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

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Allowing dismissal of an employee solely on account of membership of a political party has potential for abuse; UK employment legislation deficient

In today's Chamber judgment in the case of Redfearn v. the United Kingdom (application no. 47335/06), which is not final[1], the European Court of Human Rights held, by four votes to three, that there had been:

a violation of Article 11 (freedom of association) of the European Convention on Human Rights.

The case concerned a complaint by a member of the British National Party ("the BNP") – a far-right political party which, at the time, restricted membership to white nationals – that he had been dismissed from his job as a driver transporting disabled persons, who were mostly Asian.

Principal facts

The applicant, Arthur Collins Redfearn, is a British national who was born in 1948 and lives in Bradford (the United Kingdom).

Mr Redfearn worked as a driver, essentially transporting children and adults with physical and/or mental disabilities within the Bradford area, for a private company, Serco Limited, from 5 December 2003 to his dismissal on 30 June 2004. The majority of his passengers were Asian in origin. There had been no complaints about his work or his conduct at work and his supervisor, who was of Asian origin, had nominated him for the award of "first-class employee".

Following revelations in a local newspaper about Mr Redfearn's political affiliation, a number of trade unions and employees complained to Serco about Mr Redfearn's continued employment. When elected as local councillor for the BNP in June 2004, he was summarily dismissed.

In August 2004 he lodged a statutory claim of race discrimination in the Employment Tribunal under the Race Relations Act 1976. The Employment Tribunal dismissed his claim in February 2005, as it found that any discrimination against him had been on health and safety grounds, as his continued employment could cause considerable anxiety among Serco's passengers and their carers and there was a risk that Serco's vehicles could come under attack from opponents of the BNP.

In July 2005 the Employment Appeal Tribunal upheld his appeal notably on the ground that no consideration had been given to any any alternatives to dismissal.

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

However, in May 2006 the Court of Appeal allowed Serco's appeal, finding in particular that Mr Redfearn's complaint was of discrimination on political and not racial grounds, which fell outside the anti-discrimination laws.

He was also refused leave to appeal to the House of Lords.

Mr Redfearn could not bring a claim for unfair dismissal as one year's service is required under the Employment Rights Act 1996 to qualify. This qualifying period does not apply where the dismissal is on certain excepted grounds, including pregnancy, race, sex or religion.

Complaints, procedure and composition of the Court

Mr Redfearn complained that his dismissal had disproportionately interfered with his right to freedom of expression as well as to freedom of assembly and association. He relied in particular on Articles 10 (freedom of expression) and 11 (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 16 November 2006.

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

Lech **Garlicki** (Poland), *President*,
David Thór **Björgvinsson** (Iceland),
Nicolas **Bratza** (the United Kingdom),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Zdravka **Kalaydjieva** (Bulgaria),
Vincent A. **de Gaetano** (Malta),

and also Fatoş **Aracı**, *Deputy Section Registrar.*

Decision of the Court

Article 11 (freedom of assembly and association)

The Court considered that it was important to bear in mind the consequences of dismissing Mr Redfearn, who, 56 years old, would most likely experience difficulty in finding alternative employment. Moreover, the Court was struck by the fact that he had been summarily dismissed following complaints about problems which had never actually occurred, without any apparent consideration being given to the possibility of transferring him to a non-customer facing role. In fact, prior to his political affiliation becoming public knowledge, neither service users nor colleagues had complained about Mr Redfearn, who was considered a "first-class employee".

However, as Mr Redfearn was employed by a private company, it fell to the Court to consider whether or not the domestic legislation had offered adequate protection of his rights under Article 11 and not whether his dismissal had been reasonable or proportionate.

First, the Court referred to its well-established case-law that, in a healthy democratic and pluralistic society, the right to freedom of association under Article 11 must apply not only to people or associations whose views are favourably received or regarded as inoffensive, but also to those whose views offend, shock or disturb.

Next, it was of the opinion that the most appropriate domestic remedy for someone in Mr Redfearn's position, dismissed on account of his political beliefs or affiliations, would have been a claim for unfair dismissal under the 1996 Act. However, he was unable to use this remedy as he had not been employed for the one-year qualifying period. Individuals who have been employed for less than one year can make a claim to the Employment Tribunal of discrimination on grounds of race, sex or religion, but not political affiliation or opinion. With no other remedy at his disposal, the applicant was forced to bring a race discrimination claim under the 1976 Act, which was not primarily intended to cover such a situation and did not offer Mr Redfearn any protection against interference with his right to freedom of assembly and association.

It was therefore the United Kingdom's responsibility to take reasonable and appropriate measures to protect employees, including those with less than one year's service, from dismissal on grounds of political opinion or affiliation, either through the creation of a further exception to the one-year qualifying period under the 1996 Act or through a free-standing claim for unlawful discrimination on grounds of political opinion or affiliation. A legal system which allowed dismissal from employment solely on account of an employee's membership of a political party carried with it the potential for abuse and was therefore deficient. Accordingly, the Court concluded that there had been a violation of Article 11 in Mr Redfearn's case.

Separate opinion

Judges Bratza, Hirvelä and Nicolaou expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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