007 a Chamber composed of Nicolas Bratza, President, Josep Casadevall, Giovanni Bonello, Ljiljana Mijović, Kristaq Traja, Stanislav Pavlovschi and Lech Garlicki, judges, and Lawrence Early, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

6. The applicant and the Government each filed observations on the admissibility and merits. The parties replied in writing to each other's observations.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 6 June 2007 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr V. GROSU, *Agent*,
Mr G. ZAMISNÎI, *Adviser*;

(b) *for the applicant*
Mr V. GRIBINCEA,
Mr V. ZAMĂ, *Counsel*,
Mr I. GUJA, *Applicant*.

The Court heard addresses by Mr Grosu, Mr Gribincea and Mr Zamă.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, Mr Iacob Guja, was born in 1970 and lives in Chişinău. At the material time he was the Head of the Press Department of the Prosecutor General's Office.

A. Background to the case

9. On 21 February 2002 four police officers (M.I., B.A., I.P. and G.V.) arrested ten persons suspected of offences related to the parliamentary elections; one of them was also suspected of being the leader of a criminal gang. Later the suspects were released from detention and complained to the Prosecutor's Office of ill-treatment and illegal detention by the four police officers. As a result of their complaint, a criminal investigation was initiated against the police officers on charges of, *inter alia*, ill-treatment and unlawful detention.

10. In June 2002 the four police officers wrote letters, which they signed jointly, to President Voronin, Prime Minister Tarlev and the Deputy Speaker of Parliament, Mr Mişin, seeking protection from prosecution. They set out their views on the criminal proceedings and complained that the actions of the Prosecutor's Office were abusive. They asked for the legality of the criminal charges that had been brought against them to be verified. On 21 June 2002 Mr Mişin forwarded the letter he had received, with an accompanying note, to the Prosecutor General's Office. The note was written on the official headed paper of the Parliament and was not marked as being confidential. It stated as follows:

> "Dear Mr Rusu,
>
> A question arises after reading this letter: is the Deputy Prosecutor General fighting crime or the police? This issue is made even more pressing by the fact that the policemen concerned are from one of the best teams in the Ministry of the Interior, whose activity is now being blocked as a result of the efforts of employees of the Prosecutor General's Office. I ask you personally to intervene in this case and solve it in strict compliance with the law."

11. In January 2003 Mr Voronin visited the Centre for Combating Economic Crime and Corruption where he discussed, *inter alia*, the problem of the undue pressure some public officials were putting on law-enforcement bodies in respect of pending criminal proceedings. The President made a call to fight corruption and asked law-enforcement officers to disregard any attempts by public officials to put them under pressure. The declarations of the President were made public by the media.

12. On an unspecified date the criminal proceedings against the police officers were discontinued.

B. The leaking of documents

13. A few days after Mr Voronin made his call to fight corruption, the applicant sent to a newspaper, the *Jurnal de Chişinău*, copies of two letters ("the letters") that had been received by the Prosecutor General's Office.

14. The first was the note written by Mr Mişin (see paragraph 10 above). The second had been written by Mr A. Ursachi, a deputy minister in the

Ministry of the Interior, and was addressed to a deputy prosecutor general. It was written on the official headed paper of the Ministry of the Interior and was not marked confidential. It stated, *inter alia*:

> "... Police Major M.I. [one of the four officers, see paragraph 9 above] was convicted on 12 May 1999 ... of offences under Articles 116 § 2 [illegal detention endangering life or health or causing physical suffering], 185 § 2 [abuse of power accompanied by acts of violence, the use of a firearm or torture] and 193 § 2 [extracting a confession by acts of violence and insults] of the Criminal Code and sentenced to a fine of 1,440 Moldovan lei (128 euros). Under section 2 of the Amnesty Act, he was exempted from paying the fine.
>
> ... on 24 October 2001, Major M.I. was reinstated in his post at the Ministry of the Interior."

C. The article in the *Jurnal de Chişinău*

15. On 31 January 2003 the *Jurnal de Chişinău* published an article entitled "Vadim Mişin intimidating prosecutors". The article stated, *inter alia*:

> "At the end of last week, during a meeting at the Centre for Combating Economic Crime and Corruption, the President called on law-enforcement institutions to cooperate in the fight against organised crime and corruption and asked them to ignore telephone calls from senior public officials concerning cases that were pending before them.
>
> The President's initiative is not accidental. The phenomenon has become very widespread, especially during the last few years, and has been the subject of debate in the mass media and in international organisations.
>
> Recently the press reported on the case of the Communist Parliamentarian A.J., who had attempted to influence a criminal investigation in respect of an old friend and high-ranking official at the Ministry of Agriculture who had been caught red-handed. However, no legal action was taken. ...
>
> Also, the press reported that Mr Mişin had requested the Prosecutor General to sack two prosecutors, I.V. and P.B., involved in the investigation into the disappearance of the Chief of the Information Technology Department, P.D., apparently after they had found evidence implicating officials of the Ministry of the Interior in wrongdoing.
>
> The results of the internal investigation into the activities of these two prosecutors are not yet known. However, sources at the Prosecutor's Office have told this newspaper that even though I.V. and P.B. have not been found guilty, they have been asked to leave at the insistence of someone in authority.
>
> Now, while the declarations of the President concerning trading in influence are still fresh on peoples' minds, we reveal a new investigation concerning high-ranking officials.
>
> The Deputy Speaker of Parliament is attempting to protect four police officers who are under criminal investigation. Mr Mişin's affinity with policemen is not new, since his background is in the police force. Our sources stated that this is not the only case in which Mr Mişin has intervened on behalf of policemen in trouble with the law.
>
> ...

