EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 263

June 2022

Straume v. Latvia - 59402/14

Judgment 2.6.2022 [Section V]

Article 11

Article 11-1

Freedom of association

Domestic court failure to apply convention standards and acceptably assess employee sanctions, in response to a complaint by a trade union, imposed on its representative: *violation*

Facts – The applicant worked as an air traffic control officer ("ATCO") for the State-owned company, Latvijas Gaisa Satiksme ("LGS"), which is overseen by the Ministry of Transport, and was a chairperson of the relevant Trade Union ("the Trade Union"). A letter of complaint was sent to the Minister of Transport and the person representing the State as the sole shareholder of LGS, which was signed by all three Trade Union board members, including the applicant, and which raised grievances and concerns relating to the work of ATCOs. In response, a number of actions were taken against the applicant, including a medical check, a disciplinary investigation, suspension from work, a prohibition to attend the workplace, revocation of pay, and imposition of an obligation to stand idle. Other actions included steps to compromise the applicant's status as the chairperson of the Trade Union board and the pressuring of colleagues who did not distance themselves from her.

The applicant brought unsuccessful civil proceedings against LGS, challenging the measures taken against her. At first instance LGS lodged a successful counterclaim seeking the termination of her employment. The proceedings were heard in closed sessions and the summary judgment was pronounced in a closed hearing. The applicant appealed without success up to the Supreme Court.

Law – Article 11:

(a) *The applicable provision*

The main focus of the applicant's complaint was that she had been penalised for carrying out a trade union activity and that the domestic courts had arbitrarily denied the trade union element of the dispute. In view of the circumstances of the case and the nature of the applicant's complaint, the question of whether the negative consequences suffered by the applicant had indeed been the result of her acting as a trade union representative had to be examined under Article 11, interpreted in the light of Article 10.

(b) *Whether there was an interference*

When sending the Trade Union letter, the applicant had acted as its representative and had thereby exercised her right to freedom of association. Further, the majority of the

detriments imposed on the applicant had been put in place expressly as a sanction for having sent the latter, had been closely connected to the aforementioned measures, or, in view of the context, could only be understood as a rection to the applicant's trade union activities. There had therefore been an interference with her freedom of association.

(c) *Whether the interference was justified*

The Court proceeded on the assumption that the interference had had a legal basis and accepted that it had aimed at protecting the rights and freedoms of others, namely the employer. The Government's argument that they had also been aimed at protecting the rights and freedoms of the wider public and public safety were analysed under the question of whether the interference had been necessary in a democratic society.

As to the necessity of the interference, the Court had to determine, in particular, whether the domestic courts had struck a fair balance between the applicant's right to freedom of association on the one hand and protection of the employer's interests on the other hand.

The Court did not find it necessary to inquire into the kind of issues that had been central to its case-law on whistle-blowing, as the present case concerned the context of the freedom of expression of a trade union representative. Here, the aim of the expression had not been to raise the public awareness of unlawful conduct but to advocate for the socio-economic interests of the Trade Union's members and certain safety concerns. It was worth recalling that the impugned letter had been addressed to the State officials overseeing LGS, a State-owned company, and not disseminated publicly. The case also had to be distinguished from situations in which employees expressed their own personal opinions, as actions and statements aimed at furthering the interests of trade union members as a whole called for a particularly high level of protection.

(i) The context in which the statements were made

The letter had addressed various socio-economic issues and practices that had been considered to negatively affect LGS' employees and the performance of their tasks as ATCOs and that had already been raised with the employer. By the letter, those labour-related concerns had been relayed to the State institution that had owned and overseen the employer. The writing of the letter had formed part of the Trade Union's efforts to express the demands by which it had sought to improve the situation of its members and safeguard the performance of their duties. Accordingly, the applicant had been representing the Trade Union in its exercise of a legitimate trade union activity. Moreover, it had concerned an essential element of trade union freedom – seeking to persuade the employer to hear what it had had to say on behalf of its members.

(ii) The nature of the statements

Aside from disregarding the fact that the letter had been written by a trade union representative, the domestic courts had also paid no attention to the trade union context when analysing its contents. That had prevented the domestic courts from applying the relevant standards and appropriately assessing the pertinent facts, which had led to contradictory conclusions.

