

SUMMARY

ECtHR 27 February 2018, application no. 1085/10, Unfair dismissal, Freedom of expression

<p>Dismissal after re-instatement of employment following an ECtHR judgment found an infringement of freedom of speech.</p>

<p>Guja – v – The Republic of Moldova (No. 2), Moldavian case</p>

Summary

Dismissal after re-instatement of employment following an ECtHR judgment found an infringement of freedom of speech.

Facts

Mr Guja served as Head of the Press Department of the Prosecutor General's Office. In January 2003, he had disclosed two letters to a newspaper, which contained information about the separation of powers, improper conduct by a high-ranking politician, and the government's attitude towards police brutality. He was then fired by his employer for having violated the internal regulations of the Press Department. The Moldavian courts found in favour of the employer, on the grounds that Mr Guja had breached his duty of confidentiality by disclosing the letters and that he had failed to consult other heads of departments. In its judgment of 12 February 2008, the ECtHR held that Mr Guja's dismissal had infringed his right to freedom of expression guaranteed by Article 10 of the Convention (Guja – v – Moldova, no. 14277/04). After the ECtHR judgment, Mr Guja applied to the domestic courts to have the judgments confirming his dismissal set aside. The Supreme Court of Justice ordered his reinstatement on 28 May 2008, on which date Mr Guja lodged an application for reinstatement with his former employer.

According to Mr Guja, on 29 May 2008 the Prosecutor General asked him to resign, and upon his refusal, threatened to force him to. On 5 June 2008, the Prosecutor General issued an employment order. On the same day, he started initiated action to terminate the employment contract (and was soon granted the necessary approval of the trade union) based on a provision which enabled a new Prosecutor General to fire prior staff. Between 6 June 2008 and 16 June 2008, Mr Guja was an employee but got no access badge (and had to wait to be let in by his superiors), no office (and worked in the library) and no tasks. On 16 June 2008, he was dismissed, effective 10 June 2008. The subsequent proceedings, up to the Supreme Court, centred around the provision used to dismiss Mr Guja, not paying attention to Mr Guja's arguments that he had in fact been punished again for the incident of 2003 and that, in fact, his re-instatement and subsequent dismissal had been a fake set-up. Having no success, Mr Guja applied to the ECtHR again.

Mr Guja also informed the Department for the Execution of Judgments of the European Court of Human Rights about the described developments. Following the procedure of Article 46 of the Convention, this issue is still ongoing before the Committee of Ministers.

ECtHR findings

As for the admissibility of the case, the Moldavian Government had argued that the ECtHR was not competent to deal with allegations of non-enforcement of its 2008 judgment, because this task was within the competence of the Committee of Ministers of the Council of Europe. The ECtHR held that it was competent to investigate new issues in relation to its previous judgment. Therefore, Mr Guja's application was admissible.

As to the merits of the case, Mr Guja had argued that the dismissal was an illegitimate interference of his right to freedom of expression, as guaranteed by Article 10 of the Convention. In particular, the clause which was the main reason for dismissal, had never been used before. Further, he argued that the Prosecutor General had never intended to abide by the ECtHR Judgment of 12 February 2008. The Moldavian government disagreed with it, arguing that the dismissal was wholly unrelated to the 2003 incident. Moreover, the statements of Mr Guja about the events in May and June 2008 were untrue.

The ECtHR first of all quoted much of its 2008 judgment, in which it had held that Article 10 of the Convention had been infringed. In addition, it held that the central issue in the case at hand was whether or not Mr Guja had received the treatment he complained of as a result of his whistle-blowing in 2003. The Court held that the provision that Mr Guja's dismissal had been based on, which had given a newly-appointed Prosecutor General grounds to dismiss existing staff, was being used for the first time in his case, whilst between 2003 and 2008 two

new Prosecutor's General had been appointed. It also noted that the dismissal was initiated on the very day the reinstatement was ordered. Further, it held that the Moldavian Government should have provided at least some evidence in support of its position that Mr Guja's arguments about the events of May and June 2008 were untrue – particularly as these arguments had not even been disputed during the domestic proceedings. As for Moldavia's statement that the Prosecutor General had wanted to promote a new team of people, the ECtHR noted that this had not been argued during the domestic proceedings. In view of all of this, the ECtHR considered that there were sufficiently strong grounds for drawing an inference that Mr Guja's second dismissal from his employment was not related to an ordinary labour dispute, but had all the characteristics of an act of retaliation for his disclosure of letters in 2003. Consequently, there had been an interference with Article 10 of the Convention. As for the validity of this, the ECtHR saw no reason to depart from its findings in the 2008 judgment. Further, it found it important that the domestic court had paid no attention to Mr Guja's allegations about his treatment during the ten days of his employment. It therefore concluded that there had been a violation of Article 10 of the Convention.

Ruling

The ECtHR:

Declared the application admissible;

Held that there had been a violation of Article 10 of the Convention; and

Held that the respondent State must pay the applicant damages of EUR 11,500 plus interest.

Creator: European Court of Human Rights (ECtHR)

Verdict at: 2018-02-27

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