The Ciocana Prosecutor's Office initiated criminal proceedings against four police officers ... after they had used force during the unlawful arrest of a group of people.

... [The] police officers assaulted the detainees by punching and kicking them ... Furthermore, it was found that one of the officers had made false statements in the police report on the arrest ... The four police officers were also being investigated for forcibly extracting confessions ...

The investigation lasted for more than a year. When it was almost over ... the police officers started to seek protection from those in authority.

...

On 20 June 2002 the police officers wrote letters to President Vladimir Voronin, Prime Minister Vasile Tarlev and the Deputy Speaker of Parliament, Vadim Mişin, asking them to intervene to end the investigation, which they said was unwarranted.

...

The first to react to their letter was the Deputy Speaker of Parliament, Vadim Mişin. On 21 June 2002 ... he sent the Prosecutor General a letter in which, in a commanding tone, he asked him personally to intervene in the case of the four policemen. Even though he instructed the Prosecutor General to get involved in this case 'in strict compliance with the law', the tone of the letter clearly shows that he was giving an order for the case to be examined very quickly.

As a result of the intervention of the State's most influential figures, the Prosecutor General's Office discontinued the criminal investigation against the policemen and ordered an internal investigation into the correctness of the decision to bring criminal proceedings against them ...

...

... Sources from the Ministry of the Interior confirmed that officer M.I. [one of the four policemen] had [previously] been convicted by the Court of Appeal, and ordered to pay a criminal fine of 1,440 Moldovan lei. In accordance with the Amnesty Act, he was exempted from paying the fine. Moreover, on 24 October 2001 ... he was reinstated at the Ministry of the Interior.

Without commenting on the judgment of the Court of Appeal, we wish to make some remarks. M.I. was convicted on the basis of Articles 116, 185 and 193 of the Criminal Code of abuse of power, forcibly extracting confessions and unlawful detention. For these offences, the Criminal Code lays down sentences of one to five years' imprisonment. He was only given a fine.

Moreover, the Ministry of the Interior reinstated him while he was still under investigation."

16. The newspaper article was accompanied by photographs of the letters signed by Mr Mişin and Mr Ursachi.

D. The reaction of the Prosecutor General's Office

17. On an unspecified date the applicant was requested by the Prosecutor General to explain how the two letters had come to be published by the press.

18. On 14 February 2003 the applicant wrote to the Prosecutor General, admitting that he had sent the two letters to the newspaper. He stated, *inter alia*:

> "My act was a reaction to the declarations made by the [President] concerning the fight against corruption and trading in influence. I did this because I was convinced that I was helping to fight the scourge of trading in influence (*trafic de influenţă*), a phenomenon which has become increasingly common of late.
>
> I believed and still believe that if each of us were to help uncover those who abuse their position in order to obstruct the proper administration of justice, the situation would change for the better.
>
> Further, I consider that the letters I handed over to the *Jurnal de Chişinău* were not secret. My intention was not to do a disservice to the Prosecutor's Office, but on the contrary to create a positive image of it."

19. On an unspecified date a prosecutor, I.D., who was suspected of having furnished the letters to the applicant, was dismissed.

20. On 17 February 2003 the applicant wrote a further letter to the Prosecutor General, informing him that the letters had not been obtained through I.D. He added:

> "If the manner in which I acted is considered a breach of the internal regulations, then I am the one who should bear responsibility.
>
> I acted in compliance with the Access to Information Act, the Prosecuting Authorities Act and the Criminal Code. I believed that the declarations of the [President] decrying acts of corruption and trading in influence were sincere. To my great regret, I note that the Prosecutor General's Office has elevated a letter from a public official (which in my opinion is a clear example of direct political involvement in the administration of justice) to the status of State secret. This fact, coupled with I.D.'s dismissal, concerns me and causes me seriously to doubt that the rule of law and human rights are respected in the Republic of Moldova."

21. On 3 March 2003 the applicant was dismissed. The letter of dismissal stated, *inter alia*, that the letters disclosed by the applicant to the newspaper were secret and that he had failed to consult the heads of other departments of the Prosecutor General's Office before handing them over, in breach of paragraphs 1.4 and 4.11 of the Internal Regulations of the Press Department (see paragraph 31 below).

E. The reinstatement proceedings brought by the applicant

22. On 21 March 2003 the applicant brought a civil action against the Prosecutor General's Office seeking reinstatement. He argued, *inter alia*, that the letters he had disclosed to the newspaper were not classified as secret in accordance with the law; that he was not obliged to consult the heads of other departments before contacting the press; that he had given the letters to the newspaper at the newspaper's request; and that his dismissal constituted a breach of his right to freedom of expression.

23. On 16 September 2003 the Chişinău Court of Appeal dismissed the applicant's action. It stated, *inter alia*, that the applicant had breached his obligations under paragraph 1.4 of the Internal Regulations of the Press Department by not consulting other departmental heads and under paragraph 4.11 of the Regulations by disclosing secret documents.

24. The applicant appealed. He relied on the same arguments as in his initial court action. He also argued that the disclosure of the letters to the newspaper had not in any way prejudiced his employer.