The Government had argued that the letter had contained statements about threats to aeronavigation safety, which had gone beyond the scope of legitimate trade union interests. However, after describing various shortcomings in the organisation of ATCO work, including unregistered overtime work, the letter had submitted that those deficiencies could fatigue the employees, demoralise them, cause senior staff to leave

and reduce the quality of the training. It had further inferred that tat, in turn, could lower flight safety and the sustainability of LGS.

Drawing inferences from existing facts is generally intended to convey opinions and is thus more akin to value judgments. Moreover, in the present case, those inferences could be regarded as a professional assessment of the potential impact of the identified deficiencies. However, the domestic courts, in finding that the applicant had distributed "untruthful information" and "untruthful opinion", had looked at the statements concerning the potential consequences and verified only whether those potential consequences had already occurred. At the same time, they had not verified the statements of facts that had formed the basis for those inferences and had not analysed whether the deficiencies alleged had indeed existed, most notably whether ATCO training had taken place on the basis of unregistered overtime work. Accordingly, the domestic courts had failed to carry out a proper assessment of whether the existence of facts stated in the letter had been demonstrated and whether the opinions expressed therein had had a sufficient factual basis.

The statements made in the letter had not been devoid of factual grounds and had not amounted to a gratuitous attack on the LGS board. They had constituted a description of labour-related concerns and had been made within the legitimate aim of protecting the labour-related interests of the Trade Union members and the effective performance of their work. They had not exceeded the limits of acceptable criticism. While employees have a duty of loyalty, reserve and discretion to their employer, that duty could not be relied upon to deprive trade unions and their representatives of the very essence of their right to defend their members' interests.

(iii) The damage suffered by the employer or other persons

The letter had only been sent to the State officials that had overseen the employer – a State-owned company – and had not been published or otherwise distributed to the wider public. The public shareholder in a State-owned company such as LGS had a right to be informed of matters affecting the socio-economic circumstances and well-being of the staff and potentially influencing the quality and safety of the service provided. In fact, addressing the issues raised in the letter could only have served the interests of the employer and the public, particularly given the potential breaches of safety and health regulations in a "safety critical" environment.

The ATCOs' work, by its very essence, was therefore related to public safety. However, it could not be concluded that the detriments imposed on the applicant for seeking to protect the labour-related interests of the Trade Union members and safeguard the performance of their duties had pursued the legitimate aim of protecting the rights and freedoms of the wider public or public safety, as argued by the government.

(iv) The nature and severity of the sanctions or other repercussions

The repercussions had been exceptionally harsh and clearly incompatible with the exercise of a legitimate trade union activity. By disregarding the trade union context, the domestic courts had ignored the applicant's position as a trade union representative and had made her individually responsible for the Trade Union's decision to communicate the grievances of its members to the employer's owner. Furthermore, those sanctions had been particularly punitive given the sector the applicant had been employed in – LGS was the sole employer of civilian ATCOs in Latvia and her dismissal meant that her career as an ATCO in Latvia had been terminated, with undeniable consequences for her private and professional life.

The detriments imposed on the applicant had in themselves been capable of having a chilling effect on the Trade Union's members. However, there had been still further

actions taken by the LGS board that had been directed at the Trade Union's members, such as requiring them to sign statements under the threat of suspension, pressuring them to distance themselves from the Trade Union letter and the applicant, and calling for the Trade Union's leadership to be changed, that had clearly aimed at exerting pressure on them.

Overall, the domestic courts could not be said to have applied standards in conformity with the principles deriving from Article 11, read in the light of Article 10, or to have based themselves on an acceptable assessment of the relevant facts. Accordingly, the detriments imposed on the applicant had not been necessary in a democratic society.

Conclusion: violation (unanimously).

The Court also held, unanimously, that there had been a violation of Article 6 in relation to the civil proceedings brought by the applicant, in that there had been a failure to ensure the rights to both a public hearing and the public delivery of the judgments.

Article 41: EUR 25,000 in respect of pecuniary and non-pecuniary damage.

(See also *Palomo Sánchez and Others v. Spain* [GC], 28955/06 et al., 12 September 2011, Legal Summary; *Szima v. Hungary*, 29723/11, 9 October 2012, Legal Summary; *Vellutini and Michel v. France*, 32820/09, 6 October 2011, Legal Summary)
