



## Arresting and fining a journalist who shared classified military information without publishing it was disproportionate

In today's Chamber judgment<sup>1</sup> in the case of [Gîrleanu v. Romania](#) (application no. 50376/09) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the arrest and conviction of a journalist for possessing and trying to verify classified information on national security, namely documents belonging to a Romanian military unit based in Afghanistan.

The Court found in particular that Mr Gîrleanu had been arrested, a criminal investigation brought against him and a fine imposed on him, without him ever actually having published the secret information.

It was not convinced that Mr Gîrleanu, in trying to verify the information he had been given on a CD and then sharing it with other people, had risked causing considerable damage to national security. The documents in question had been de-classified just before the investigation against him had come to an end and, as observed by the prosecuting authorities in their decision not to indict Mr Gîrleanu but fine him, the information was in any case outdated and not likely to endanger national security.

The Court found that the domestic courts should have weighed those elements along with the fact that Mr Gîrleanu had not obtained the information unlawfully and had been carrying out a journalistic investigation in the public interest.

### Principal facts

The applicant, Marian Gîrleanu, is a Romanian national who was born in 1963 and lives in Focșani (Romania). He was a local correspondent for the national daily newspaper *România Liberă*. His field of work included investigations into the armed forces and police.

In February 2006 the prosecuting authorities instituted a criminal investigation against Mr Gîrleanu concerning leaked secret documents belonging to a Romanian military unit based in Afghanistan. The documents had originally been leaked in 2004 and had given rise to much debate in the media in the following years. Although the leaks were discussed in the printed media, notably in articles in *România Liberă*, and on radio and television shows, the actual content of the documents was never made public. The leaks also led to an internal inquiry within the Ministry of Defence and 79 members of the army receiving disciplinary sanctions.

The investigation established that, in July 2005, a journalist specialising in the military had given Mr Gîrleanu a copy of a CD of the leaked documents. He had then tried to verify the information with the Romanian Armed Forces and intelligence services and, because they would not confirm that

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

it was genuine, shared it with two people he believed to be former police officers and other journalists.

During the investigation, his telephone was tapped, he was arrested and the hard drive of his computer confiscated. He was released after two days' police custody.

In August 2007 the prosecuting authorities found him guilty of gathering and sharing secret information, in violation of the legal framework on national security. The prosecutor, observing that the information was outdated and its disclosure had not been likely to endanger national security, decided that it was not necessary to pursue the criminal investigation any further and did not indict Mr Gîrleanu. He was instead ordered to pay an 800 Romanian lei (approximately 240 euro) fine and judicial costs.

In the meantime, in July 2007, the Romanian army documents which had been the object of the investigation had been de-classified.

Mr Gîrleanu complained to the courts about the decision against him, without success. The courts found in particular that he was guilty of sharing information which could have put the military in danger.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Gîrleanu alleged that the measures against him had been disproportionate as compared to his actions, namely he had carried out a journalistic investigation to provide information in the public interest.

The application was lodged with the European Court of Human Rights on 10 September 2009.

Guardian News and Media, the Open Society Justice Initiative and the International Commission of Jurists submitted comments as third parties.

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

Ganna **Yudkivska** (Ukraine), *President*,  
Vincent A. **De Gaetano** (Malta),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Iulia **Motoc** (Romania),  
Carlo **Ranzoni** (Liechtenstein),  
Marko **Bošnjak** (Slovenia),  
Péter **Paczolay** (Hungary),

and also Marialena **Tsirli**, *Section Registrar*.

## Decision of the Court

The Court considered that an arrest, criminal investigation and fine in the context of a journalistic investigation, as had occurred in Mr Gîrleanu's case, had constituted an interference with his right to freedom of expression.

It accepted that that interference had had a legal basis in domestic law, namely the legal framework which provided that no one had the right to make public secret activities regarding national security, and that it had pursued the legitimate aim of preventing the disclosure of confidential military operations in a conflict zone.

However, it was not convinced that the gathering and sharing of the information by Mr Gîrleanu had risked causing considerable damage to national security. Indeed, in his decision not to indict Mr Gîrleanu, the prosecutor had observed that the information was outdated and was not likely to

endanger national security. Furthermore, the documents in question had actually been declassified in July 2007, just before the investigation against Mr Gîrleanu had come to an end.

Moreover, set against the context of the media debate in Romania, discussions in the Senate, and the internal military inquiry, which had resulted in a number of disciplinary sanctions, the documents in Mr Gîrleanu's possession had raised questions of public interest.

In addition, Mr Gîrleanu had not obtained the documents by unlawful means, and the first step he had taken after coming into possession of the information had been to discuss it with the Romanian Armed Forces, who did not apparently try to recover the documents or warn about the dangers of disclosure.

None of those aspects of Mr Gîrleanu's conduct had, however, been taken into account by the domestic courts in their analysis of his case. Nor had they verified whether the information could actually have posed a threat to military structures. They had also ignored the prosecutor's finding on the unlikelihood of disclosure endangering national security.

Lastly, although the fine was relatively low, it had been imposed without Mr Gîrleanu ever having published the secret information. The decision whether to impose a fine on Mr Gîrleanu should have been more carefully weighed against the fact that the documents had in the meantime been de-classified and that the prosecutor had not found them to have put national security in danger.

The Court therefore concluded that, in view of the interests of a democratic society in maintaining freedom of the press, the measures taken against Mr Gîrleanu had not been justified.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Romania was to pay Mr Gîrleanu 4,500 euros (EUR) in respect of non-pecuniary damage and EUR 3,695 directly to his lawyer in respect of costs and expenses.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.