25. On 26 November 2003 the Supreme Court of Justice dismissed the appeal on the same grounds as the Chişinău Court of Appeal. Referring to the applicant's submissions concerning freedom of expression, the Supreme Court stated that obtaining information through the abuse of one's position was not part of freedom of expression (*dreptul la exprimare nu presupune dobândirea informaţiei abuziv, folosind atribuţiile de serviciu*).

26. Neither the Prosecutor General's Office nor the Deputy Speaker of Parliament, Mr Mişin, appear to have contested the authenticity of the letters published in the *Jurnal de Chişinău* or the truthfulness of the information contained in the article of 31 January 2003 or to have taken any further action.

F. The criminal complaint by the *Jurnal de Chişinău*

27. Since the Prosecutor General's Office did not react in the manner the *Jurnal de Chişinău* had anticipated after the publication of the article on 31 January 2003 (see paragraph 15 above), the latter initiated court proceedings for an order requiring the Prosecutor General's Office to initiate a criminal investigation into Mr Mişin's alleged interference in an ongoing criminal investigation. The newspaper argued, *inter alia*, that, under the Code of Criminal Procedure, newspaper articles and letters published in newspapers could serve as a basis for the institution of criminal proceedings and that the Prosecutor General was under a duty to order an investigation.

28. The newspaper's action was dismissed by the Râşcani District Court on 25 March 2003 and by the Chişinău Regional Court on 9 April 2003. The courts found, *inter alia*, that the newspaper did not have legal standing to lodge a complaint and that, in any event, the article of 31 January 2003 was merely a newspaper article expressing a personal point of view, not an official request to initiate a criminal investigation.

G. The follow-up article by the *Jurnal de Chişinău*

29. On 14 March 2003 the *Jurnal de Chişinău* published a follow-up to its article of 31 January 2003 entitled "Mişin launches crackdown on prosecutors". The piece described the events that had followed the

publication of the first article and stated that Mr Mişin had been infuriated by the article and had ordered the Prosecutor General to identify and punish those responsible for disclosing his note to the press. The Prosecutor General had acquiesced and declared war on subordinates who refused to tolerate political intervention in the workings of the criminal-justice system. The article stated that the actions of the Prosecutor General were in line with the general trend that had been observed in recent years of replacing people with considerable professional experience who were not prepared to comply with the rules instituted by the new government with people from dubious backgrounds. It claimed that sources from the Prosecutor General's Office had told the newspaper that the Prosecutor General's Office had received systematic indications from Mr Mişin and the advisers to the President concerning who should be employed or dismissed. In the previous year alone, thirty experienced prosecutors had been dismissed from the Chişinău Prosecutor's Office.

The article also gave an account of the applicant's dismissal as a result of pressure from Mr Mişin, and stated that sources at the Prosecutor General's Office had told the newspaper that the Office had received dozens of letters from Mr Mişin and V.S. (another high-ranking public official) in connection with ongoing criminal investigations.

According to the newspaper's sources, two prosecutors had been dismissed at the insistence of Mr Mişin because they had discovered incriminating material against him during an investigation into the disappearance of an important businessman, P.D. After their dismissal that criminal investigation had been brought to an end.

II. RELEVANT NON-CONVENTION MATERIALS

A. Domestic law and practice

1. The Labour Code

30. Article 263 § 1 of the Labour Code provided at the material time that employees of the central public authorities could be dismissed for a serious breach of their professional duties.

2. The Internal Regulations of the Press Department of the Prosecutor General's Office

31. Paragraphs 1.4 and 4.11 of the Internal Regulations of the Press Department of the Prosecutor General's Office read as follows:

> "1.4 The Press Department shall plan and organise, in conjunction with the editorial offices of newspapers, magazines and radio and television stations and with the heads of other departments of the Prosecutor General's Office, items for publication in the mass media concerning the activities of the Prosecutor General's Office.

...

4.11 [The Head of the Press Department] is responsible for the quality of the published materials, the veracity of the information received and supplied, and for preserving confidentiality in accordance with the legislation of the Republic of Moldova."

32. At the material time neither the Internal Regulations of the Prosecutor's Office nor Moldovan legislation contained any provision concerning the disclosure by employees of acts of wrongdoing committed at their place of work.

3. The Criminal Code and the Code of Criminal Procedure

33. The Criminal Code at the material time contained in Article 190 § 1 a provision prohibiting any interference with a criminal investigation. It stated:

"Any interference with a criminal investigation, namely the illegal exercise of influence in any form over the person carrying out the investigation ... shall be punished with imprisonment of up to two years or a fine of up to one hundred times the minimum wage."

34. Article 90 of the Code of Criminal Procedure provided at the material time that, *inter alia*, information about offences contained in newspaper articles or notes or letters published in a newspaper could constitute a ground for a prosecutor to commence a criminal investigation.

35. Article 122 of the Code of Criminal Procedure provided that, at the investigation stage, materials from a criminal file could not be disclosed except with the authorisation of the person in charge of the investigation.

4. The organisation of the prosecuting authorities in Moldova

36. According to Article 125 of the Constitution, prosecutors are independent.

37. The relevant provisions of the Prosecuting Authorities Act read as follows.

Section 3: The fundamental principles governing the activity of the Prosecutor's Office

"(1) The Prosecutor's Office:

– shall exercise its functions independently of the public authorities ... in accordance with the law; ...

(3) ... Prosecutors and investigators are precluded from membership of any political party or other socio-political organisations and shall only be accountable before the law ..."

