European Court of Human Rights: Szima v. Hungary

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The applicant in this case, Ms Judit Szima, was the chairperson of the Tettrekész Police Trade Union. She published a number of writings on the Trade Union's website, which was effectively under her editorial control. In some of these writings she sharply criticized the police management, also referring to outstanding remunerations due to police staff, alleged nepotism and undue political influence in the force, as well as dubious qualifications of senior police staff. In 2010 Szima was convicted for instigation to insubordination. The Military Bench of the Budapest Court of Appeal confirmed her sentence as a fine and demotion. It held that the publication of the posted articles and statements on Tettrekész's website had gone beyond Szima's freedom of expression, given the particularities of the armed body to which she belonged. According to the Hungarian authorities, the views contained in the website articles constituted one-sided criticism whose truthfulness could and should not be proven.

The Strasbourg Court confirms that the accusations by Szima of the senior police management of political bias and agenda, transgressions, unprofessionalism and nepotism were indeed capable of causing insubordination. The Court also observes that "it is true that Szima was barred from submitting evidence in the domestic proceedings - a matter of serious concern - however, in her attacks concerning the activities of police leadership, she failed to relate her offensive value judgments to facts". The Court is of the opinion that Szima "has uttered, repeatedly, critical views about the manner in which police leaders managed the force, and accused them of disrespect of citizens and of serving political interests in general", and that these views "overstepped the mandate of a trade union leader, because they are not at all related to the protection of labour-related interests of trade union members " (§ 31). In view of the margin of appreciation applicable, in order to maintain discipline by sanctioning accusatory opinions that undermine trust in, and the credibility of, the police leadership, the European Court accepts that there was a sufficient "pressing social need" to interfere with Szima's freedom of expression. It also found that the relatively mild sanction imposed on the applicant - demotion and a fine - could not be regarded as disproportionate in the circumstances. By six votes to one, the Court concluded that there has been no violation of Article 10 read in the light of Article 11 of the Convention.

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The outcome of the case is somewhat surprising, as the Court firmly took as its starting point that “the members of a trade union must be able to express to their employer their demands by which they seek to improve the situation of workers in their company. A trade union that does not have the possibility of expressing its ideas freely in this connection would indeed be deprived of an essential means of action. Consequently, for the purpose of guaranteeing the meaningful and effective nature of trade union rights, the national authorities must ensure that disproportionate penalties do not dissuade trade union representatives from seeking to express and defend their members’ interests” (§ 28).

As the sole dissent, the president of the Chamber, Judge Tulkens, vehemently disagreed with the reasoning of the Court. Tulkens refers to the finding by the Court’s majority that Szima’s critical remarks had overstepped the mandate of a trade union leader, because some of them were “not at all related to the protection of labour-related interests of trade union members”. Tulkens wonders whether the Court itself has not overstepped its mandate by casting this judgment on the role of a trade union leader and on the “legitimate” scope of trade-union activities. In Tulkens’ view, the majority of the Court dismissed artificially the trade-union dimension of this case and, also neglected the importance of freedom of expression in a democratic society.

Judgment by the European Court of Human Rights (Second Section), case of Szima v. Hungary, nr. 29723/11 of 9 October 2012

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