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

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Violations found in treatment of trade-union chair following her raising concerns about flight safety

In today's **Chamber** judgment[1] in the case of Straume v. Latvia (application no. 59402/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights, and

a violation of Article 6 (right to a fair trial).

Ms Straume was an air-traffic controller and chair of her trade union. The case concerned her treatment by her employer and ultimately her firing for statements made regarding safety in a letter to the State officials overseeing her State-owned employer on behalf of the union.

The Court found that the measures taken in her case – in particular the disciplinary investigation, her suspension, "idle standing" and dismissal – had not been proportionate to the legitimate aim of protecting the rights of her employer, and had thus not been "necessary in a democratic society.

It also found that the domestic courts had not justified the need to hold the civil proceedings in a closed courtroom and to not have the judgments delivered or made available publicly, despite the great need in this case for public scrutiny.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicant, Aušra Straume, is a Lithuanian national who was born in 1978 and lives in Riga.

In 2005 Ms Straume began working as an air-traffic control officer for a State-owned company, Latvijas Gaisa Satiksme (LGS). In 2011 the company asked her to sign an updated job description, which she did with a note expressing her disagreement with a point which disadvantaged people who had taken maternity leave regarding promotion. She signed a revised job description a year later.

In 2011 Ms Straume became chair of the new Latvian Air Traffic Controllers' Trade Union. The union sought clarification about a recent order concerning work schedules for air-traffic control instructors. LGS responded that such training had to be carried out outside normal work shifts – it would be regarded as additional work and would be paid separately. In subsequent correspondence the union asserted that instructors' training work was not being recorded and that those instructors were thus not being paid the extra they deserved. It emphasised that this could potentially impact flight safety, among other things. It asserted that the LGS board were not complying with the relevant laws, were infringing the legal rights of the LGS employees, and were mismanaging the company's funds. It emphasised the societal importance of the situation. It also stated the following:

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

"Even though the trade union has repeatedly attempted to find a constructive solution through negotiations, the situation has become unmanageable [*kļuvusi nevaldāma*] and seriously endangers both the quality of the provision of airline services [*aeronavigācijas pakalpojumu nodrošināšanas kvalitāti*] and LGS's ability to grow and compete in the international market."

Ms Straume signed the relevant letter, addressed to the Minister of transport and another official, in her capacity as chair.

In response 19 air-traffic controllers wrote to the LGS to distance themselves from the trade union's letter, allegedly under pressure from LGS.

The Civil Aviation Agency stated that the union's pronouncements regarding flight safety had been "extreme", stating that they should have been raised through the proper channels.

The LGS board asked all trade-union members to sign letters stating that they could assure safety standards, threatening that refusal to sign would lead to possible suspension. LGS warned the trade-union members not to "seek help from outside", as that would only harm them. It opened an internal investigation into the legality of statements around flight safety. Ms Straume was suspended from duties as a result, and she was denied access to the building. A large number of air-traffic controllers wrote letters expressing their support for Ms Straume. According to statements, staff who showed a positive attitude towards Ms Straume – for example by wishing her a happy birthday – were harassed by the company. At the end of her suspension she was made to "stand idle", that is to say to come to work but not carry out any of her duties.

The investigation ultimately recommended that she be fired. For certain periods during the dispute LGS stopped paying her salary.

Ms Straume challenged the measures taken by LGS in court, and LGS lodged a counterclaim, seeking full termination of her employment, citing its loss of trust in her due to her refusal to agree to the new job description, and deliberate dissemination of untruths about LGS. The Riga City Kurzeme District Court, following closed proceedings, allowed the counterclaim. The court stated that Ms Straume had written the letter in her private capacity and had unnecessarily created a crisis with her statements, casting doubt on her ability to perform her duties. The court concluded that it was inappropriate to invoke human rights in her case. Ms Straume appealed.

LGS successfully asked the Riga Regional Court for a closed hearing owing to security concerns around air-safety rules. The court upheld the first-instance judgment. The Supreme Court then upheld the judgment following an appeal on points of law in February 2014. None of the judgments in the case were delivered publicly.

