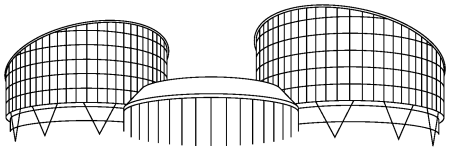

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GÎRLEANU v. ROMANIA

(Application no. 50376/09)

JUDGMENT

STRASBOURG

26 June 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 Gîrleanu v. Romania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Faris Vehabović,
Iulia Motoc,
Carlo Ranzoni,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 29 May 2018,

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

PROCEDURE

1. The case originated in an application (no. 50376/09) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Marian Gîrleanu ("the applicant"), on 10 September 2009.

2. The applicant was represented by Ms D. O. Hatneanu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant complained, in particular, of a violation of his freedom of expression as guaranteed by Article 10 of the Convention.

4. On 18 June 2013 the complaint concerning Article 10 of the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. Written submissions were received from Guardian News and Media, the Open Society Justice Initiative and the International Commission of Jurists, which had been granted leave by the then President of the Court to intervene as third parties (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and lives in Focşani.

7. At the material time the applicant was a local correspondent for the national daily newspaper *România liberă*. The applicant's articles covered various fields, including investigations into the activities of the armed forces and the police.

A. Background to the case

8. In the summer of 2004 secret documents were leaked, accidentally or deliberately, from the Romanian unit of an international military base in Afghanistan. The leak consisted mostly of copies of documents produced by the Romanian unit and classified as secret. The documents referred to the military operations of the Romanian troops at the said base in 2002 and 2003, such as operations orders or military maps. Copies of secret documents produced for the use of the Romanian unit by a military unit belonging to another country were also leaked.

9. In March 2005 three Romanian journalists, including O.O., who was working for *România liberă*, were kidnapped by a terrorist group in Iraq. Their release in May 2005 was negotiated by the Romanian State and an investigation was immediately started by the Romanian authorities. The following year the media extensively reported on this case and the role played by the authorities.

10. On 31 January 2006 O.O., together with other journalists, participated in a television show on a national channel. They criticised the authorities' negligence in allowing leaks of secret sensitive military information and mentioned the existence of a compact disc ("CD") with secret documents belonging to a Romanian military unit in Afghanistan. When the host of the show questioned the authenticity of the information on the CD, O.O. showed his computer to the camera. Some of the documents, including several military maps with the positions of the Romanian troops, were thus made visible to the public.

11. The journalists speculated as to whether such information could have reached terrorists too and demanded an investigation in order to establish whether the leaks had been voluntary. O.O. also said that although at that stage, the information no longer posed a threat to the lives of Romanian soldiers, it could have more serious implications in connection with the conflict in Afghanistan and Iraq.

12. During the show it was mentioned that the newspapers *România liberă* and *Ziua* had received the secret information in question but had decided not to publish it, fearing possible damage to national security.

13. On 7 February 2006 the national daily newspapers, *România liberă* and *Ziua*, published articles drawing attention to the fact that confidential information which could threaten national security had been leaked from a military unit under the authority of the Ministry of Defence.

14. On 8 February 2006 O.O. participated in a radio show together with the chairman and vice-chairman of the Defence Commission of the Romanian Senate, the director of *Ziua* and an investigative journalist from a national newspaper. The show followed a day of discussions and explanations about the leak of secret documents given by the Minister of Defence, the Chief of the Armed Forces and the head of the Information Department of the Army before the Defence Commission of the Senate. When asked how they had obtained the documents in question, O.O. refused to disclose his source, while the director of *Ziua* stated that he had received them anonymously. The chairman of the Defence Commission mentioned that the security of classified information had been one of the main chapters in Romania's negotiations for joining NATO. He emphasised the importance of the Ministry of Defence undertaking a thorough investigation in connection with the leak, which put into play Romania's credibility as a member of NATO.

15. On 3 March 2006 the Minister of Defence held a press conference during which he announced that an internal inquiry into the leak of classified information had been finalised and that seventy-nine members of the army were being punished with disciplinary sanctions. Further investigations were being conducted by the prosecutors with respect to two other members of the army. The minister also confirmed the fact that he had been informed about the leak by the Romanian Intelligence Service (*Serviciul Român de Informaţii*) in October 2005 and that the specialised army departments had immediately started preliminary verifications.

B. Criminal investigation against the applicant

16. On 7 February 2006 the prosecutor's office attached to the High Court of Cassation and Justice opened of its own motion an investigation on the basis of the articles published the same day in *România liberă* and *Ziua* (see paragraph 13 above). At the same time, the Ministry of Defence informed the same prosecutor's office about the leak of information from within its structures.

17. Shortly afterwards the prosecutor decided to institute criminal proceedings against the applicant and four other people (P.I. – a former member of the armed forces, O.S. – a journalist, E.G. and I.M.) for disclosing classified information on national security under Article 169 of the Criminal Code, and for the gathering and sharing of secret or confidential information under Article 19(1) of Law no. 51/1991 on national security.

18. Authorisations had been issued for the interception of telephone calls made from the phone numbers belonging to E.G., I.M. and P.I., as well as for the surveillance of E.G. and I.M. and the ambient recording of their discussions. As a result, transcripts of discussions between the applicant and E.G. and I.M. had been included in the investigation file.

19. At 4.30 p.m. on 16 February 2006, after his house had been searched by the police and the hard drive of his computer seized, the applicant was taken into police custody.

20. On 17 February 2006 the applicant's pre-trial detention was authorised by a judge for a period of ten days. An appeal lodged by the applicant against the measure was allowed and he was released on 18 February 2006.

