



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

FOURTH SECTION

Application no. 79040/12
Andris RUBINS
against Latvia
lodged on 7 December 2012

STATEMENT OF FACTS

The applicant, Mr Andris Rubins, is a Latvian national, who was born in 1947 and lives in Riga.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Background

The applicant was a professor and the head of the Department of Dermatological and Venereal Diseases of the Faculty of Medicine of Riga Stradiņa University (hereafter – “the university”), which is a State university. The applicant had been elected to hold the position of a head of the department until 13 April 2013. The applicant was also an elected member of the constitutive assembly of the university (*Satversmes sapulce*).

On 22 February 2010 the Council of the Faculty of Medicine decided to merge the Department of Dermatological and Venereal Diseases and the Department of Infectious Diseases. That decision was approved by the Senate of the University on the following day. It appears that as a result of the merger the position of the head of department that had been held by the applicant was eliminated.

On 3 March 2010 the applicant sent an e-mail to the rector of the university and to several other recipients. The e-mail criticised the lack of democracy and accountability in the leadership of the organisation as well as drew the recipients’ attention to mismanagement of the university’s finances. The applicant further unfavourably described several representatives of the management of the university, for example, stating that G.B. “pretends to be a God-fearing Catholic ... yet, as far as is known, has several out-of-wedlock children”, that A.P. “cannot decide a single

question by himself, does not keep his word, is lying” and that A.G. “has called me and asked me to break the law in the interests of her protégées”.

On 20 March 2010 the applicant sent an e-mail to the rector of the university. The subject-line of the e-mail read “agreement – settlement”. In the e-mail the applicant suggested to the rector two ways to deal with “the situation”. The first suggestion was that the university annul the decision to merge the two departments and the second was that the applicant agrees to receive a financial compensation (100,000 Latvian lati; approximately 142,300 euros) and to leave his position of head of a department. Should the rector choose not to accept the applicant’s settlement proposals, the applicant informed him of his intention to appeal to courts and to publicise various information concerning his situation.

On 6 May 2010 the applicant received a notice of termination (*uzteikums*) from the university, in which he was informed that his employment contract with the university would be annulled ten days after the receipt of the notice. The legal basis for the applicant’s dismissal was section 101(1)(1) and (3) of the Labour Law, which authorise the employer to dismiss an employee if, respectively, “the employee, without an extenuating reason, has committed significant infractions of the employment contract or terms of employment” and “the employee has fulfilled his duties while disregarding good morals [*labi tikumi*] and such actions are not compatible with continued employment”. The notice stated, *inter alia*, the following:

“The basis for the dismissal is the e-mail you sent to the rector of [the university] on 20 [March] 2010, in which you, while addressing the rector concerning issues of interest to you, have included inappropriate demands, including elements of blackmail and undisguised threats. As a consequence your actions are considered as very grave infractions of basic principles of ethics and norms of behaviour, which are absolutely contrary to good morals. The fact of sending such a letter and its contents are clearly contrary to good morals, which is even the more so, taking into account the circumstances in which the letter has been sent and your attitude.”

The applicant was deemed to have acted in contravention to several provisions of the staff rules of the university, in particular the obligation “to treat the other staff members of the university with respect”. On 17 May 2010 the university dismissed the applicant.

2. Civil proceedings

The applicant submitted a claim to the Riga City Kurzeme District Court, asking the court to invalidate the notice of termination, to order his reinstatement and payment of the unpaid salary and benefits as well as compensation for moral harm.

By a judgment of 11 March 2011 the Kurzeme District Court allowed the applicant’s claim in part. It held that the fact that the employer had been offended by the applicant’s e-mail was not a legitimate reason for his dismissal, since section 101 of the Labour Law did not contain such a ground. The court considered that the allegation that the applicant’s e-mail had contained elements of blackmail and threats was merely speculation on the employer’s behalf. It was additionally found that the applicant had not been given an adequate possibility to respond to the allegations contained in the termination notice before that notice was sent to him. Accordingly the

court annulled the termination notice and ordered the applicant's reinstatement with back-payment of his salary. The applicant's claim for compensation for moral harm was rejected as unsubstantiated.

Both the applicant and the university appealed. On 18 January 2012 the Riga Regional Court quashed the first-instance court's judgment and dismissed the applicant's claim in full. The appeal court considered that by his e-mail of 20 March 2010 the applicant had invited the rector to carry out "unlawful actions", namely, to annul a decision of the Senate of the university (concerning the merger of two department of the Faculty of Medicine), which were deemed to be "unlawful" because annulling decisions of the Senate of the University exceeded the rector's competence. The court also considered that the applicant had requested to be paid "unreasonably high compensation" for his termination. These two considerations led the appeal court to conclude that the applicant had failed to observe the basic principles of ethics, such as honesty, collegiality and responsibility.

