European Court of Human Rights: Dede v. Türkiye

IRIS 2024-4:1/19

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In a judgment of 20 February 2024 the European Court of Human Rights (ECtHR) once more found a violation by Türkiye of a citizen's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). This time the reason was not because of criticising the government's policy or the alleged support of or incitement to terrorism. The applicant in *Dede v. Türkiye* was dismissed from his job because he had criticised in a professional email the management style and practices of the chairman (H.K.) of the board of directors of Takasbank's main shareholder. The Court's judgment confirms the horizontal effect of the application of Article 10 ECHR in the employment relationship (see also IRIS 2000-4/1, IRIS 2008-6/1, IRIS 2009-9/1 and IRIS 2015-1/1). It also confirms the state's responsibility in upholding interferences with the (online) right to freedom of expression of employees (see also IRIS 2020-1:1/4).

Based on his experiences as an IT expert employed within Takasbank, Dede had criticised H.K. for being aloof from his employees, for having cancelled financial aid allocated to them, for having an authoritarian management style akin to micromanagement and for showing favouritism in recruitment. Dede expressed his opinions on H.K. in an email that was sent to a limited group of persons within the company. He was dismissed by his employer, who found that the email's content was derogatory, untrue and made fun of H.K., while it also contained insulting and defamatory statements overstepping the limits of acceptable criticism of H.K. Dede lodged a claim before the Turkish courts for wrongful dismissal, relying in particular on his right to freedom of expression. After the Employment Tribunal found in his favour, the Regional Court of Appeal concluded that Dede's dismissal was lawful; although the expressions used in Dede'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 Dede's rights that amounted to a violation. Subsequently, Dede lodged an application with ECtHR arguing a violation of his rights under Article 10 ECHR.

First the ECtHR observed that the interference with Dede's freedom of expression corresponded to the legitimate aim of protecting the reputation of H.K. as well as the rights of others, in particular the employer's interests in maintaining peace and harmony in the workplace. The ECtHR however noted that, in reaching the

conclusion that Dede'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, which were all factors that needed to be taken into account according to the jurisprudence of the ECtHR in cases concerning the right to freedom of expression of employees. The ECtHR found that the email did not contain any language that was insulting or vulgar toward H.K., although some statements were provocative and somewhat offensive, but without amounting to wanton denigration. It further emphasised that Dede had criticised the alleged shortcomings in the company's management in his email, while such criticisms were undoubtedly a matter of interest to the company concerned. The email had been sent by Dede only internally, to a small group of recipients within the company, namely the human resources team concerned and the head of the department in which Dede worked. Accordingly, the impact of the email on the employer and the workplace must have been very limited. The ECtHR concluded that the national authorities had not sought to ascertain through a detailed analysis whether Dede's email had created a nuisance in the workplace or had had a negative impact on the employer. Therefore the ECtHR found that the national authorities had failed to take into account all the relevant facts and factors in finding that Dede's actions had been such as to disturb peace and harmony in his workplace, having regard to the email's content, the professional context in which it was sent and its potential effects and impact on the workplace. Hence, the grounds adduced to justify Dede's dismissal could not be regarded as relevant and sufficient. Finally the ECtHR observed that, as to the severity of the sanction, Dede's dismissal was the heaviest sanction that could be applied, namely immediate termination of employment; the possibility of applying a lighter penalty had not been considered at the national level.

The overall conclusion of the ECtHR is that the national authorities had not convincingly demonstrated in the reasoning of their decisions that, in rejecting Dede'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. Therefore the ECtHR unanimously concluded that there had been a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, deuxième section, rendu 20 février 2024 dans l'affaire Dede c. Türkiye, requête n° 48340/20

Judgment by the European Court of Human Rights, Second Section, in the case of Dede v. Türkiye, Application no 48340/20, 20 February 2024

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