21. The prosecutor established that at the beginning of July 2005 O.S., a journalist specialised in military issues, working for local newspapers in Focşani, had received on a CD a copy of the secret military documents leaked in 2004. At that time, three people, including P.I., had been in possession of the above-mentioned documents. On 2 July 2005 O.S. had met the applicant and had given him a copy of the CD.

22. A list of the applicant's telephone calls showed that on 4 July 2005 he had called the head of the public relations department of the Romanian Armed Forces. In the following months, both the applicant and O.S. had discussed the content of the CD with other journalists and on several occasions with employees of the Romanian Armed Forces and of the Romanian Intelligence Service.

23. The investigation further established that by the end of 2005 the applicant had shown the content of the CD to a few people and had given a copy of the CD to E.G. and I.M., who the applicant believed were former members of the police. Furthermore, in January 2006 O.O. (see paragraph 10 above) went to Focşani and met the applicant and O.S., who showed him the documents.

24. In a statement given before the prosecutor on 16 February 2006, the applicant said that he could not remember having discussed the secret documents with O.O. He also said that as soon as he had found out about the information in question, he became interested in it as a journalist. Because there were doubts about the authenticity of the documents, he had had to contact a number of people in order to verify the information. It was in that context that he had discussed and shown the said documents to E.G. and I.M., who had let him believe they had connections with high-ranking politicians. He acknowledged that he might have told some of his friends that he had seen secret documents in order to be given more credit as an investigative journalist.

25. On 2 July 2007 the head of the Romanian Armed Forces informed the chief prosecutor of the prosecutor's office attached to the High Court of Cassation and Justice that the documents which formed the object of the

investigation and which had been issued by the Romanian army, and had been compromised by their publication in the media, had been de-classified.

26. On 15 August 2007 the prosecutor's office attached to the High Court of Cassation and Justice decided that "by receiving (obtaining) from O.S. a CD that he [had] watched three times; by saving on the hard drive of his computer the information classified as State secret and work secret and by giving the CD to I.M. and E.G., outside the legal framework set forth by the provisions of Law no. 182/2002 and Government Decision no. 585/2002", the applicant had committed, in a continuous form, the crime proscribed by Article 19(1) of Law no. 51/1991. The prosecutor decided, however, not to indict the applicant but to sanction him with an administrative fine of 800 Romanian lei (ROL) (approximately 240 euros (EUR)). The applicant was further ordered to pay part of the judicial costs incurred in the investigation in the amount of ROL 1,912 (EUR 572). The prosecutor also ordered the confiscation of the hard drive seized from the applicant on 16 February 2006.

27. The prosecutor's decision was based on the Romanian legal framework on classified information, which was held to include Law no. 182/2002 on the protection of classified information, Government Decision no. 585/2002 approving national standards for the protection of classified information, Government Decision no. 781/2002 on the protection of professional secrets and Law no. 51/1991 on national security. The decision further mentioned that the applicant had received the secret military information and had proceeded to verify its nature and importance. He had further shared the information with other people. From the elements in the file, the prosecutor concluded that the purpose of the applicant's actions was just to make himself more visible as an investigative journalist and not to serve the public interest. Noting that the protection of classified information was an obligation incumbent only on authorised personnel, the prosecutor nevertheless considered that information concerning national defence was classified and could not be of public interest, as provided for by Article 12(1)(a) of Law no. 544/2001 on access to public information. As a result, although anyone unauthorised in the field of national defence – such as a journalist – was not bound by a duty to protect this type of information, he or she did not have the right to disclose it to the public.

28. In view of the above, the prosecutor considered that the applicant had acted with intent to disclose classified information outside the above-mentioned legal framework. However, the prosecutor considered that the crimes committed by the applicant and the other four suspects were not serious enough to require the pursuit of the criminal investigation. In this connection, the prosecutor noted firstly that the information in dispute was not likely to endanger national security but only to harm the interests of the Romanian State and its armed forces. In addition, the information was outdated and hence was no longer likely to endanger the Romanian military

structures in Afghanistan. The information in question had already been "compromised" (disclosed by a member of the armed forces to a civilian) as early as the summer of 2004, with no measures having been taken by the institution concerned. The prosecutor also mentioned that the actions undertaken by O.S and the applicant in order to gather information concerning the content, nature and importance of the secret documents in question, by contacting active or reserve members of the armed forces or other journalists were part of the working methods of investigative journalists and did not necessarily present a danger for society.

29. The applicant complained against that decision to the superior prosecutor, who rejected the complaint as ill-founded on 6 November 2007.

C. Court proceedings

30. On 3 December 2007 the applicant complained against the prosecutors' decisions before the Bucharest Court of Appeal. He submitted that he had been wrongfully found guilty of the crime proscribed by Article 19(1) of Law no. 51/1991. In his opinion, that Article, as well as the entire law, imposed obligations only on people authorised to work with secret information. He contended that he had not made any steps to gather military secrets but had merely passively received information that was already in the public domain. Invoking Article 10 of the Convention, the applicant submitted that the Court had already decided that once information concerning national security had entered the public domain, it was difficult to justify the imposition of sanctions for its publication. He therefore urged the court to acknowledge that his actions could not be regarded as crimes.

31. On 5 February 2008 the Bucharest Court of Appeal rejected the applicant's complaint as ill-founded. The court held that the facts established during the investigation had led to the conclusion that the applicant had secretly transmitted the CD containing secret information to other people he knew, avoiding handing it over to the competent authorities of the Ministry of Defence or the Romanian Intelligence Service. The court further held:

> "The accused's capacity as a journalist cannot exonerate him from the commission of this crime because anyone who finds out about secret military information does not have the right to publish it since this might endanger the lives of soldiers, officers in the conflict environment. But the applicant, by the means described above, covertly shared the secret information, which could have reached people interested in putting military structures in danger.
>
> The accused did not even wish to use his profession in order to bring to the public's knowledge the leak of information, as he failed to ask the newspaper for which he worked to make public the breach of state secrets in the military (obviously the military secret information could not have been published).

