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

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Trade unionists' dismissal for an offensive publication did not violate their freedom of expression

In today's Grand Chamber judgment in the case **Palomo Sanchez and Others v. Spain** (application nos. 28955/06, 28957/06, 28959/06 and 28964/06), which is final[1], the European Court of Human Rights held, by a majority, that there had been:

No violation of Article 10 (freedom of expression) of the European Convention on Human Rights read in the light of Article 11 (freedom of assembly and association).

The case concerned the dismissal of a group of trade unionists after the union's newsletter had published a cartoon and articles considered to be insulting to two other employees and a manager.

Principal facts

The applicants, Juan Manuel Palomo Sánchez, Francisco Antonio Fernández Olmo, Agustín Alvarez Lecegui and Francisco José María Blanco Balbas, are Spanish nationals who live in Barcelona. They worked as deliverymen for the company P. After having brought several sets of proceedings before the labour courts against their employer, in 2001 they set up a trade union and joined the union's executive committee.

The March 2002 issue of the union's monthly newsletter reported on a judgment of a Barcelona employment tribunal, which had partly upheld the applicants' claims, ordering the company P. to pay them certain sums in respect of salaries owed to them. The cover page of the newsletter displayed a caricature showing two employees of the company giving sexual favours to the director of human resources. Two articles, worded in vulgar language, criticised the fact that those two individuals had testified in favour of the company during the proceedings brought by the applicants. The newsletter was distributed among the workers and displayed on the notice board of the trade union on the company's premises.

On 3 June 2002, the applicants were dismissed for serious misconduct, namely for impugning the reputations of the employees and the human resources director criticised in the newsletter. The applicants challenged that decision before the courts. In a November 2002 judgment, the Employment Tribunal no. 17 of Barcelona dismissed their complaints, finding that the dismissals were justified in accordance with the relevant provisions of the Labour Regulations. It held that the cartoon and the two articles were offensive and impugned the dignity of the people concerned, and thus exceeded the limits of freedom of expression.

In May 2003, the High Court of Justice of Catalonia upheld the judgment in so far as it concerned the four applicants. It referred, in particular, to the limits imposed by the principle of good faith between parties to an employment contract and to the necessary balance that judicial decisions had to strike between a worker's contractual obligation and his freedom of expression.

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

An appeal on points of law by the applicants was dismissed by the Supreme Court on 11 March 2004. Their *amparo* appeal was declared inadmissible by the Constitutional Court on 11 January 2006, in particular on the grounds that the constitutional protection of freedom of expression did not extend to offensive or humiliating statements which were not necessary for others to form an opinion about the facts of which the applicants wished to complain.

Complaints, procedure and composition of the Court

The applicants alleged that their dismissal, based on the content of the newsletter, had infringed their rights under Article 10, and that the real reason for their dismissal had been their trade-union activities, in violation of their right to freedom of assembly and association under Article 11.

The case originated in six applications[2], which were lodged with the European Court of Human Rights on 13 July 2006. In its Chamber judgment of 8 December 2009, the Court held, by six votes to one, that the authorities had not exceeded their discretion in penalising the applicants and that there had been no violation of Article 10. It was also of the opinion that no separate question arose under Article 11. On 10 May 2010, the case was referred to the Grand Chamber at the applicants' request.

Judgment was given by the Grand Chamber of 17 judges composed as follows:

Nicolas **Bratza** (the United Kingdom), *PRESIDENT,*
Peer **Lorenzen** (Denmark),
Françoise **Tulkens** (Belgium),
Elisabeth **Steiner** (Austria),
David Thór **Björgvinsson** (Iceland),
Danutė **Jočienė** (Lithuania),
Ján **Šikuta** (Slovakia),
Dragoljub **Popović** (Serbia),
Ineta **Ziemele** (Latvia),
Isabelle **Berro-Lefèvre** (Monaco),
Päivi **Hirvelä** (Finland),
Luis **López Guerra** (Spain),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Ledi **Bianku** (Albania),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Kristina **Pardalos** (San Marino)*, JUDGES*,

and also Vincent **Berger**, *JURISCONSULT.*

Decision of the Court

Article 10

The Court noted that in the applicants' case the question of freedom of expression was closely related to that of freedom of association in a trade-union context. However, the complaint mainly concerned the applicants' dismissal for having, as members of the executive committee of a trade union, published and displayed the articles in question. Furthermore, the High Court of Justice of Catalonia had found the dismissal of two other union members unjustified because they had been on sick leave at the time of the

