European Court of Human Rights: case of Guja v. Moldova

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The European Court of Human Rights recently delivered a judgement on a very particular and interesting case, concerning the position of a “whistle-blower” who leaked two letters to the press and was subsequently dismissed. The Court held that the divulgence of the internal documents to the press was *in casu* protected by Article 10 of the Convention, which guarantees the right to freedom of expression, including the right to receive and impart information and ideas. The applicant, Mr. Guja, was Head of the Press Department of the Moldovan Prosecutor General’s Office, before he was dismissed, on the grounds that he had handed over two secret letters to a newspaper and that, before doing so, he had failed to consult the heads of other departments of the Prosecutor General’s Office, a behaviour which constituted a breach of the press department’s internal regulations. Guja was of the opinion that the letters were not confidential and that, as they revealed that the Deputy Speaker of Parliament, Vadim Mişin, had exercised undue pressure on the Public Prosecutor’s Office, he had acted in line with the President’s anti-corruption drive and with the intention of creating a positive image of the Office. Guja brought a civil action against the Prosecutor General’s Office seeking reinstatement, but this action was not successful. Relying on Article 10 of the Convention, he complained to the European Court of Human Rights about his dismissal.

The European Court held that, given the particular circumstances of the case, external reporting, even to a newspaper, could be justified, as the case concerned the pressure exerted by a high-ranking politician on pending criminal cases. At the same time, the Public Prosecutor had given the impression that he had succumbed to political pressure. The Court also referred to the reports of international non-governmental organisations (the International Commission of Jurists, Freedom House, and the Open Justice Initiative), which had expressed concern about the breakdown of the separation of powers and the lack of judicial independence in Moldova. There is no doubt that these are very important matters in a democratic society, about which the public has a legitimate interest in being informed and which fall within the scope of political debate. The Court considered that the public interest in the provision of information on undue pressure and wrongdoing within the Prosecutor's Office is so important in a democratic society, that it outweighs the interest in maintaining public confidence in the Prosecutor General's Office. The open discussion of topics of public concern

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is essential to democracy and it is of great importance if members of the public are discouraged from voicing their opinions on such matters. The Court, being of the opinion that Guja had acted in good faith, finally noted that it was the heaviest sanction possible (dismissal) that had been imposed on the applicant. The sanction not only had negative repercussions on the applicant's career, but could also have a serious chilling effect on other employees from the Prosecutor's Office and discourage them from reporting any misconduct. Moreover, in view of the media coverage of the applicant's case, the sanction could also have a chilling effect on other civil servants and employees.

Being mindful of the importance of the right to freedom of expression on matters of general interest, of the right of civil servants and other employees to report illegal conduct and wrongdoing at their place of work, the duties and responsibilities of employees towards their employers and the right of employers to manage their staff, and having weighed up the other different interests involved in the applicant’s case, the Court came to the conclusion that the interference with the applicant's right to freedom of expression, in particular his right to impart information, was not “necessary in a democratic society”. Accordingly, there has been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Grand Chamber), case of Guja v. Moldova, Application no. 14277/04 of 12 February 2008

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