The freedom of the press invoked by the accused cannot give a journalist the right to make public, to unofficial people, secret military information, because this may endanger the right to safety of certain military structures."

32. The applicant was ordered to pay court fees in the amount of ROL 50 (EUR 13).

33. The applicant appealed against that judgment. He alleged that the information in dispute had already been in the public domain at the time it had been brought to his attention. He submitted that the prosecutor's decision had breached his freedom of expression in an attempt to cover up an embarrassing situation for the authorities, who had allowed the information to be leaked to the public.

34. On 23 March 2009 the High Court of Cassation and Justice rejected the applicant's complaint with final effect. The court held that Article 19 of Law 51/1991 applied to anyone who gathered and shared secret information outside the legal framework. It further held that the applicant had not contested the fact that he had come into possession of secret information which he had then shared with other people outside the legal framework. Moreover, he had done this with direct intent. Considering that the information in question had not been in the public domain, the court held that journalists coming into possession of such information must submit it to the competent authorities and were allowed by law to share with the public only the failure of the institution concerned to protect its confidentiality. Having failed to act in that way, the applicant had committed the crime proscribed by Article 19(1) of Law no. 51/1991. The court concluded that the prosecutor had correctly considered that the crime had not, however, attained the degree of seriousness to require criminal sanctions.

35. The applicant was ordered to pay court fees of ROL 200 (EUR 47).

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Domestic law and practice

36. The relevant provisions of Law no. 51/1991 on national security, in force at the relevant time, are as follows:

Article 12

"No one has the right to make public secret activities regarding national security, taking advantage of unrestricted access to information, of the right to the diffusion of such activities or of the freedom to express opinions.

The disclosure, by any means, of secret data and information that may be prejudicial to the interests of national security, regardless of the way in which they have been obtained, is prohibited and shall involve the responsibility of the guilty persons, in accordance with the law.

The provisions of paragraphs 1 and 2 above are not prejudicial to the right to freedom of opinion and expression, to the right of the person concerned not to be in any way subjected to interference on account of his/her opinions, as well as to the right to look for, to receive and to diffuse information and ideas, by any means of expression, if these rights are exercised in accordance with the laws of Romania."

Article 19

"The initiation, organisation or constitution on the territory of Romania of some informative structures that can cause damage to national security, supporting them in any way or adhering to them, the holding, manufacturing or unlawful utilisation of specific means for the interception of communications, as well as gathering and sharing information of a secret or confidential nature, by any means, outside of the legal framework, shall constitute a criminal offence and shall be punishable by imprisonment for a term of two to seven years, unless the deed is considered a more serious offence.

Any attempt [at carrying out the offence] shall be punished."

37. The relevant parts of Law no. 182/2002 on the protection of classified documents provide as follows:

Article 16

"Protection of State secrets is an obligation incumbent on authorised personnel who issue, manage or receive them."

Article 17

"The following information is classified as State secret:

...

b) plans, military objectives, numbers and missions of the forces engaged in conflict;

...

h) maps, topographic plans, thermograms and air recordings of any kind containing elements or objectives classified as State secret;"

38. Government Decision no. 585/2002 approving the national standards for the protection of classified information sets out the rules for the implementation of Law no. 182/2002. More specifically, it regulates issues such as the classification of State secret information, obligations and responsibilities on behalf of the authorities, public institutions, companies and other private or public legal entities; the norms for accessing classified information and for security screenings; as well as rules concerning the drafting, storing or transport of classified documents by authorised personnel.

39. The relevant provisions of the Criminal Code in force at the relevant time are as follows:

Article 169
Disclosure of classified information which endangers national security

"(1) The disclosure of documents or data which are classified as State secret or of other documents or data by a person who knows of them through his or her professional duties, if doing so poses a threat to national security, shall be punishable by imprisonment for a term of seven to fifteen years and the restriction of certain rights.

(2) The possession, outside professional duties, of a document classified as State secret, if such possession poses a threat to State security, shall be punishable by imprisonment for a term of five to ten years.

(3) The same punishment provided for by paragraph 2 shall apply to the possession, outside professional duties, of other documents with the aim of divulging [their content], if doing so poses a threat to national security.

(4) If the acts provided for by the previous paragraphs are committed by any other person, the punishment shall be a term of imprisonment of one to seven years."

40. By new provisions which entered into force on 1 February 2014 Article 19 of Law No. 51/1991 was repealed and paragraph (3) of Article 169 of the Criminal Code was amended so as to punish with imprisonment for a term of one to five years any disclosure of state secret information without having the right by those who come across such information outside professional duties.

41. The relevant parts of Law no. 544/2001 on access to public information provide as follows:

Article 1

"Free access to information of public interest, as defined by the present law, is one of the fundamental principles of the relations between the public and the authorities ..."

Article 2

"...

b) information of public interest means any information concerning the activities or resulting from the activities of a public authority or institution, regardless of the manner in which it is stored, its form or means of expression."

Article 12

"(1) The following information is not subject to free access by the public:

a) information in the field of national defence, safety and public order, if they are classified in accordance with the law; ..."