Section 13: The Prosecutor General

"(1) The Prosecutor General shall:

(i) be appointed by Parliament on a proposal by the Speaker of Parliament for a term of office of five years; and

(ii) have a senior deputy and ordinary deputies, who shall be appointed by Parliament on the basis of his or her proposals ...”

5. The Petitions Act and the Status of Members of Parliament Act

38. The Petitions Act requires civil servants or government bodies to reply to written requests within thirty days. If they lack competence, they must forward the request to the competent body within three days.

39. The relevant provisions of the Status of Members of Parliament Act of 7 April 1994 provide:

Section 22(1)

“Members of parliament shall have the right to contact any State body, non-governmental organisation or official about problems pertaining to the activity of a member of parliament and to participate in their examination.”

Section 23(1)

“Members of parliament, in their capacity as representatives of the supreme legislative authority, shall have the right to demand the immediate cessation of any unlawful conduct. In case of necessity they may request official bodies or persons to intervene to bring an end to the unlawful conduct ...”

B. Reports concerning the separation of powers and independence of the judiciary in Moldova

40. The relevant part of the 2004 report of the International Commission of Jurists (ICJ) on the rule of law in Moldova stated:

“... The mission to Moldova carried out by the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists (ICJ/CIJL) has concluded that, despite efforts by the post-independence Moldovan government to reform its system of justice, the rule of law suffers serious shortcomings that must be addressed. The ICJ/CIJL found that the breakdown in the separation of powers has again resulted in a judiciary that is largely submissive to the dictates of the government. The practice of ‘telephone justice’ has returned. The executive is able to substantially influence judicial appointments through the Supreme Council of Magistracy that lacks independence. Beyond allegations of corruption, the Moldovan judiciary has substantially regressed in the last three years, resulting in court decisions that can pervert the course of justice when the interests of the government are at stake ...”

41. The 2003 Freedom House report on Moldova stated, *inter alia*, that:

“... In 2002, the principle of the rule of law was under challenge in Moldova ... Also affecting the fragile balance of power among the legislative, executive, and judicial branches of government in 2002 were a series of judicial nominations based on loyalty to the ruling party, the dismissal of the ombudsman, and attempts to limit the independence of the Constitutional Court.

...

In April [2002], the Moldovan Association of Judges (MAJ) signalled that the government had started a process of 'mass cleansing' in the judicial sector. Seven judges lost their jobs ...

The situation worsened when President Voronin refused to prolong the mandates of fifty-seven other judges ..."

42. The 2003 report by Open Society Justice Initiative and Freedom House Moldova stated, *inter alia*, the following:

"... there has been instituted the practice of 'taking under control' certain files, presenting interest to the Communist leaders or to state authorities. This practice implies the following: the High Council of the Magistracy (HCM) or the Supreme Court (both institutions are chaired by the same person) receives instructions from the President's office, from government or Parliament, referring to the concerned case and required solution (such instructions also exist in oral form). Following these instructions, the Supreme Court or HCM addresses directly to the chairman of the court, where the particular case is being considered with the order to 'take under personal control' the examination of one or other particular file. The so-called 'taking under control' in fact represents direct instructions on solutions for specific cases."

C. Materials of the United Nations

43. The relevant provision of the Termination of Employment Convention no. 58 of the International Labour Organisation, which was ratified by Moldova on 14 February 1997, reads:

Article 5

"The following, *inter alia*, shall not constitute valid reasons for termination:

...

(c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

..."

44. The relevant provision of the United Nations Convention against Corruption, which was adopted by the General Assembly by resolution no. 58/4 of 31 October 2003 and which has been in force since 14 December 2005, reads:

Article 33 – Protection of reporting persons

"Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with [the] Convention."

At the date on which this judgment was adopted, the Convention had been signed by 140 countries and ratified or acceded to by 77 countries, not including the Republic of Moldova.

D. Materials of the Council of Europe

45. The relevant provision of the Council of Europe's Criminal Law Convention on Corruption of 27 January 1999 reads:

> "Preamble
>
> The member States of the Council of Europe and the other States signatory hereto,
>
> ...
>
> Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;
>
> ...
>
> Have agreed as follows:
>
> ...
>
> **Article 22 – Protection of collaborators of justice and witnesses**
>
> Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:
>
> (a) those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise cooperate with the investigating or prosecuting authorities;
>
> (b) witnesses who give testimony concerning these offences."

The Explanatory Report to this convention states as follows with regard to Article 22:

> "111. ... the word 'witnesses' refers to persons who possess information relevant to criminal proceedings concerning corruption offences as contained in Articles 2-14 of the Convention and includes whistle-blowers."

This convention was signed by Moldova on 24 June 1999 and came into force in respect of Moldova on 1 May 2004.

46. The relevant provision of the Council of Europe's Civil Law Convention on Corruption of 4 November 1999 reads:

> "Preamble
>
> The member States of the Council of Europe, the other States and the European Community, signatories hereto,
>
> ...
>
> Emphasising that corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the proper and fair functioning of market economies;

Recognising the adverse financial consequences of corruption to individuals, companies and States, as well as international institutions;

...

Have agreed as follows:

...

Article 9 – Protection of employees

Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities."

The Explanatory Report to this convention states with regard to Article 9:

"66. This Article deals with the need for each Party to take the necessary measures to protect employees, who report in good faith and on the basis of reasonable grounds their suspicions on corrupt practices or behaviours, from being victimised in any way.

67. As regards the necessary measures to protect employees provided for by Article 9 of the Convention, the legislation of Parties could, for instance, provide that employers be required to pay compensation to employees who are victims of unjustified sanctions.