[2] The applications of two of the original applicants were found inadmissible by the Court in its Chamber judgment of 8 December 2009.

publication and distribution of the newsletter, which confirmed that the applicants' trade union membership did not play a decisive role in their dismissal. The Court thus found it appropriate to examine the facts under Article 10, interpreted in the light of Article 11.

The principal question was whether Spain was required to guarantee respect for the applicants' freedom of expression by annulling their dismissal. The domestic courts had noted that freedom of expression in the context of labour relations was not unlimited, the specific features of those relations having to be taken into account. To arrive at the conclusion that the cartoon together with the articles had been offensive to the people concerned, the employment tribunal had carried out a detailed analysis of the disputed facts and the context in which the applicants had published the newsletter.

The Court saw no reason to call into question the domestic courts' findings that the content of the newsletter had been offensive and capable of harming the reputation of others. It underlined that a clear distinction had to be made between criticism and insult and that the latter might, in principle, justify sanctions. In that light, the Court took the view that the grounds given by the domestic courts had been consistent with the legitimate aim of protecting the reputation of the individuals targeted by the content in question, and that the domestic courts' conclusion that the applicants had overstepped the limits of admissible criticism in labour relations could not be regarded as unfounded or devoid of a reasonable basis in fact.

As to whether the sanction imposed on the applicants, namely their dismissal, was proportionate to the degree of seriousness of the content in question, the Court noted that the cartoon and the articles had been published in the newsletter of the trade union workplace branch to which the applicants belonged, in the context of a dispute between them and the company. However, they included accusations which were aimed not directly at the company but against two other employees and the human resources manager. The Court reiterated in that connection that the extent of acceptable criticism was narrower as regards private individuals than as regards politicians or civil servants acting in the exercise of their duties.

The Court did not share the Spanish Government's view that the content of the articles in question did not concern any matter of general interest. They had been published in the context of a labour dispute inside the company to which the applicants had presented certain demands. The debate had therefore not been a purely private one; it had at least been a matter of general interest for the workers of the company. However, such a matter could not justify the use of offensive cartoons or expressions, even in the context of labour relations. The remarks had not been instantaneous and ill-considered reactions in the context of a rapid and spontaneous oral exchange but written assertions, displayed publicly on the premises of the company.

After a detailed balancing of the competing interests, making extensive reference to the Spanish Constitutional Court's case-law concerning the right to freedom of expression in labour relations, the domestic courts had endorsed the penalties imposed by the employer and had found that the conduct in question had not directly fallen within the applicants' trade union activity but offended against the principle of good faith in labour relations. The Court agreed with the domestic courts that in order to be fruitful, labour relations had to be based on mutual trust. While that requirement did not imply an absolute duty of loyalty towards the employer or a duty of discretion to the point of subjecting the worker to the employer's interests, certain manifestations of the right to freedom of expression that might be legitimate in other contexts were not legitimate in that of labour relations. An attack on the respectability of individuals by using grossly insulting or offensive expressions in the professional environment was, on account of its disruptive effects, a particularly serious form of misconduct capable of justifying severe sanctions.

In those circumstances, the Court found that the applicants' dismissal had not been a manifestly disproportionate or excessive sanction requiring the State to afford redress by annulling it or by replacing it with a more lenient measure. There had accordingly been no violation of Article 10, read in the light of Article 11.

Separate opinion

Judges Tulkens, Björgvinsson, Jočienė, Popović and Vučinić expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available in English and French.

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