B. International law and practice

42. In Recommendation No. R (2000) 7 on the rights of journalists not to disclose their sources of information, the Committee of Ministers of the Council of Europe held that the following measures should not be applied if

their purpose was to circumvent the right of journalists not to disclose information identifying a source:

> "11.1. interception orders or actions concerning communication or correspondence of journalists or their employers;
>
> 11.2. surveillance orders or actions concerning journalists, their contacts or their employers;
>
> 11.3. search or seizure orders or actions concerning private or business premises, belongings or correspondence of journalists or their employers, or personal data related to their professional work."

43. On 19 April 2007 the Parliamentary Assembly of the Council of Europe adopted a resolution on espionage and divulging State secrets. The paragraphs of relevance to the present case read as follows:

> "Fair-trial issues in criminal cases concerning espionage or divulging State secrets (Resolution 1551 (2007))
>
> 1. The Parliamentary Assembly finds that the State's legitimate interest in protecting official secrets must not become a pretext to unduly restrict the freedom of expression and of information, international scientific cooperation and the work of lawyers and other defenders of human rights.
>
> 2. It recalls the importance of freedom of expression and of information in a democratic society, in which it must be possible to freely expose corruption, human rights violations, environmental destruction and other abuses of authority.
>
> ...
>
> 5. The Assembly notes that legislation on official secrecy in many Council of Europe member States is rather vague or otherwise overly broad in that it could be construed in such a way as to cover a wide range of legitimate activities of journalists, scientists, lawyers or other human rights defenders.
>
> 6. ... For its part, the European Court of Human Rights found 'disproportionate' an injunction against the publication in the United Kingdom of newspaper articles reporting on the contents of a book (Spycatcher) that allegedly contained secret information, as the book was readily available abroad.
>
> ...
>
> 9. It calls on the judicial authorities of all countries concerned and on the European Court of Human Rights to find an appropriate balance between the State interest in preserving official secrecy on the one hand, and freedom of expression and of the free flow of information on scientific matters, and society's interest in exposing abuses of power on the other hand.
>
> 10. The Assembly notes that criminal trials for breaches of State secrecy are particularly sensitive and prone to abuse for political purposes. It therefore considers the following principles as vital for all those concerned in order to ensure fairness in such trials:
>
> 10.1. information that is already in the public domain cannot be considered as a State secret, and divulging such information cannot be punished as espionage, even if the person concerned collects, sums up, analyses or comments on such information. The same applies to participation in international scientific cooperation, and to the

exposure of corruption, human rights violations, environmental destruction or other abuses of public authority (whistle-blowing); ..."

44. On 26 September 2007 the Committee of Ministers of the Council of Europe adopted a Declaration on the Protection and Promotion of Investigative Journalism, the relevant parts of which read as follows:

"... 4. Acknowledging, in this context, the important work of investigative journalists who engage in accurate, in-depth and critical reporting on matters of special public concern, work which often requires long and difficult research, assembling and analysing information, uncovering unknown facts, verifying assumptions and obtaining corroborative evidence; ...

7. Considering that, because of its very nature, investigative journalism is of particular significance in times of crisis, a notion that includes, but is not limited to, wars, terrorist attacks and natural and man-made disasters, when there may be a temptation to limit the free flow of information for security or public safety reasons; ...

II. Calls on member states to protect and promote investigative journalism, having regard to Article 10 of the European Convention on Human Rights, the relevant case law of the European Court of Human Rights and other Council of Europe standards, and in this context:

...

iv. to ensure that deprivation of liberty, disproportionate pecuniary sanctions, prohibition to exercise the journalistic profession, seizure of professional material or search of premises are not misused to intimidate media professionals and, in particular, investigative journalists".

45. In the Claude Reyes et al. v. Chile case before the Inter-American Court of Human Rights (19 September 2006, Series C no. 151), the Inter-American Commission on Human Rights submitted as follows:

"58. ... The disclosure of State-held information should play a very important role in a democratic society, because it enables civil society to control the actions of the government to which it has entrusted the protection of its interests. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

46. The applicant complained that his arrest, along with the criminal proceedings against him, had infringed his right to freedom of expression as provided for in Article 10 of the Convention, which 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."

A. Admissibility

47. The Government argued that Article 10 was not applicable in the current case. In their opinion, the acts for which the applicant had been convicted could not be considered as journalistic investigation because they had not resulted in the publication of the information in question. The Government therefore raised an objection of incompatibility *ratione materiae* with the provisions of Article 10 of the Convention.

48. The applicant disagreed and submitted that the investigation he had conducted in his capacity as a journalist had resulted in the disclosure in the media of information which was of public interest. Accordingly, he contended that Article 10 was applicable in his case.

49. The Court considers that the Government's objection regarding the applicability of Article 10 to the facts of the current case is closely linked to the merits of the application. It therefore joins this issue to the merits. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions and third-party comments

(a) The applicant

50. The applicant firstly submitted that Article 10 of the Convention provided that everyone had the right to receive and impart information. Notwithstanding that general right, the applicant argued that he had acted in his capacity as a journalist with the intention of publishing information which he believed was of public interest. He maintained that the acts for which he had been investigated and sanctioned were part of a journalistic investigation that he had undertaken in order to determine whether the information brought to his attention was true and of public interest. As soon as he had verified the said information, he had contacted the central office of his newspaper and subsequently entered into contact with his colleague, O.O. The manner in which his colleague from the central office and the newspaper where he was employed had chosen to publish the information had not depended on him. Moreover, his statements as well as the witness

statements given by other journalists during the investigation were meant to protect their sources and their colleagues. Under those circumstances, the applicant submitted that his arrest and the criminal sanctions imposed on him constituted an interference with his right to freedom of expression.