68. In practice corruption cases are difficult to detect and investigate and employees or colleagues (whether public or private) of the persons involved are often the first persons who find out or suspect that something is wrong.

69. The 'appropriate protection against any unjustified sanction' implies that, on the basis of [the] Convention, any sanction against employees based on the ground that they had reported an act of corruption to persons or authorities responsible for receiving such reports, will not be justified. Reporting should not be considered as a breach of the duty of confidentiality. Examples of unjustified sanctions may be a dismissal or demotion of these persons or otherwise acting in a way which limits progress in their career.

70. It should be made clear that, although no one could prevent employers from taking any necessary action against their employees in accordance with the relevant provisions (e.g. in the field of labour law) applicable to the circumstances of the case, employers should not inflict unjustified sanctions against employees solely on the ground that the latter had reported their suspicion to the responsible person or authority.

71. Therefore the appropriate protection which Parties are required to take should encourage employees to report their suspicions to the responsible person or authority. Indeed, in many cases, persons who have information of corruption activities do not report them mainly because of fear of the possible negative consequences.

72. As far as employees are concerned, this protection provided covers only the cases where they have reasonable ground to report their suspicion and report them in good faith. In other words, it applies only to genuine cases and not to malicious ones."

This convention was signed by Moldova on 4 November 1999 and came into force in respect of Moldova on 1 July 2004.

47. The relevant provisions of the Recommendation on Codes of Conduct for Public Officials adopted by the Committee of Ministers of the Council of Europe on 11 May 2000 (Rec(2000)10) read:

Article 11

"Having due regard for the right of access to official information, the public official has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her employment."

Article 12 – Reporting

"...

5. The public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment. The investigation of the reported facts shall be carried out by the competent authorities.

6. The public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable grounds and in good faith."

THE LAW

48. The applicant complained that his dismissal for the disclosure of the impugned letters to the *Jurnal de Chişinău* amounted to a breach of his right to freedom of expression and in particular of his right to impart information and ideas to third parties. Article 10 of the Convention reads as follows:

"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."

I. THE ADMISSIBILITY OF THE CASE

A. The complaint under Article 6 of the Convention

49. In his initial application, the applicant submitted a complaint under Article 6 of the Convention about the failure of the domestic courts to consider the arguments he had made in the reinstatement proceedings. However, in his subsequent submissions, the applicant asked the Court not to proceed with the examination of that complaint. Accordingly the Court will not examine it.

B. The complaint under Article 10 of the Convention

50. The Government did not contest the authenticity of the letter that had been sent by Mr Mişin to the Prosecutor General. However, they argued that there had been no interference with the applicant's right to freedom of expression because he was not the author of the articles that had been published in the *Jurnal de Chişinău* and had not been dismissed for exercising his freedom of expression but simply for breaching the internal regulations of the Prosecutor General's Office. In their view, since the applicant's complaints were in essence related to his labour rights, Article 10 was inapplicable.

51. The applicant argued that Article 10 was applicable in the present case, irrespective of the fact that he was not the author of the letters that had been sent to the newspaper. Relying on the cases of *Thoma v. Luxembourg* (no. 38432/97, ECHR 2001-III) and *Jersild v. Denmark* (23 September 1994, Series A no. 298), he submitted that the Court had already found that freedom of expression also covered the right to disseminate information received from third parties.

52. The Court reiterates that the protection of Article 10 extends to the workplace in general and to public servants in particular (see *Vogt v. Germany*, 26 September 1995, § 53, Series A no. 323; *Wille v. Liechtenstein* [GC], no. 28396/95, § 41, ECHR 1999-VII; *Ahmed and Others v. the United Kingdom*, 2 September 1998, § 56, *Reports of Judgments and Decisions* 1998-VI; and *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000).

53. The applicant sent the letters to the newspaper, which subsequently published them. Since Article 10 includes the freedom to impart information and since the applicant was dismissed for his participation in the publication of the letters, the Court dismisses the Government's preliminary objection.

54. The Court considers that the applicant's complaint under Article 10 of the Convention raises questions of fact and law which are sufficiently serious for their determination to depend on an examination of the merits, and no grounds for declaring it inadmissible have been established. The

Court therefore declares the application admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. THE MERITS OF THE CASE

A. Existence of an interference

55. The Court found in paragraph 53 above that Article 10 was applicable to the present case. It further holds that the applicant's dismissal for making the letters public amounted to an "interference by a public authority" with his right to freedom of expression under the first paragraph of that Article.

56. 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.

B. "Prescribed by law"

57. In his initial submissions, the applicant argued that the interference had not been prescribed by law since the law relied upon by the domestic authorities was not sufficiently foreseeable. However, in his subsequent oral pleadings he did not pursue this point.

58. The Court notes that the applicant was dismissed on the basis of Article 263 § 1 of the Labour Code for having violated paragraphs 1.4 and 4.11 of the Internal Regulations of the Press Department of the Prosecutor General's Office (see paragraph 31 above). However, since the parties did not argue this point further before the Court, it will continue its examination on the assumption that the provisions contained in paragraphs 1.4 and 4.11 of the Internal Regulations satisfied the requirement for the interference to be "prescribed by law".

