European Court of Human Rights: Matúz v. Hungary

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In its judgment in the case of Matúz v. Hungary, the European Court of Human Rights confirmed the importance of whistleblower protection, in this case for a journalist who alarmed public opinion regarding censorship within the public broadcasting organisation in Hungary. The case concerned the dismissal of a television journalist, Gábor Matúz, working for the State television company Magyar Televízió Zrt., after having revealed several instances of alleged censorship by one of his superiors.

Matúz first contacted the television company's president and sent a letter to its board, informing them that the cultural director's conduct in modifying and cutting certain programme content amounted to censorship. A short time later, an article appeared in the online version of a Hungarian daily newspaper, containing similar allegations and inviting the board to end censorship in the television company. A few months later, Matúz published a book containing detailed documentary evidence of censorship exercised in the State television company. Subsequently, Matúz was dismissed with immediate effect. Matúz challenged his dismissal in court, but he remained unsuccessful in his legal action in Hungary. After exhausting all national remedies, he lodged a complaint in Strasbourg, arguing a violation of his rights under Article 10 of the Convention. He submitted that he had the right and obligation to inform the public about alleged censorship at the national television company. The Hungarian government argued that by publishing the impugned book without prior authorisation and by revealing confidential information in that book, Matúz had breached his duties, leading to his summary - and justified - dismissal.

The European Court accepted that the legitimate aim pursued by the impugned measure was the prevention of the disclosure of confidential information, as well as "the protection of the reputation or rights of others" within the meaning of Article 10 § 2 of the Convention. Once more, the central question was whether the interference was "necessary in a democratic society". The Court referred to its standard case law on freedom of expression and journalistic reporting on matters of public interest and also observed that the present case bears a certain resemblance to the cases of Fuentes Bobo v. Spain (see IRIS 2000-4/1) and Wojtas-Kaleta v. Poland (see IRIS 2009-9/1), in which it found violations of Article 10 in respect of journalists who had publicly criticised the public television broadcaster's management.

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The relevant criteria regarding the balancing of the right to freedom of expression of a person bound by professional confidentiality against the right of employers to manage their staff have been laid down in the Court's case-law since its Grand Chamber judgment in the case of Guja v. Moldova (§§74-78) (see IRIS 2008-6/1). These criteria are: (a) public interest involved in the disclosed information; (b) authenticity of the information disclosed; (c) the damage, if any, suffered by the authority as a result of the disclosure in question; (d) the motive behind the actions of the reporting employee; (e) whether, in the light of the duty of discretion owed by an employee toward his or her employer, the information was made public as a last resort, following disclosure to a superior or other competent body; and (f) the severity of the sanction imposed. The Court emphasised that the content of the book essentially concerned a matter of public interest and it confirmed that it was not in dispute that the documents published by Matúz were authentic and that his comments had a factual basis. The Court also noted that the journalist had included the confidential documents in the book with no other intention than to corroborate his arguments on censorship and that there was no appearance of any gratuitous personal attack either (par. 46). Furthermore, the decision to make the impugned information and documents public was based on the lack of any response following his complaint to the president of the television company and letters to the board. Hence the Court was "satisfied that the publication of the book took place only after the applicant had felt prevented from remedying the perceived interference with his journalistic work within the television company itself - that is, for want of any effective alternative channel" (par. 47). The Court also noted that "a rather severe sanction was imposed on the applicant", namely the termination of his employment with immediate effect (par. 48).

The Court was of the opinion that the approach by the Hungarian judicial authorities neglected to sufficiently apply the right of freedom of expression. The Court concluded that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society". Accordingly, the Court unanimously found that there has been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Second Section), case of Matúz v. Hungary, Appl. No. 73571/10 of 21 October 2014

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