51. As to whether the measures taken against him were provided for by law, the applicant submitted that the authorities' decisions had been based on a legal framework which did not apply in his case. More specifically, Law no. 182/2002 clearly placed obligations only on authorised personnel, while Law no. 544/2001 referred to the public's free access to information of public interest held by the authorities. Moreover, the Court had already expressed concerns as to the foreseeability of Article 19 of Law no. 51/1991 in the case of *Bucur and Toma v. Romania* (no. 40238/02, § 82, 8 January 2013). Consequently, the applicant argued that the interference with his right to freedom of expression was not prescribed by law.

52. The applicant further pointed out that he had acted in good faith, in his capacity as a journalist, firstly making enquiries about the authenticity and importance of the information before the relevant authorities. However, representatives of the army and the Romanian Intelligence Service had denied the authenticity of the information in his possession, so he had had to further his investigation. Subsequently, he had worked with his colleagues from the central office of his newspaper, who had finally decided to make public the fact that classified information had been leaked by the Romanian army. This type of information was clearly a matter of public interest. The applicant also submitted that having received the information in question from a colleague journalist, it could have been easily inferred that the said secret information was already in the public domain, a fact recognised also in the prosecutor's decision of 15 August 2007. On this point the applicant was of the opinion that his case differed from the case of *Stoll v. Switzerland* (no. 69698/01, 10 December 2007) where classified information had been disclosed directly to the applicant journalist by a government agent.

53. The applicant considered that the criminal investigation to which he had been subjected, his detention, his surveillance, the seizure of his hard drive, as well as the fine and the court fees he had been obliged to pay had been disproportionate measures as compared to his actions. He had refused to pay the above-mentioned fine and fees considering their unfairness, but had not opposed their enforcement.

54. Lastly, the applicant noted that the offence for which the fine had been imposed was a serious one, punishable by up to seven years' imprisonment. Although the fine he had been ordered to pay might appear to be low, the criminal proceedings had damaged his reputation as a journalist and led to him losing his permanent employment and later to his dismissal from his job with the newspaper.

(b) The Government

55. The Government firstly argued that the applicant's detention and the administrative fine imposed on him by the prosecutor's decision of 15 August 2007 had not amounted to an interference with his right to freedom of expression. They considered that the applicant had not acted in his capacity as a journalist, because he had gathered and shared not information of public interest but military intelligence concerning operations of the Romanian army in Afghanistan.

56. The Government further submitted that should the Court consider that there had been an interference with the applicant's rights under Article 10 of the Convention, such interference was provided for by law, pursued a legitimate aim and was necessary in a democratic society.

57. In the Government's view the judicial authorities had correctly applied the legal provisions on national security and classified information. They contended that the measures taken against the applicant had been aimed at preventing the disclosure of confidential information concerning military operations in a conflict zone.

58. The Government challenged the applicant's arguments that the information had already been in the public domain when it came into his possession. Its circulation within a small circle of people and the fact that it was confidential could not lead to the conclusion that the information in question had been accessible to the public.

59. The Government also stressed that the domestic courts had correctly balanced the competing interests in the current case in the presence of all the relevant documents from the investigation file.

60. Lastly, the Government submitted that the sanction imposed on the applicant had been proportionate to the legitimate aim pursued. Referring to the case of *Stoll* (cited above, § 155), the Government argued that the Court had held that a consensus appeared to exist between the member States of the Council of Europe on the need for appropriate criminal sanctions to prevent the disclosure of certain confidential items of information. In the Government's opinion, since the applicant's pre-trial detention had been revoked by the domestic courts, the applicant could no longer claim to be a victim in that respect. As far as the administrative fine was concerned, the Government considered it a minor sanction, of a rather low amount, which by October 2013 the applicant had still not paid. In addition, the applicant had failed to provide any proof that that sanction had had a discouraging effect on him or had prevented him from continuing his work as a journalist.

(c) Third parties

(i) Guardian News and Media

61. Guardian News and Media submitted that measures which restrict, hinder or discourage journalists from researching and collating information,

including information that remains unpublished, or from keeping such information as part of an investigation or for purposes of a future investigation, fell within the scope of Article 10 and must be subject to the same scrutiny as that applied in respect of measures which directly restrict, hinder or discourage the publication or dissemination of information.

62. The third party further submitted that the collation and retention of (even non-published) investigative material – including, on occasion, sensitive material – was a necessary and essential part of investigative journalism. It facilitated the evaluation or development of future events, statements or decisions, and helped to form a properly informed view as to the public interest in publication in particular cases, a crucial aspect of responsible journalism; the identification and assessment of leads for potential further investigation; or the development of a body of "background" expertise or knowledge on particular issues to assist with the writing of accurate and properly informed articles and stories in future.

63. They lastly noted that there was an increasing trend for prosecutorial criminal enforcement powers to be utilised against journalists. The use of criminal enforcement powers against a journalist in the context of national security or terrorism could have a real impact in hampering or discouraging other journalists from engaging in research and investigation of such matters. In this context, it was well established in the Court's case-law that the imposition of even very minor criminal sanctions on a journalist could have a wholly disproportionate chilling effect on those performing the role of reporting on matters of public interest and, in consequence, may very rarely be considered proportionate.

(ii) Open Society Justice Initiative and the International Commission of Jurists

64. Open Society Justice Initiative, together with the International Commission of Jurists, submitted that based on research of various sources of comparative law and jurisprudence, there was an emerging European consensus distinguishing the sanctions that could be applied to journalists, and in some cases other members of the public, compared with those available for public servants, for the public disclosure of information of public interest. Public servants were subject to reasonable and qualified obligations of confidentiality to which members of the public were not. Among the members of the public, journalists and other similarly protected persons with a special responsibility to act as public watchdogs, could be sanctioned for disclosing government information only in extraordinary circumstances.