C. Legitimate aim

59. The applicant argued that the interference did not pursue any legitimate aim. The Government submitted that the legitimate aims pursued in this case were to maintain the authority of the judiciary, to prevent crime and to protect the reputation of others. The Court, for its part, is ready to accept that the legitimate aim pursued was the prevention of the disclosure of information received in confidence. In so deciding, the Court finds it significant that at the time of his dismissal the applicant refused to disclose the source of the information, which suggests that it was not easily or

publicly available (see *Haseldine v. the United Kingdom*, no. 18957/91, Commission decision of 13 May 1992, Decisions and Reports (DR) 73). The Court must therefore examine whether the interference was necessary in a democratic society, in particular whether there was a proportionate relationship between the interference and the aim thereby pursued.

D. "Necessary in a democratic society"

1. The parties' submissions

(a) The applicant

60. According to the applicant, the disclosure of the letters had to be regarded as whistle-blowing on illegal conduct.

61. He pointed firstly to the fact that he had acted in good faith and that, when he disclosed the letters to the newspaper, he was convinced that they contained information concerning the commission of a serious offence by the Deputy Speaker of Parliament. The only reason for him disclosing them was to help fight corruption and trading in influence. He disagreed that the purpose of Mr Mişin's note had simply been to pass the police officers' letter to the Prosecutor General in accordance with the Petitions Act (see paragraph 38 above) and with the contention that Mr Mişin's actions had been in accordance with sections 22 and 23 of the Status of Members of Parliament Act (see paragraph 39 above). He further argued that the letters were not part of a criminal case file.

The applicant contended that, in the light of the manner in which the Prosecutor General and his deputies were appointed and in view of the predominant position of the Communist Party in Parliament, the Prosecutor General's Office was perceived by the public as being strongly influenced by Parliament. The independence of the Prosecutor General's Office was guaranteed in theory but not in practice. In the applicant's submission, the Prosecutor General could be dismissed at will by Parliament without any reasons being given. In the years 2002-03 more than thirty prosecutors who were not considered loyal to the Communist Party had been dismissed. Moreover, Mr Mişin, who was one of the leaders of the ruling party and the Deputy Speaker of Parliament, was also perceived as systematically using his position to influence the outcome of judicial proceedings.

The applicant added that the language of the letter written by Mr Mişin unequivocally suggested that its author intended to influence the outcome of the criminal proceedings against the four police officers. Such conduct constituted an offence under Article 190 § 1 of the Criminal Code (see paragraph 33 above). The applicant also pointed to the fact that, after receiving the letter in question, the Prosecutor General had ordered the reopening of the criminal investigation and shortly thereafter the criminal proceedings had been discontinued. According to the applicant, the fact that

the four police officers decided to ask State representatives at the highest level to investigate the legality of the criminal charges against them indicated the existence of a practice in the Republic of Moldova that was contrary to the principle of the separation of powers. It was highly unlikely that police officers dealing with the investigation of crime would be unaware that the authorities to whom they had addressed their letters had no judicial functions.

According to the applicant, the information disclosed by him was thus of major public interest.

62. In order to disclose the information, he had had no alternative but to go to a newspaper. As there was no whistle-blowing legislation in Moldova, employees had no procedure for disclosing wrongdoing at their place of work. It would have been pointless to bring the problem to the attention of the Prosecutor General as he lacked independence. Even though he had been aware of Mr Mişin's letter for about six months, it would appear that he had simply concealed its existence while at the same time complying with its terms. The refusal of the Prosecutor's Office to initiate criminal proceedings against Mr Mişin after the publication of the newspaper articles (see paragraphs 15 and 29 above) supported the view that any disclosure to the Prosecutor's Office would have been in vain. Furthermore, the applicant had had reasonable grounds for fearing that the evidence would be concealed or destroyed if he disclosed it to his superiors.

The applicant also submitted that it would have been unreasonable to expect him to complain to Parliament because 71 of its 101 members were from the ruling Communist Party and there was no precedent of an MP from that party being prosecuted for a criminal offence. Moreover, between 2001 and 2004 no initiative by the opposition that was contrary to the interests of the ruling party had ever been successful in Parliament.

63. The applicant also complained about the severity of the sanction that had been imposed on him and pointed out that it was at the highest end of the range of possible penalties.

(b) The Government

64. In the Government's view, the disclosure in question did not amount to whistle-blowing.

65. They considered that the letters were internal documents to which the applicant would not normally have had access by virtue of his functions. He had thus effectively "stolen" them. Moreover, the letters disclosed by the applicant were confidential and part of a criminal file. Under the Code of Criminal Procedure, materials in a criminal file could not be made public without the authorisation of the person conducting the investigation (see paragraph 35 above).

The applicant's good faith was questionable also because the letter written by Mr Mişin could not reasonably be considered to have put undue

pressure on the Prosecutor General. The expression "I ask you personally to intervene in this case and solve it in strict compliance with the law" was a normal form of communication between different State bodies in accordance with the law. Mr Mişin had simply passed the letter received from the four police officers to the competent body – the Prosecutor General's Office – in accordance with the Petitions Act (see paragraph 38 above) and the Status of Members of Parliament Act (see paragraph 39 above). Under the latter Act, an MP had the right, *inter alia*, to examine petitions from citizens, to pass them to competent authorities, to participate in their examination and to monitor compliance with the law.

There was no causal link between Mr Mişin's letter and the subsequent decision to discontinue the criminal proceedings against the four police officers. In the Government's submission, the Prosecutor General's Office was a truly independent body whose independence was guaranteed by the Constitution and law of Moldova (see paragraphs 36 and 40 above).

