European Court of Human Rights: Gîrleanu v. Romania

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On 26 June 2018, the European Court of Human Rights (ECtHR) delivered an interesting judgment in support of investigative journalism, criticising the Romanian authorities' negligence in allowing leaks of secret, sensitive military information. The ECtHR found that the criminal prosecution of a journalist and the measures taken against him for disclosing classified information that gave evidence of the leaks, violated the journalist's right to freedom of expression as guaranteed under Article 10 of the European Convention on Human Rights (ECHR).

The applicant is Marian Gîrleanu, a local correspondent for the national daily newspaper România liberă. His articles covered various fields, including investigations into the activities of the armed forces and the police. In a television show, examples of leaks of secret, sensitive military information were criticised, and it was suggested that such information could also have reached terrorists. During the show, it was mentioned that some daily newspapers had received classified secret information about military operations, but had decided not to publish it, fearing possible damage to national security. A few days later, the newspapers România liberă and Ziua published articles drawing attention to the fact that confidential information which could have threatened national security had been leaked from a military unit in Afghanistan under the authority of the Romanian Ministry of Defence. Shortly afterwards, criminal proceedings were instituted against Gîrleanu and four other people, including another journalist and a former member of the army, 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. Gîrleanu's house was searched by the police, the hard drive of his computer was seized and he was taken into police custody. The next day, his pre-trial detention was authorised by a judge for a period of ten days, but after two days, he was released. Finally, he was convicted of having committed the crime proscribed by Article 19(1) of Law No. 51/1991 and ordered to pay an administrative fine of EUR 240 and the court fees. The hard drive that was seized remained confiscated. Gîrleanu complained to the ECtHR that he had been arrested, investigated and fined for gathering and sharing secret information, and that this interference with his right as a journalist to gather and disclose confidential information on national security had infringed his rights under Article 10 ECHR. Although the fine he had been ordered to pay might appear to be low,

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he argued that the detention and 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. The journalist received support before the ECtHR from the Guardian News and Media, Open Society Justice Initiative and the International Commission of Jurists as third-party interveners.

The ECtHR reiterated that the press exercises the vital role of "public watchdog" in imparting information on matters of public concern, while the gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom. The ECtHR also referred to the concept of responsible journalism as a professional activity which enjoys the protection of Article 10 ECHR. 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. While the interferences with Gîrleanu's right to freedom of expression were prescribed by law and could be considered to protect national security, the ECtHR did not agree with the Romanian government's view that the interferences at issue were necessary in a democratic society. In its assessment of this crucial aspect, the ECtHR applied the criteria of Stoll v. Switzerland (IRIS 2008/3-2) and it analysed the interests at stake, the conduct of the journalist, the review of the measure by the domestic courts and whether the penalty imposed was proportionate. In the Court's view, the documents in Gîrleanu's possession, as well as the fact that they had been leaked from the Romanian army, were likely to raise questions of public interest. He had not obtained the information in question by unlawful means and the investigation had failed to prove that Gîrleanu had actively sought to obtain such information. The ECtHR also noted that the information in question had already been seen by other people before Gîrleanu obtained the documents, and that it was the state's responsibility to organise its intelligence and military services and to train its personnel in such a way as to ensure that no confidential information is disclosed. The ECtHR noted that Gîrleanu was a journalist claiming to have made the disclosure in the context of a journalistic investigation, not a member of the army who collected and transmitted secret military information to others. The ECtHR was of the opinion that the domestic courts had not addressed the prosecutor's finding that the disclosure of the information under dispute was not likely to endanger national security and had failed to actually verify whether the information at issue could indeed have posed a threat to military structures. Moreover, although Gîrleanu invoked the guarantees provided by Article 10 ECHR, the domestic courts did not appear to have weighed 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 information leak and maybe even of the actual contents of the documents. Although the amount of the fine appears to be relatively low, the domestic courts held as established that Gîrleanu had intentionally committed a criminal offence against national security. In this

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perspective, the ECtHR reiterated that the fact that a person had been convicted may, in some cases, be more important than the minor nature of the penalty imposed. Furthermore, the sanctions against Gîrleanu had been imposed before publication of the secret information in question, which meant that the measures taken had the purpose of preventing him from publishing and sharing the secret documents he had in his possession. Finally, the ECtHR was of the opinion 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 on whether to impose any sanctions against the applicant should have been more thoroughly weighed. Therefore, the ECtHR considered that the measures taken against Gîrleanu 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. Accordingly, the ECtHR concluded that there had been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Fourth Section, case of Gîrleanu v. Romania, Application No. 50376/09, 26 June 2018

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