65. States increasingly distinguished between the offences or penalties available for the unauthorised disclosure of information by members of the public on the one hand, and public servants on the other. For instance, in Germany, the criminal law had been amended in 2012 to release journalists from the risk of being charged with aiding and abetting the "violation of

official secrets" for disclosing classified information. If the unauthorised disclosure did not amount to treason or espionage, and was not in wartime, several countries – including Moldova, the Russian Federation and Slovenia – limited criminal responsibility for unauthorised disclosure only to public servants. Many other countries – including Belgium, Denmark, France, Poland and the United Kingdom – provided separate or heightened offences for public servants who disclosed information to which private persons, including those working in the media, were not subject.

66. They further submitted that the possession of information was protected from government restriction at least to the extent that disclosure would be so protected. It could not be lawful for a journalist who received information which the State did not want disseminated to be unprotected in the absence of disclosure. On this point, there was growing support in international and national law and practice against sanctions for unauthorised possession, including in the area of national security. For instance, where there was no espionage, demonstration of intent to harm, or actual harm, the laws of Albania, Moldova and Poland provided no punishment for the unauthorised possession of classified information by members of the public or public servants, despite clear penalties for the unauthorised disclosure of such information. In other States – including the Czech Republic, Germany, Serbia and Slovenia – the offence of unauthorised possession required that the offender was a public servant, had had an intent to disclose, had used unlawful means, or had caused harm.

67. They concluded that the State was primarily or exclusively responsible for the protection of government information, and journalists and other similarly protected persons may be subject to sanctions for possession or disclosure in the public interest of information only in exceptional circumstances due to the commission of crimes not based on the fact of possession or disclosure.

2. The Court's assessment

(a) Applicability of Article 10 and the existence of interference

68. The Court has consistently held that the press exercises a vital role of "public watchdog" in imparting information on matters of public concern (see, for example, *Magyar Helsinki Bizottság v. Hungary*, no. 18030/11, § 167, 8 November 2016). It is also well established that the gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom (see *Dammann v. Switzerland*, no. 77551/01, § 52, 25 April 2006; *Shapovalov v. Ukraine*, no. 45835/05, § 68, 31 July 2012; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 128, ECHR 2017 (extracts)).

69. In the current case, the Court notes that the applicant was a journalist whose field of work included investigations into the activities of the armed

forces and the police. It was in this capacity that he received the information in question from a fellow journalist. He then contacted the authority which had produced the documents, his colleagues as well as other authorities and people who, the applicant believed, had knowledge about the subject (see paragraphs 22 and 23 above). In the Court's opinion, all the above actions may be considered as part of a journalistic investigation, as the prosecutor also held in the decision of 15 August 2007 (see paragraph 28 above).

70. The Court further observes that the applicant was arrested, investigated and fined for gathering and sharing secret information.

71. In previous cases concerning gathering and disclosure by journalists of confidential information or of information concerning national security, the Court has consistently considered that it had been confronted with an interference with the rights protected by Article 10 of the Convention (see, for example, *Fressoz and Roire v. France*, no. 29183/95, § 41, 21 January 1999, and *Stoll*, cited above, §§ 46 and 47). Moreover, the Court reached a similar conclusion also in cases which, as the present case, concerned the journalistic preparatory work before publication (see *Dammann*, cited above, § 28; and *Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, no. 34124/06, § 22, 21 June 2012).

72. In these circumstances, the Court is satisfied that Article 10 of the Convention is applicable in the present case and that the sanctions imposed on the applicant constituted an interference with his right to freedom of expression. The Government's objection that the applicant's complaint is incompatible *ratione materiae* must therefore be dismissed.

(b) Whether the interference was justified

73. In order to be justified, an interference with the applicant's right to freedom of expression must be "prescribed by law", pursue one or more of the legitimate aims mentioned in paragraph 2 of Article 10, and be "necessary in a democratic society".

(i) "Prescribed by law"

74. The Court observes that the parties disagreed as to whether the interference with the applicant's freedom of expression was "prescribed by law". The difference in the parties' opinions as regards the applicable law originates in their diverging views on the issue of whether the legal provisions on classified information prevented people other than authorised personnel from gathering or sharing classified information. According to the applicant, journalists and other people were not bound by such an obligation, whereas the Government argued that because classified national defence information was excluded from the types of information available freely to the public, as provided for by Law no. 544/2001 on access to public information, the applicant too had been under a duty to refrain from disclosing such information.

75. The Court also notes that it has already expressed concerns about the foreseeability of Romanian domestic law on national security in the case of *Bucur and Toma* (cited above, § 82), where the parties disagreed as to whether it was forbidden by law to classify information as State secret in order to hide violations of the law, or administrative errors, or in order to limit access to information of public interest. However, in the current case, it is clearly another area of domestic law that is involved.

76. As the Court has held on numerous occasions, it is not its task to take the place of the domestic courts and it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. Nor is it for the Court to express a view on the appropriateness of the methods chosen by the legislature of a respondent State to regulate in a given field (see, among many authorities, *Magyar Helsinki Bizottság*, cited above, § 184).

77. The Court notes that Law no. 51/1991 – which is part of the legal framework on national security – provides that no one has the right to make public secret activities regarding national security (see paragraph 36 above). The Court further notes that both the Bucharest Court of Appeal and the High Court of Cassation and Justice analysed the applicant's arguments in this respect and considered that Article 19 of Law no. 51/1991 applied to everyone (see paragraphs 31 and 34 above). The Court sees no reason to question the domestic courts' interpretation of the legislation on national security and therefore accepts that the interference was "prescribed by law" within the meaning of the second paragraph of Article 10 of the Convention.