Moreover, the applicant had not given the domestic courts the same reason for his actions as he had given his employer (see paragraphs 18 and 20 above). In the Government's view, this also indicated a lack of good faith on his part and showed that the real motive behind the disclosure was not the fight against corruption but an attempt to embarrass those concerned.

66. Since, as outlined above, Mr Mişin was not attempting to put pressure on the Prosecutor General, the information contained in his letter was not of public interest.

67. Moreover, the applicant had not disclosed the information to a competent authority and had acted hastily. There had been no information of an urgent or irreversible nature concerning life, health or the environment. The applicant was entitled to make a disclosure externally only if it was not possible to do so internally. Any such disclosure should in the first instance have been to the top echelons of the Prosecutor General's Office and thereafter to the Parliament (including the parliamentary commissions, factions and opposition), rather than going directly to the press.

In support of their submission, the Government sent the Court copies of several complaints that had been lodged by citizens with the Parliament concerning alleged illegalities in employment and other matters. All the complaints appeared to have been forwarded by the Parliament to the competent organs, such as the Prosecutor General's Office and the Superior Council of Magistrates, without any other parliamentary involvement.

The Government argued that twenty-one states in the United States of America did not afford protection to disclosures made to the media, while in the United Kingdom protection for external whistle-blowing was possible only in extremely rare and strictly defined circumstances.

68. In view of the nature of the duties and responsibilities of civil servants, the margin of appreciation enjoyed by the States in interfering with their right to freedom of expression was very large. The Government

submitted, lastly, that the severity of the penalty was proportionate to the gravity of the applicant's acts.

2. *The Court's assessment*

(a) The general principles applicable in this case

69. The central issue which falls to be determined is whether the interference was "necessary in a democratic society". The fundamental principles in that regard are well established in the Court's case-law and have been summed up as follows (see, among other authorities, *Jersild v. Denmark*, cited above, § 31; *Hertel v. Switzerland*, 25 August 1998, § 46, *Reports* 1998-VI; and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II):

> "(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-fulfilment. 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 ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.
>
> (iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient' ... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

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. To date, however, the Court has not had to deal with cases where a civil servant publicly disclosed internal information. To that extent the present case raises a new issue which can be distinguished from that raised in *Stoll v. Switzerland* ([GC], no. 69698/01, ECHR 2007-V), where the disclosure took place without the intervention of a civil servant. In this respect 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 signalling 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. In this context, the Court has had regard to the following statement from the Explanatory Report to the Council of Europe's Civil Law Convention on Corruption (see paragraph 46 above):

> "In practice corruption cases are difficult to detect and investigate and employees or colleagues (whether public or private) of the persons involved are often the first persons who find out or suspect that something is wrong."

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).

79. The Court will now assess the facts of the present case in the light of the above principles.

(b) Application of the above principles in the present case

(i) Whether the applicant had alternative channels for the disclosure

80. The applicant argued that he did not have at his disposal any effective alternative channel for the disclosure, while the Government argued that, on the contrary, the applicant could have raised the issue with his superiors in the first instance and later with the Parliament or the Ombudsman if necessary.

81. The Court notes that neither the Moldovan legislation nor the internal regulations of the Prosecutor General's Office contained any provision concerning the reporting of irregularities by employees (see paragraph 32 above). It appears, 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.

82. It also appears that the disclosure concerned the conduct of the Deputy Speaker of Parliament, who was a high-ranking official, and that despite having been aware of the situation for some six months the Prosecutor General had shown no sign of having any intention to respond but instead gave the impression that he had succumbed to the pressure that had been imposed on his office.

83. As to the alternative means of disclosure suggested by the Government (see paragraph 67 above), the Court finds that it has not been presented with any satisfactory evidence to counter the applicant's submission that none of the proposed alternatives would have been effective in the special circumstances of the present case.

84. In the light of the foregoing, the Court considers that in the circumstances of the present case external reporting, even to a newspaper, could be justified.

(ii) The public interest in the disclosed information

85. The applicant submitted that Mr Mişin's note constituted evidence of political interference in the administration of justice. The Government disagreed.

86. The Court notes that the police officers' letter requested Mr Mişin to verify the legality of the criminal charges brought against them by the Prosecutor's Office (see paragraph 10 above). Mr Mişin reacted by sending an official letter to the Prosecutor General. The Government submitted that Mr Mişin's actions were in compliance, *inter alia*, with the Status of Members of Parliament Act. In this context the Court considers it necessary to reiterate that in a democratic society both the courts and the investigation authorities must remain free from political pressure. Any interpretation of

any legislation establishing the rights of members of parliament must abide by that principle.

Having examined the note which Mr Mişin wrote to the Prosecutor General, the Court cannot accept that it was intended to do no more than to transmit the police officers' letter to a competent body as suggested by the Government (see paragraph 65 above). Moreover, in view of the context and of the language employed by Mr Mişin, it cannot 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" (see paragraph 10 above).

87. Against this background, the Court notes that the President of Moldova has campaigned against the practice of interference by politicians with the criminal-justice system and that the Moldovan media has widely covered the subject (see paragraph 11 above). It also notes the reports of the international non-governmental organisations (see paragraphs 40-42 above), which express concern about the breakdown of separation of powers and the lack of judicial independence in Moldova.

88. In the light of the above, the Court considers 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 (see paragraphs 10 and 14 above). There is no doubt that these are very important matters in a democratic society which the public has a legitimate interest in being informed about and which fall within the scope of political debate.

