European Court of Human Rights: Case of Wojtas-Kaleta v. Poland

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In one of its recent judgments the European Court of Human Rights found that the freedom of expression of a journalist employed by the Polish public television broadcaster (Telewizja Polska Spółka Akcjna, TVP) had been unduly restricted. The journalist, Helena Wojtas-Kaleta, received a disciplinary sanction after criticising in public the direction the TVP had taken. This sanction, and its confirmation by the Polish courts, was found to constitute a violation of Article 10 of the European Convention for Human Rights.

In 1999 the national newspaper Gazeta Wyborcza published an article reporting that two classical music programmes had been taken off the air by TVP. The article quoted an opinion expressed by Ms Wojtas-Kaleta in her capacity as the President of the Polish Public Television Journalists' Union, in which she criticised this decision of the director of TVP. In addition, Ms Wojtas-Kaleta signed an open letter in protest at the above measure. The letter was addressed to the Board of TVP and stated among other things that, while classical music is the heritage of the nation, its continuous dissemination was seriously jeopardised by reducing its time on the air and by instead polluting air time with violence and pseudo-musical kitsch. Ms Wojtas-Kaleta was reprimanded in writing by her employer for failing to observe the company's regulations, which required her to protect her employer's good name. Following an unsuccessful objection to the reprimand, she brought a claim against TVP before the district court, requesting the withdrawal of the reprimand. However, first the district court and subsequently the court of appeal dismissed her claim and found that Ms Wojtas-Kaleta had behaved in an unlawful manner and that this was a necessary and sufficient prerequisite for the disciplinary measure imposed on her. The courts found that she had acted to the detriment of her employer by breaching her obligation of loyalty and, consequently, the employer had been entitled to impose the reprimand.

Ms Wojtas-Kaleta complained in Strasbourg that the Polish judicial authorities had violated her freedom of expression by taking into account merely her obligations as an employee, while disregarding her right as a journalist to comment on matters of public interest. The Court considered that, where a State has decided to create a public broadcasting system, the domestic law and practice have to guarantee that the system provides a pluralistic audiovisual service. The Polish public television company had been entrusted with a special mission including, among other things, assisting the development of culture, with emphasis on the

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national intellectual and artistic achievements. In her comments and open letter Ms Wojtas-Kaleta had essentially referred to widely-shared concerns of public interest about the declining quality of music programmes on public television, while her statements had relied on a sufficient factual basis and, at the same time, amounted to value judgments which were not susceptible to proof. The Court further noted that Ms Wojtas-Kaleta had to enjoy freedom of expression in all her capacities: as an employee of a public television company, as a journalist or as a trade union leader. The Court observed that the Polish courts took no note of her argument that she had been acting in the public interest. They limited their analysis to a finding that her comments amounted to acting to the employer's detriment. As a result, they did not examine whether or how the subject matter of Ms Wojtas-Kaleta's comments and the context in which they had been made could have affected the permissible scope of her freedom of expression. Such an approach is not compatible with Convention standards. The Court noted that the tone of the impugned statements was measured and that she did not make any personal accusations against named members of the management. Finally, the journalist's good faith had never been challenged either by her employer or by the domestic authorities involved in the proceedings. Being mindful of the importance of the right to freedom of expression on matters of general interest, Ms Wojtas-Kaleta's professional obligations and responsibilities as a journalist, and of the duties and responsibilities of employees towards their employers, as well as having weighed up the other different interests involved in the present case, the Court came to the conclusion that the interference with her right to freedom of expression was not "necessary in a democratic society". Accordingly, the Court held that there had been a violation of Article 10.

Judgment by the European Court of Human Rights (Fourth Section), case of Wojtas-Kaleta v. Poland, Application no. 20436/02 of 16 July 2009

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