(ii) Legitimate aim

78. The parties disagreed also as to whether the interference had pursued a legitimate aim.

79. The applicant alleged that the information in question had already been circulating among a number of people before reaching him and that therefore the measures taken against him could not have had the purpose of preventing the disclosure of that information.

80. The Government contended that the information in dispute was confidential military information and that the purpose of the measures taken against the applicant had been to prevent its disclosure.

81. The Court notes that considerations of national security featured prominently in all the decisions adopted by the authorities in this case. In addition, it appears from the file that measures similar to the ones taken against the applicant were also taken against the people whom the authorities knew were in possession of the documents in question.

82. In view of the above, the Court considers that the Government were entitled to invoke the legitimate aim of protecting national security.

(iii) "Necessary in a democratic society"

(α) General principles

83. The fundamental principles concerning the question whether an interference with freedom of expression is "necessary in a democratic society" are well established in the Court's case-law and were summarised in *Stoll* (cited above, § 101) and restated more recently in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, ECHR 2016) as follows:

> "(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 ..."

84. As regards the level of protection, there is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in two fields, namely political speech and matters of public interest. Accordingly, a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest. However, the protection afforded by Article 10 of the Convention to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism. The concept of responsible journalism, as a professional activity which enjoys the protection of Article 10 of the

Convention, is not confined to the contents of information which is collected and/or disseminated by journalistic means. That concept also embraces the lawfulness of the conduct of a journalist, and the fact that a journalist has breached the law is a relevant, albeit not decisive, consideration when determining whether he or she has acted responsibly (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015 and the cases referred to therein; see also *Bédat*, cited above, §§ 49-50).

(β) Application of these principles to the present case

85. In the present case the applicant was arrested, the hard drive of his computer was confiscated and he was ordered by the domestic courts to pay a fine of ROL 800 and additional judicial fees totalling ROL 2,162 for having gathered and shared secret information "outside the legal framework", within the meaning of Article 19 of the Law on national security. In the view of the Romanian courts, the applicant had committed an offence by virtue of having shared secret military information with other people. The information in dispute – copies of secret documents belonging to a Romanian military unit operating in Afghanistan – concerned the national defence and was classified.

86. In order to ascertain whether the impugned measure was necessary the Court had previously relied on the following aspects: the interests at stake, the conduct of the applicant, the review of the measure by the domestic courts and whether the penalty imposed was proportionate (see *Stoll*, cited above, § 112).

- *The interests at stake*

87. In the current case, in order to answer whether the information in question was of public interest, the Court firstly takes note of the context surrounding the applicant's actions – more specifically, the public debate on the kidnapping of three journalists in Iraq (see paragraph 9 above). In addition, the information in question and the fact that it was leaked was amply discussed in the media, with journalists speculating that it could have serious implications in connection with the conflict in Afghanistan and Iraq (see paragraphs 10-14 above). Furthermore, the disclosure of the documents to the public gave rise to an internal investigation within the Ministry of Defence, and to a high number of disciplinary sanctions (see paragraph 15 above). It must also be noted that the High Court of Cassation and Justice recognised in its judgment of 23 March 2009 that the issue of the leak of secret information from the army was a matter of public interest (see paragraph 34 above). Therefore, in the Court's view the documents in the applicant's possession, as well as the fact that they had been leaked from the Romanian army, were likely to raise questions of public interest.

88. On this point the Court also reiterates the principle adopted in Resolution 1551 (2007) of the Parliamentary Assembly of the Council of

Europe on fair-trial issues in criminal cases concerning espionage or divulging State secrets, whereby publication of documents is the rule and classification the exception (see paragraph 43 above). Similarly, the Inter-American Commission on Human Rights has taken the view that the disclosure of State-held information should play a very important role in a democratic society because it enables civil society to control the actions of the government to whom it has entrusted the protection of its interests (see *Stoll*, cited above, § 111).

89. As regards the interests the domestic authorities sought to protect and the repercussions in the circumstances of the present case, the Court must ascertain whether the applicant's actions were, at the relevant time, capable of causing "considerable damage" to national security (see *Hadjianastassiou v. Greece*, no. 12945/87, § 45 *in fine*, 16 December 1992, and *Pasko v. Russia*, no. 69519/01, § 86, 22 October 2009, for cases concerning military interests and national security in the strict sense; and, *mutatis mutandis*, *Stoll*, cited above, § 130). That being so, the Court does not doubt that secret information concerning military operations in a conflict zone is *a priori* information that must be protected. However, it is important to note that the prosecutor observed that the information was outdated and that its disclosure was not likely to endanger national security (see paragraph 28 above). Moreover, the documents issued by the Romanian military unit liable for the leak had been de-classified after the beginning of the investigation (see paragraph 23 above). Under these circumstances, the Court notes that the Government did not succeed in demonstrating that the gathering and the disclosure of the information by the applicant to E.G. and I.M. had been liable to cause considerable damage to national security.

- *The conduct of the applicant*

90. The Court firstly notes that the present case differs from other similar cases concerning disclosure of military secret information in that the applicant was not a member of the armed forces on which specific "duties" and "responsibilities" are incumbent (compare *Hadjianastassiou,* cited above, § 46, and *Pasko*, cited above, § 87).

91. The Court further notes that the applicant did not obtain the information in question by unlawful means and the investigation failed to prove that he had actively sought to obtain such information. It must also be noted that the information in question had already been seen by other people before the applicant (see paragraph 21 above).

