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

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Dismissal of bank employee for email criticising company shortcomings infringed his freedom of expression

In today's **Chamber** judgment[1] in the case of Dede v. Türkiye (application no. 48340/20) 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 dismissal of a bank employee for having sent an email to the staff of his company's human resources department criticising a senior executive's management methods. The employer considered that the email had caused a nuisance which had disturbed peace and order in the workplace.

The Court found that the national courts – with which the applicant had lodged a claim for wrongful dismissal on freedom of expression grounds – had not conducted a sufficiently detailed examination of the content of the email in question, in which the applicant had criticised alleged shortcomings in the company's management. In particular, they had not attempted to establish whether the applicant's email had created nuisances in the workplace or had had a negative impact on the employer.

The Court noted in this connection that the criticisms contained in the applicant's email were of interest to the company in question and that it had been sent internally to a small group of recipients within the company. It further noted that the domestic courts had upheld the employer's decision to impose the heaviest sanction on the employee, without considering the possibility of applying a lighter penalty. It found that the national authorities had not convincingly demonstrated in their reasoning that – in rejecting the applicant's claim of wrongful dismissal – a fair balance had been struck between his freedom of expression and his employer's right to protect the company's legitimate interests.

Principal facts

The applicant, Mehmet Tahir Dede, is a Turkish national who was born in 1979 and lives in Maidenhead (the United Kingdom). Mr Dede is a computer engineer.

At the relevant time, Mr Dede was employed as an IT specialist at Takasbank under an employment contract governed by private law.

In December 2016 he sent an email from his professional email account to the staff of the human resources department, copying in a deputy director of the company. That email – the subject line of which was "*Jeff Bezos versus H.K.*" – concerned the management practices of the chairman of the board of directors of Takasbank's main shareholder.

In his email Mr Dede criticised H.K.'s management style and practices, comparing the latter's actions and decisions with those of Jeff Bezos when it came to the management of their respective companies. In particular, he criticised H.K. for being aloof from his employees, for having cancelled

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.

financial aid allocated to them, for having an authoritarian management style akin to micro-management and for showing favouritism in recruitment.

The same day, Mr Dede's employer initiated disciplinary proceedings and terminated his employment contract the next. The employer considered, in particular, that the email's content was derogatory, untrue and made fun of H.K.; that it contained wording that could be characterised as insulting and defamatory; and that it overstepped the limits of acceptable criticism of H.K.

In February 2017 Mr Dede lodged a claim for wrongful dismissal with the Istanbul Employment Tribunal, relying in particular on his right to freedom of expression. The tribunal found in his favour and declared his dismissal null and void. The employer lodged an appeal against that decision with the Istanbul Regional Court of Appeal, which overturned the Employment Tribunal's judgment.

The Regional Court of Appeal found, in particular, that there were valid grounds under Article 18 of the Labour Code to justify termination of employment and that, although the expressions used in the applicant's email did not contain any insults or threats, they had nevertheless overstepped the limits of acceptable criticism and had caused a nuisance in the workplace. The Court of Cassation upheld that decision and the Constitutional Court found that there had been no interference with the applicant's rights that amounted to a violation.

Complaints

Mr Dede relied in particular on Article 10 (freedom of expression) of the Convention.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 9 October 2020.

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

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Saadet **Yüksel** (Türkiye),
Frédéric **Krenc** (Belgium),
Diana **Sârcu** (the Republic of Moldova),

and also Dorothee **von Arnim**, *Deputy Section Registrar.*

Decision of the Court

Article 10

The Court observed that, according to the national authorities, there was a certain connection between protecting H.K.'s reputation on the one hand and maintaining peace and harmony in the workplace on the other. The national courts had thus found that a nuisance had been caused in the workplace by the fact that the applicant's email had used expressions which, in their view, overstepped the limits of acceptable criticism of H.K.

The Court found that the national authorities had thus pursued legitimate aims that were recognised under Article 10 of the Convention, namely the protection of the reputation or rights of others, including the employer's interests in the workplace. It nevertheless noted that, in reaching the conclusion that the applicant's email had caused a nuisance which had disturbed peace and order in the workplace, the national courts did not appear to have conducted a sufficiently detailed

examination of the content of the email in question, of the context in which it had been sent, of its potential scope or impact, of its alleged negative consequences for the employer or the workplace, or of the severity of the sanction imposed on the applicant, which were all factors that the Court had previously taken into account in cases concerning the freedom of expression of employees. In that connection, the Court noted the following points in particular.

As to the email's content, the applicant had in essence subjected H.K. to harsh criticism, alleging that the latter's management practices were incompatible with a modern approach to management – without, however, using any language that was insulting or vulgar with regard to him.

Thus, the Court noted that following inconclusive exchanges he had had with his supervisors concerning grievances he had previously brought to their attention, the applicant had criticised the alleged shortcomings in the company's management in his email. In the Court's view, such criticisms were undoubtedly a matter of interest to the company concerned.

Admittedly, the applicant had employed sarcastic language. However, having regard to the subject matter of the email, the context in which it had been sent and its recipients, the email's provocative and somewhat offensive style and content could not be regarded as having been gratuitously insulting in the context in which it had been sent, namely a debate of interest to the company. Moreover, the Regional Court of Appeal had failed to identify the specific expressions in the email which it had found problematic; nor had it assessed the language used by the applicant.

In addition, the email in question had been sent by the applicant internally, to a small group of recipients within the company – namely the human resources team concerned and the head of the department in which the applicant worked. Moreover, the authorities had not alleged that the email – which had not been intended for the general public – had been disclosed to the public or shared with other company employees outside of the appropriate procedural channels. Accordingly, the impact of the email on the employer and the workplace must have been very limited.

Lastly, the national authorities had not sought to ascertain through a detailed analysis whether the applicant's email had created a nuisance in the workplace or had had a negative impact on the employer.

Consequently, the Court found that the national authorities had failed to take into account all the relevant facts and factors in finding that the applicant's actions had been such as to disturb peace and harmony in his workplace. In particular, they had not attempted to assess whether the email had been apt to have harmful consequences for the applicant's workplace, having regard to its content, the professional context in which it was sent and its potential effects and impact on the workplace. Therefore, the grounds adduced to justify the applicant's dismissal could not be regarded as relevant and sufficient.

As to the severity of the sanction, the employer's disciplinary board – whose decision had been upheld by the national courts – had imposed the heaviest sanction that could be applied, namely immediate termination of employment, without considering the possibility of applying a lighter penalty, having regard to the circumstances of the case.

The Court therefore found that the national authorities had not convincingly demonstrated in the reasoning of their decisions that, in rejecting the applicant's claim of wrongful dismissal, a fair balance had been struck between his freedom of expression and his employer's right to protect the company's legitimate interests.

It followed that there had been a violation of Article 10 of the Convention.

Article 41 (just satisfaction)

The Court held that Türkiye was to pay the applicant 2,600 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

The judgment is available only in French.

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