Ms Straume was re-elected chair of the trade union on 1 February 2013.

Over the course of this dispute, concerns were raised separately in internal reports and by national and international bodies as to the compliance of LGS with air-traffic control and safety regulations.

Complaints, procedure and composition of the Court

Relying on Articles 11 (freedom of assembly and association) read in the light of Article 10 (freedom of expression), the applicant complained of the negative consequences she had suffered owing to the letter she had written to State officials on behalf of her trade union. Under Article 6 (right to a fair trial) she complained about her appeal hearing being closed to the public and that the judgments had not been delivered publicly.

The application was lodged with the European Court of Human Rights on 25 August 2014.

The European Transport Workers' Federation, the European Trade Union Confederation and the International Federation of Air Traffic Controllers' Associations were given leave to intervene as third parties.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Lətif **Hüseynov** (Azerbaijan),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Kateřina **Šimáčková** (the Czech Republic),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 11 read in the light of Article 10

The Court considered that in a trade union context the right to freedom of expression was closely related to the right to freedom of association. As the focus of the complaint was that the applicant had been penalised for carrying out trade-union activity and that the domestic courts had arbitrarily denied the trade-union element of the dispute, the Court decided to examine it under Article 11 interpreted in the light of Article 10.

The Court expressed doubts that the steps taken to deal with the applicant had been covered by law, but nevertheless it decided to proceed on the basis that the interference with her rights had had a legal footing.

It held that the measures in question had the legitimate aim of protecting the rights of others, in this case Ms Straume's employer.

The question remained as to whether the domestic authorities had struck a fair balance between Ms Straume's and her employer's rights. It was relevant to consider the context within which the statements had been made (including whether they formed part of a legitimate trade-union activity); the nature of the statements (including whether the limits of acceptable criticisms were crossed); the damage suffered by the employer or other persons; and the nature and severity of the sanctions or other repercussions.

It found it established that had been signed by the applicant in her capacity as the trade union's chair and that it had been clearly part of trade-union activity about members' work. It held that the domestic courts had failed to assess whether inferences made in the letter had had a sufficient factual basis and thus had in fact been acceptable criticism. They also had not verified the stated facts that had formed the basis for those inferences, instead checking only whether the claimed potential consequences had already occurred. The Court asserted that the letter had been a professional assessment of the potential impact of the identified deficiencies that had had a sufficient factual basis, and could not be seen as a gratuitous attack on LGS. The repercussions for the applicant had been exceptionally harsh, and could very well have a chilling effect on trade-union members. Furthermore, the Court judged that many of the actions of the LGS had been clearly aimed at exerting pressure on those members.

Overall, the measures taken in this case had not been proportionate to the legitimate aim pursued, and had thus not been "necessary in a democratic society, in violation of Article 11 of the Convention, read in the light of Article 10.

Article 6

The hearing on the merits of the case in the first-instance proceedings had been closed to the public for "more efficient and successful administration of justice". Conversely, the appellate court had stated closed hearings had been "necessary for the protection of a State secret or a commercial secret", with the Supreme Court's examining the case in written proceedings.

The Court was unable to conclude that closed proceedings had been necessary to protect the public interests listed. The domestic courts had failed to relate the grounds cited to the actual case, in particular to examine whether alleged sensitive information regarding flight safety had justified a closed courtroom. The Court held that the need for public scrutiny had been particularly strong in this case owing to the subject matter.

Furthermore, none of the judgments had been delivered publicly, nor had the full texts been made public. Given that the Government had failed to justify the use of closed hearings, the methods by which the public could access the decisions were also found to be insufficient.

There had been a violation of Article 6 owing to the failure to ensure the rights both to a public hearing and to the public delivery of the judgments.

Just satisfaction (Article 41)

The Court held that Latvia was to pay the applicant 25,000 euros (EUR) in respect of pecuniary damage and non-pecuniary damage and EUR 11,562.28 in respect of costs and expenses.

The judgment is available only in English.

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