

SUMMARY

ECtHR 28 March 2017, application no. 51706/11, Freedom of expression

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Facts

The applicant, Mirela Marunic, is a Croatian national, born in 1964 and living in Kostrena, in Croatia. She complained she was dismissed in breach of her right to freedom of expression as

a result of statements she had made to the media.

Between 2003 and October 2007 Ms Marunic was the director of a municipal utility company, KD Kostrena, which was owned by the municipality of Kostrena. In September 2007, an article was published in the daily Novi list, containing public criticisms made by the mayor of Kostrena about how Ms Marunic had done her job. In this article, the mayor expressed his dissatisfaction with her work and claimed that (i) the company was not doing what it was set up to do; (ii) it was stagnating under her leadership; (iii) she had not been collecting parking fees from two parking lots that had (long ago) been leased out to third parties; and (iv) that in all those ways, she was losing income and reducing possible employment for local people.

Eight days later, Ms Marunic responded to the criticisms in another article in Novi list. She complained that it was the legal department of the municipality that had caused problems with the company's performance, as it had advised the company to act unlawfully by charging parking fees, when the land where the parking lot was located was subject to unresolved property issues and may not in fact have belonged to the municipality. She also argued that the company had been stagnating because of these unresolved issues and not because of any incompetence on her part. She also said that if anyone thought she had not been doing her job properly, the authorities could come to the company and check her work.

Ms Marunic was then summarily dismissed based on a decision taken by the General Meeting of the company, chaired by the mayor, on the grounds that her public statements had damaged the company's reputation. Ms Marunic brought a civil action for unfair dismissal.

National proceedings

The Supreme Court of Croatia ruled that the employer had a justified reason for terminating the employment contract because "the extremely negative depiction by the employee of the employer's business activities in the media is an important factor which gives the employer a justified reason to terminate the employment contract." Ms Marunic then lodged a constitutional complaint alleging, inter alia, a breach of her right to freedom of expression.

The Constitutional Court did not find a breach of the right to freedom of expression because "the right of a citizen to publicly express his or her personal opinions cannot justify a breach of employment-related rights and obligations stemming from an employment contract and relevant legislation."

ECtHR's findings

The ECtHR noted that the Government had conceded that the dismissal of Ms Marunic on

account of her statements to the press did constitute an interference with her right to freedom of expression (as guaranteed by Article 10 of the Convention). The Court further noted that the Supreme Court had considered her dismissal lawful because her statements in the press had harmed the reputation of the company and she was the director of the company. The Supreme Court had found that those statements had played an important role in making the continuation of her employment impossible and that the grounds for the dismissal was to be found in section 107(1) of the Labour Act. The ECtHR accepted that the interference with Ms Marunic's rights was lawful and that it pursued the legitimate aim of protecting the reputation or rights of others, namely the business reputation and interests of the company.

The only remaining question was whether the interference was "necessary in a democratic society". The Government had argued that this requirement should be viewed in light of the criteria it had developed in its case-law concerning freedom of expression in the workplace. These were:

- the motive behind the actions of the employee;
- the accuracy of the information disclosed;
- the availability of other effective, but more discreet means of remedying the wrongdoing that the reporting employee intended to uncover;
- the damage suffered by the employer;
- the public interest involved in the disclosed information.

The Court, however, considered that the case at hand was different from its previous case-law in one crucial respect. The Court could not ignore the fact that Ms Marunic made her statements only after being criticised in the media by the chairman of the company's General Meeting. It is true that "a duty of loyalty, reserve and discretion" normally prevents employees from publicly criticising the work of their employers. However, in the present case it was another officer of the company, namely the chairman of the company's General Meeting, who had gone to the media first and publicly criticised her. The ECtHR considered that in those circumstances she could not be expected to have remained silent and not defend her reputation. Such an expectation would overstretch her duty of loyalty, contrary to Article 10 of the Convention – whereby the right to freedom of expression would protect against unreasonable demands of loyalty by the employer.

This meant that several of the criteria relied on by the Government concerning freedom of expression in the workplace were either inapplicable or of limited relevance. In particular, since the right of reply is the right to defend oneself against public criticism in the forum in

which the criticism was published, the ECtHR was not persuaded by the Government's arguments that the Ms Marunic could have used other effective, but more discreet ways of protecting her reputation. Further, as regards the harm suffered by the company, the ECtHR accepted that her statements could have been harmful to the reputation of the company. As regards the level of public interest in the disclosed information, the ECtHR reiterated that the right of reply not only protects the reputation of the person exercising it, but also ensures a plurality of opinions in matters of general interest. The way a municipal public utility company is operated is a matter of general interest to the local community and the ECtHR therefore agreed with Ms Marunic that what she said in reply was also of public interest.

The ECtHR considered that Ms Marunic's statement implying that the company had been unlawfully charging for parking because the land might belong to someone else was a subjective judgment with sufficient basis in fact that it was reasonable for her to argue it. The Court considered that it had been important for her to make that argument in order to defend her professional reputation against what she saw as groundless criticism by the mayor. She was trying to clarify that the company had not been stagnating because of any unsound business decisions on her part, but because of unresolved property issues that the municipality should have dealt with.

Accordingly, the ECtHR found that the interference with Ms Marunic's freedom of expression – in the form of her summary dismissal – was not 'necessary in a democratic society' for the protection of the business reputation and rights of the company. Therefore, there had been a violation of Article 10 of the Convention.

Creator: European Court of Human Rights (ECtHR)

Verdict at: 2017-03-28

Case number: 51706/11