European Court of Human Rights: Nenkova-Lalova v. Bulgaria

IRIS 2013-4:1/1

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In a controversial judgment, with a 4/3 decision, the European Court of Human Rights dismissed the claim by a journalist, Ms. Nenkova-Lalova, regarding her dismissal from the Bulgarian public broadcaster BNR. The BNR journalist complained that her disciplinary dismissal, ostensibly on technical grounds regarding the way she had hosted one of her regular weekly radio shows, had in reality been a sanction for the way in which she had exposed corrupt practices during one of her radio shows. In that talk show unpleasant facts were revealed about the then ruling political party. However, as Nenkova-Lalova essentially had breached employment discipline within the meaning of the Bulgarian Labour Code and BNR regulations, the European Court agreed with the findings of the Sofia Court of Appeal and the Bulgarian Supreme Court that there had been no violation of Article 10 of the Convention.

The European Court accepts that Nenkova-Lalova's dismissal did amount to an interference with her rights under Article 10 of the Convention, but the dismissal was justified as it was prescribed by law, it pursued the legitimate aim of protecting the rights of others and was "necessary in a democratic society". The European Court is of the opinion that Nenkova-Lalova's dismissal was based on her wilful disregard of an editorial decision concerning an issue of the internal organisation of the BNR, related to the presentation of a radio show and the journalists (not) participating in it. The Court observes that there had not been any limitations on the topics to be discussed during her show, or on the substantive content or manner of presentation of the information broadcast during the show. Therefore the Court cannot agree with the applicant that her dismissal was intended to prevent the dissemination of information of public interest: her capacity as a journalist "did not automatically entitle her to pursue, unchecked, a policy that ran counter to that outlined by her employer, to flout legitimate editorial decisions taken by the BNR's management and intended to ensure balanced broadcasting on topics of public interest, or to have unlimited access to BNR's air. There is nothing in the facts of the present case to suggest that the decisions of the BNR's management in relation to the applicant's show were taken under pressure from the outside or that the BNR's management was subject to outside interferences". The Court also comes to the conclusion that although it is true that a dismissal by way of disciplinary sanction is a severe measure, it cannot be overlooked that the facts showed that her employer could not trust her to perform her duties in good faith. Insisting that employment

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relations should be based on mutual trust applies even more when it comes to journalists employed by a public broadcasting organisation. In sum, the Court does not consider that Nenkova-Lalova has established that her dismissal was intended to stifle her freedom to express herself rather than enable the public broadcasting organisation by which she was employed - the BNR - to ensure the requisite discipline in its broadcasts, in line with its “duties and responsibilities” under Article 10 of the Convention. There has therefore been no violation of that provision. The three dissenting judges are of the opinion that the functioning of the BNR and especially the manner in which decisions relevant to the editorial choices of journalists hosting programmes were dealt with, did not offer the necessary safeguards for the rights, activities, performance and independence of the journalists in their relationship with the public employer. They also consider that the act attributed to Nenkova-Lalova taken within this context of a rather unclear division of responsibilities as concerns editorial choices within a given programme does not appear to have been so grave or so far-reaching in its effects as to have irrevocably breached the mutual trust between employer and employee. The opinion that the Bulgarian authorities have violated Article 10 of the Convention however is not shared by the majority of the Court. Four of the seven judges indeed found that the dismissal of the BNR journalist did not amount to a breach of Article 10.

Judgment by the European Court of Human Rights (Fourth Section), case Nenkova-Lalova v. Bulgaria, Appl. nr. 35745/05 of 11 December 2012

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