European Court of Human Rights: *Aghajanyan v. Armenia*

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The European Court of Human Rights (ECtHR) has added a new and interesting judgment to its case-law on the right to freedom of expression in the workplace and the horizontal effect of the right to freedom of expression in private relations (see also *Halet v. Luxembourg*, IRIS 2023-4:1/23; *Herbai v. Hungary*, IRIS 2020-1:1/4; and *Fuentes Bobo v. Spain*, IRIS 2000-4:1/1). The case concerns the dismissal in 2010 of a senior employee in a chemical factory on the ground that he had disclosed sensitive information concerning the factory in an interview with a journalist. In this interview the employee raised a series of sensitive and important matters of public interest, such as the protection of the environment, damage to human health, and workplace safety. However, the relationship between the employee's duty of loyalty and the public interest in being informed about environmental issues and perceived wrongdoing in Armenia's vast chemicals factory was not examined by the domestic courts at all. The national courts, which confirmed the employee's dismissal, had failed to strike a fair balance between the competing interests at stake. The ECtHR found a violation of the employee's right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR).

The case concerns the dismissal without notice of Ishkhan Aghajanyan from his employment on the ground that he had disclosed sensitive information concerning his employer in a newspaper interview. In particular, the director of the factory who announced the dismissal found that Aghajanyan had disseminated false information about scientific work and experiments, as well as about the salaries of employees in the factory, thereby breaching the Labour Law and certain clauses of his contract of employment on trust, loyalty and confidentiality. Aghajanyan challenged his dismissal in the civil courts, arguing that he had not revealed any commercial secrets and also invoking his right to freedom of expression. The Armenian courts rejected his application on the ground that the information he revealed in the interview, such as details about the production capacities of the factory, the nature of its scientific work, ongoing experiments, the storage of raw material, product types and technological processes that were being developed and implemented, as well the salary of employees were considered as commercial secrets. Aghajanyan lodged an application with the ECtHR, complaining that his dismissal, as a result of his interview published in the newspaper article, had breached his right to freedom of expression as provided for in Article 10 ECHR. The ECtHR found unanimously that

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the Armenian courts had indeed violated Aghajanyan's right to freedom of expression. The ECtHR first referred to its previous case-law on the application of Article 10 in the context of professional relationships, regardless whether those relations are governed by public law or by private law. Indeed, genuine and effective exercise of freedom of expression does not depend merely on the state's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. In certain cases, the state has a positive obligation to protect the right to freedom of expression, even against interference by private individuals.

The Armenian Government argued that Aghajanyan's dismissal had complied with the requirements of Article 10 ECHR, and in particular that Aghajanyan had been dismissed in accordance with the law, namely on account of his employer's loss of trust in him and his gross violation of labour discipline – in the present case, the disclosure of a commercial secret. The ECtHR found it appropriate to examine the present case in terms of the state's positive obligations under Article 10 ECHR and therefore evaluated whether the Armenian judicial authorities, in dismissing Aghajanyan's claim, had adequately secured his right to freedom of expression in the context of labour relations. It also reiterated the importance of the duty of loyalty and discretion of employees to their employers, which requires that the dissemination of even accurate information be carried out with moderation and propriety. However, this duty may be overridden by the interest which the public may have in particular information. The ECtHR also pointed out that when assessing the proportionality of a serious measure such as dismissal without notice, the domestic courts had to take into account and give a comprehensive analysis of such key elements of the case as the nature and veracity of the statements at issue, the employee's motives for giving the interview and the possibility of effectively raising his point before his superiors, as well as the damage caused to the factory as a result of the employee's interview.

The ECtHR observed that the domestic judgments contained very little reasoning on these issues. Firstly, even though Aghajanyan submitted detailed arguments contesting the lawfulness of his dismissal as a result of his interview, the domestic courts failed to address any of his arguments made in that respect. More importantly, the domestic courts failed to assess the case before them in the light of the principles defined in the Court's case-law under Article 10 ECHR. The domestic court judgments did not specify which of the employee's statements published in the newspaper were found to be inaccurate or defamatory and they never analysed Aghajanyan's arguments about his earlier repeated attempts to raise his concerns with his superiors on the issues revealed in the interview. The Armenian courts also failed to verify his motive while there was no mention in the domestic judgments that Aghajanyan had acted in bad faith. Moreover, in his interview Aghajanyan had raised sensitive and important matters of public interest concerning the protection of the environment, damage to human health and workplace safety. However, the relationship between Aghajanyan's duty of

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loyalty and the public interest in being informed about environmental issues and perceived wrongdoing in Armenia's vast chemicals factory was not examined by the domestic courts at all. In addition, the domestic judgments, in upholding the dismissal, contained no mention of any harm sustained by the factory as a result of Aghajanyan's interview. Lastly, as regards the severity of the measure imposed on Aghajanyan, the ECtHR noted that it was the heaviest one possible, without any assessment of the appropriateness of a less severe measure. Having regard to the foregoing, the ECtHR considered that the national courts had failed to strike a fair balance in the light of the criteria established in its case-law between the competing interests at stake and adduce "relevant and sufficient" reasons for their decisions. There has accordingly been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Fourth Section, in the case of Aghajanyan v. Armenia, Application No. 41675/12, 8 October 2024

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