92. In addition, the Court observes that the applicant's first step after coming into possession of the information in question was to discuss it with the institution concerned by the leak, the Romanian Armed Forces. It does not appear from the investigation whether the latter tried to recover the documents or warn about possible dangers in the event of their disclosure. On this point, the Court reiterates that whoever exercises his freedom of

expression undertakes "duties and responsibilities" the scope of which depends on his situation and the technical means he uses (see *Dammann*, cited above, § 55). However, it is for the States to organise their services and to train their personnel in such a way as to ensure that no confidential information is disclosed (ibid.). These findings are valid in the current case too, especially since the lack of action on the part of the institution concerned by the leak of the secret information was noted also by the prosecutor (see paragraph 28 above).

93. Moreover, from the facts of the case it may be inferred that the journalistic investigations conducted by the applicant and O.S. were followed by discussions of the subject on national television and radio, the publication of two articles by the newspapers where they were employed, as well as by discussions in the Romanian Senate and an internal inquiry within the Ministry of Defence (see paragraphs 10-14 above).

- *The review of the measure by the domestic courts*

94. As far as the review of the measures against the applicant by the domestic courts is concerned, the Court reiterates that it is not for it to take the place of the States Parties to the Convention in defining their national interests, a sphere which traditionally forms part of the inner core of State sovereignty. However, considerations concerning the fairness of proceedings may need to be taken into account in examining a case of interference with the exercise of Article 10 rights (see *Stoll*, cited above, § 137).

95. The Court finds that none of the above specific elements concerning the applicant's conduct (see paragraphs 89-91 above) were taken into consideration by the domestic courts in their analysis. Both the Bucharest Court of Appeal and the High Court of Cassation and Justice limited themselves to stating that journalists did not have the right to publish secret military information and that the applicant was guilty of sharing information which could have put military structures in danger. The courts did not address the prosecutor's finding that the disclosure by the applicant of the information under dispute was not likely to endanger national security and failed to actually verify whether the said information could indeed have posed a threat to military structures. Moreover, although the applicant invoked the guarantees provided by Article 10 of the Convention (see paragraph 31 above), the courts did not appear to weigh, in the circumstances of the case, the interests in maintaining the confidentiality of the documents in question over the interests of a journalistic investigation and the public's interest in being informed of the leak of information and maybe even of the actual content of the documents (contrast *Stoll*, cited above, § 138).

- *Whether the penalty imposed was proportionate*

96. In cases concerning criminal sanctions for the disclosure of classified military information the Court has held that the margin of appreciation is to be left to the domestic authorities in matters of national security (see *Hadjianastassiou*, cited above, § 47 and *Pasko*, cited above, § 87). However, the applicant in the current case is a journalist claiming to have made the disclosure in the context of a journalistic investigation and not a member of the military who collected and transmitted secret military information to foreign nationals (see *Pasko*, cited above, § 13) or to private companies (see *Hadjianastassiou*, cited above, § 7).

97. In the present case, the Court agrees with the Government that the amount of the fine (ROL 800 or approximately EUR 240) appears to be relatively low. The Court further observes that the applicant was also ordered to pay judicial fees of ROL 2,162 (approximately EUR 630) and that it is not evident from the file whether the applicant indeed paid those amounts. Be that as it may, the domestic courts held as established that the applicant had intentionally committed a criminal offense against the national security (see paragraph 34 above). On this point, the Court reiterates that contrary to the Government's submission, the fact of a person's conviction may in some cases be more important than the minor nature of the penalty imposed (see *Dammann*, cited above, § 57).

98. Furthermore, the above-mentioned sanctions against the applicant were imposed before publication of the secret information in question. The Court observes that the measures taken against the applicant had the purpose of preventing him from publishing and sharing the secret documents he had in his possession. This fact was not contested by the Government. The Court notes that after the de-classification of the documents in question and the prosecutor's finding that they were outdated and not likely to endanger national security, the decision whether to impose any sanctions against the applicant should have been more thoroughly weighed.

(γ) Conclusion

99. Having regard to the above, the Court considers that the measures taken against the applicant were not reasonably proportionate to the legitimate aim pursued, in view of the interests of a democratic society in ensuring and maintaining freedom of the press.

100. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage, alleging that the breach of his right to freedom of expression had damaged his professional life.

103. The Government considered that the applicant's claim was excessive and submitted that the finding of a violation would be sufficient compensation for any non-pecuniary damage sustained by the applicant.

104. Ruling on an equitable basis, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

105. The applicant also claimed EUR 3,995.75 for the costs and expenses incurred before the Court. The claim consisted of EUR 3,695.75 in lawyer's fees, to be paid directly to the lawyer's account, and EUR 300 for technical support and various communication costs incurred by the Romanian Helsinki Committee, to be paid directly to that organisation's account. The applicant submitted a contract signed by his representative and a detailed document indicating the number of hours worked in preparing the case. He also submitted an agreement signed with the Helsinki Committee by which the latter committed itself to offering technical support and to paying the correspondence fees incurred before the Court.

106. The Government considered the amount claimed for lawyer's fees unreasonable. They further submitted that the EUR 300 requested by the Helsinki Committee was not justified in view of the low number of documents submitted on behalf of the applicant.

107. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII, and *Cobzaru v. Romania*, no. 48254/99, § 110, 26 July 2007). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

108. In the present case, having regard to the above criteria, to the complexity of the case and to the documents submitted by the applicant, the Court considers it reasonable to award the applicant the sum of EUR 3,695 in respect of lawyer's fees, to be paid directly into the bank account indicated by the applicant's representative.

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 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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,695 (three thousand six hundred and ninety-five euros), to be paid directly to Ms Diana Olivia Hatneanu, 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 26 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President