(iii) The authenticity of the disclosed information

89. It is common ground that the letters disclosed by the applicant to the *Jurnal de Chişinău* were genuine (see paragraph 26 above).

(iv) The detriment to the Prosecutor General's Office

90. The Court observes that it is in the public interest to maintain confidence in the independence and political neutrality of the prosecuting authorities of a State (see, *mutatis mutandis*, *Prager and Oberschlick v. Austria*, 26 April 1995, § 34, Series A no. 313). The letters sent by the applicant to the newspaper were not written by officials of the Prosecutor General's Office and, according to the Government, the letter from Mr Mişin was a normal communication between State bodies which had not affected the decision of the Prosecutor General's Office to discontinue the proceedings against the police officers. Nevertheless, the conclusion drawn by the newspaper in its articles that the Prosecutor General's Office was subject to undue influence may have had strong negative effects on public confidence in the independence of that institution.

91. However, the Court considers that the public interest in having information about undue pressure and wrongdoing within the Prosecutor's

Office revealed is so important in a democratic society that it outweighed the interest in maintaining public confidence in the Prosecutor General's Office. It reiterates in this context that open discussion of topics of public concern is essential to democracy, and regard must be had to the great importance of not discouraging members of the public from voicing their opinions on such matters (see *Barfod v. Denmark*, 22 February 1989, § 29, Series A no. 149).

(v) Whether the applicant acted in good faith

92. The applicant argued that his sole motive for disclosing the letters was to help fight corruption and trading in influence. This statement was not disputed by his employer. The Government, on the other hand, expressed doubt about the applicant's good faith, arguing, *inter alia*, that he had not given this explanation before the domestic courts.

93. On the basis of the materials before it, the Court does not find any 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. The fact that he did not make before the domestic courts his submissions about the fight against corruption and trading in influence is, in the Court's opinion, inconclusive since he may have been focused on challenging the reasons advanced by his employer for dismissing him and might well have considered it unnecessary to refer to matters that his employer did not dispute.

94. Accordingly, the Court comes to the conclusion that the applicant's motives were as stated by him and that he acted in good faith.

(vi) The severity of the sanction

95. Finally, the Court notes that the heaviest sanction possible was imposed on the applicant. While it had been open to the authorities to apply a less severe penalty, they chose to dismiss the applicant, which undoubtedly is a very harsh measure (see *Vogt*, cited above, § 60). This sanction not only had negative repercussions on the applicant's career but it could also have a serious chilling effect on other employees from the Prosecutor's Office and discourage them from reporting any misconduct. Moreover, in view of the media coverage of the applicant's case, the sanction could have a chilling effect not only on employees of the Prosecutor's Office but also on many other civil servants and employees.

96. The Court observes that the Government have argued that the applicant had in fact "stolen" the letter, which in their view was secret and part of a criminal file. The Government also stated that Mr Mişin's letter had not placed any undue pressure on the Public Prosecutor. It was a normal communication between State bodies and was unconnected with the decision to discontinue the proceedings against the police officers. In these

circumstances, the Court finds that it is difficult to justify such a severe sanction being applied.

(c) Conclusion

97. Being mindful of the importance of the right to freedom of expression on matters of general interest, 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 present case – 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".

Accordingly, there has been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant claimed 15,000 euros (EUR) in respect of pecuniary and non-pecuniary damage made up as follows: EUR 6,000 for loss of earnings for the period of unemployment after his dismissal, EUR 6,000 for lost career prospects and EUR 3,000 for non-pecuniary damage.

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

101. 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

102. The applicant's representatives claimed EUR 6,843 for legal fees, of which EUR 4,400 was claimed in respect of Mr Gribincea and EUR 2,443 in respect of Mr Zamă. They submitted a detailed time sheet and a contract indicating that the lawyers' hourly rates were EUR 80 and EUR 70 respectively. The calculation in the time sheet did not include time spent on the complaint under Article 6, which was subsequently withdrawn by the applicant.

103. They argued that the number of hours they had spent on the case was not excessive and was justified by its complexity and the fact that the observations had to be written in English.

104. As to the hourly rate, the applicant's lawyers argued that it was within the limits recommended by the Moldovan Bar Association, which were between EUR 40 and 150.

105. The applicant's representatives also claimed EUR 2,413 for expenses linked to the hearing of 6 June 2007, which sum included travel expenses, visa costs, insurance costs and a subsistence allowance.

106. The Government contested the amount claimed for the applicant's representation. They said that it was excessive and disputed the number of hours that the applicant's lawyers had spent on the case and the hourly rates, notably that charged by Mr Zamă, who, in their opinion, lacked the necessary experience to command such high fees.

107. As to the other expenses claimed by the applicant, the Government argued that they should have been claimed from the Court.

108. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-III). In the present case, regard being had to the itemised list that has been submitted and the complexity of the case, the Court awards the entire amount claimed by Mr Gribincea, EUR 1,600 for Mr Zamă's fee and the entire amount claimed by the applicant's representatives for the expenses incurred in connection with the hearing of 6 June 2007.

C. Default interest

109. 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, EUR 10,000 (ten thousand euros) in respect of pecuniary

damage and non-pecuniary damage and EUR 8,413 (eight thousand four hundred and thirteen euros) in respect of costs and expenses, plus any tax that may be chargeable, which sums are to be converted into the currency of the respondent State at the rate applicable at the date of payment;

(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 in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 12 February 2008.

Erik Fribergh Registrar	Jean-Paul Costa President