The conclusions of the appeal court echoed the ones that had been reached by the university's Ethics Committee and by two *ad hoc* commissions set up on 25 March and 6 April 2010.

The court also took into account that on 23 March 2010 the national news agency LETA had published the applicant's statement about the processes in the university, in which he had criticised the leadership of the university, stating that a group of twelve to fifteen persons had usurped all powers and set up an authoritarian or rather dictatorial regime. The court further noted the contents of the e-mail the applicant had sent on 3 March 2010 (see paragraph 5 above) and came to the conclusion that the applicant had contravened the obligation to treat the staff of the university with respect.

The court next turned to the question of "good morals" and, after finding that this term had no precise legal definition, proceeded to conclude that it consisted of three "basic principles of ethics": "the principle of integrity and righteousness", "the principle of responsibility" and "the principle of loyalty". It found that the applicant had acted in breach of these principles and that there was

"no reason to conclude that the applicant had only intended to inform [the rector] about [his plan] to use his democratic rights, [that is], to submit complaints to courts and to publish information in the media, while respecting interests of the society, since the contents of the letter [of 20 March 2010] attest to [the applicant's] wish to act for a selfish cause – to retain the position of a head of a department, contrary to the Senate's decision on reorganization, or to receive a substantial financial compensation, regardless of [the need to use] the budget of [the university] economically and reasonably, in compliance with the goals of the [university].

[The appeal court] finds that there is no evidence that prior to sending the letter of 20 March 2010 [the university] had obstructed the applicant's democratic rights to inform the society and the responsible institutions about the violations in the [university].

Taking into account the aforementioned, [that is], that the [applicant's] aim in writing the letter of 20 March 2010 was selfish, the [appeal court] finds that the way the [applicant] has wished to achieve a result beneficial to him has been by influencing [the rector] in such a way that he would take unlawful steps, which, taking into account the aforementioned, should be considered a threat."

Turning to the applicant's claim for compensation for moral harm, the appeal court cited section 9(1) of the Labour Law, which provides as follows:

"An employee shall not be punished or otherwise directly or indirectly subjected to unfavourable consequences for the reason that the employee in the context of employment relations uses his rights in a permissible way [*pieļaujāmā veidā*] or if he informs competent authorities or officials about suspicions of criminal or administrative violations in his place of employment".

The court disagreed that the applicant's dismissal had created "unjustified consequences" (*nepamatotas sekas*) or caused moral harm only because the applicant had expressed legitimate concerns about the reorganisation of the university and about the way the financial resources were used. The reasoning in that regard was as follows:

"[The appeal court], on the basis of experience and logics, finds that calm and positive atmosphere and respectful attitude amidst colleagues best contributes to achieving constructive dialogues.

Having analysed above-mentioned evidence, the [appeal court] considers that nothing prevented the applicant from expressing his opinion in a manner that would be compatible with ethics and staff rules".

The applicant submitted an appeal on points of law, disputing, *inter alia*, the appeal court's findings that by sending one confidential letter to one recipient (namely, the rector of the university), in which he had raised points concerning unjustified use of funds from the State budget, he had committed an infraction of working rules and ethics of such a gravity that would justify his dismissal. The applicant's appeal on points of law was rejected by the Senate of the Supreme Court in a preparatory meeting on 26 September 2012.

3. Criminal proceedings

On 27 September 2010 the rector of the university sought to institute criminal proceedings against the applicant for extortion. The criminal proceedings were instituted on 30 January 2012 and the applicant was ordered not to leave his permanent residence without a permission of the competent investigative authority for more than 24 hours. The criminal proceedings were discontinued for lack of *corpus delicti* on 9 February 2012. The travel restrictions were annulled by the same decision.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the decisions of the Regional Court and the Senate of the Supreme Court were unlawful and unfair because the courts disregarded the applicant's right to the freedom of expression.

The applicant further complains that his dismissal violated Article 10 of the Convention, since he had been punished for expressing a legitimate opinion about problems prevailing in the university and for attempting to resolve his employment situation.

QUESTION TO THE PARTIES

Has there been a violation of the applicant's right to freedom of expression, guaranteed by Article 10 of the Convention (see, *mutatis mutandis*, *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, ECHR 2011)?