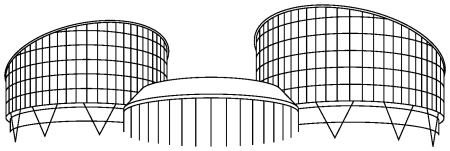

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RUBINS v. LATVIA

(Application no. 79040/12)

JUDGMENT

STRASBOURG

13 January 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rubins v. Latvia,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Päivi Hirvelä, *President,*
Ineta Ziemele,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 December 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 79040/12) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Andris Rubins ("the applicant"), on 7 December 2012.

2. The applicant was represented by Ms I. Betkere, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

3. The applicant alleged, in particular, that his dismissal from his university post following a critical email sent to the Rector constituted a violation of his right to freedom of expression guaranteed by Article 10 of the Convention.

4. On 5 October 2013 the Government were given notice of the complaint concerning Article 10 of the Convention and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Riga.

A. Events leading to the applicant's dismissal

6. 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 the position of head of department with effect until 13 April 2013. He was also an elected member of the constituent assembly of the University (*Satversmes sapulce*).

7. 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 (*Senāts*) on the following day. It appears that as a result of the merger the position of head of department occupied by the applicant was abolished. Accordingly, on 24 February 2010 the applicant received a warning (*brīdinājums*) to that effect and was given the opportunity to agree to the changes in his contract with the University. He was also informed that if he refused, his employment relationship with the University would be terminated.

8. On 28 February 2010 the applicant sent various emails to the Rector of the University concerning the circumstances of the reorganisation and the abolition of his department. He criticised the decisions taken by the deputy dean, G.B.

9. On 3 March 2010 the applicant sent another email to the Rector of the University and to several other recipients, including the members of the Senate. The email criticised the lack of democracy and accountability in the leadership of the organisation, which, according to the applicant, stemmed from the fact that all the members of the Senate were also a part of the executive authority of the University and there was thus an inadequate system of checks and balances. He also drew the recipients' attention to the alleged mismanagement of the University's finances. In support of this allegation the applicant relied on the conclusions adopted by the State Audit Office (*Valsts Kontrole)* in December 2009.

10. The applicant further spoke in unfavourable terms about several representatives of the management of the University, stating, for example, that [Mr ...]. "pretends to be a God-fearing Catholic ... yet, as far as is known, has several children born out of wedlock", that [Mr ...] "cannot decide a single question by himself, does not keep his word, is lying" and that [Mrs ...] "has called me and asked me to break the law in the interests of her protégés".

11. Finally, the applicant came up with a proposal involving several amendments to the constitution of the University, such as changes in the election of the members of the Senate (an obligation to inform the constituent assembly of the candidate's CV at least one week before the elections, the setting-up of an independent electoral commission);

separation of powers between the University's governing bodies (Senate members should not be part of the executive body of the University); and the granting of independence to the Senate (changing the remuneration system so that the Rector did not unilaterally fix the remuneration of members of the Senate). He asked the Rector to forward his proposals to the members of the constituent assembly and to send him the email addresses of those members or inform him where to find those contacts.

12. It appears that on 16 March 2010 the applicant expressed his disagreement with the reorganisation at the meeting of the Senate of the university which upheld the decision.

13. On 20 March 2010 the applicant sent an email to the Rector of the University. The subject-line of the email read "Settlement agreement". The text of the email read as follows:

> "To the Rector of the University .... Confidential
>
> [1] Dear Rector,
>
> [2] In view of the situation which has evolved and the advice of my lawyers and supporters, I hereby propose the following settlement agreement.
>
> [3] It would entail:
>
> [4] Version 1
>
> [5] You (the University) revoke all the orders and decisions of the Senate concerning the abolition/merger of the Department of Dermatological and Venereal Diseases. I for my part withdraw all my appeals, thereby restoring the situation as it was before the decision of the Senate of 23 February 2010. Meanwhile the three lecturers ... (all of them were recognised as plagiarists by a decision of the [Latvian association of doctors]) who expressed their intention to move to the Department of Infectious Diseases, are transferred to that Department. I have no objections if the specialist ... who, it is common knowledge, is the mother of ...'s daughter, is transferred to another post or fired. This month she did not spend a single day at work in the Department of Dermatological and Venereal Diseases (presumably she reports to ... or has been transferred to ... or another department, or maybe [she has] submitted her resignation, I don't know).
>
> [6] Version 2. I, as a head of department elected until 2013, and after having received a certain amount of compensation on which we would agree (for example, LVL 100,000), as provided for by my agreement with the University, agree terms with you, the dispute is terminated and I leave the post.
>
> [7] Of course I understand that at the constituent assembly of the University you, as Rector, can secure a decision that is favourable to you. However by this means nothing would come to an end but would only start, as I reserve the right to appeal against all the decision [adopted by] the University in the administrative, district and regional courts, while of course making everything public beforehand and attracting the attention of society.
>
> [8] I do not believe that in an election year, taking into consideration the latest news (the conclusion adopted by the State Audit Office on the illegalities at the University, plagiarism on the part of lecturers and professors of the University etc.), you would want to have additional tasks and trouble *(nodarbošanos un nepatikšanas)*.

> [9] I am sure that I don't want this and I wish to be allowed to work in a creative manner with students in my field as before. In addition, I have much work to do organising two large European congresses in 2011 and 2012 in Riga, in both of which my participation as president has been confirmed.
>
> [10] Since I have also not received the list of members of the constituent assembly of the University (which was requested from you and the Senate in my letter of 3 March 2010!?, a fact which demonstrates the lack of democracy [at] the University), I will await a reply from you by Monday, 22 March 2010 at 11 a.m. If we are unable to reach agreement by signing a settlement agreement I will make all my current information public in the form of an open letter so that the members of the constituent assembly of the University also have at least one day before the meeting to think about their vote.
>
> Professor A. Rubins
>
> P.S. [contains a request concerning one of the applicant's staff members who was on sick leave but at the same time attended meetings of the Senate].

14. On 22 March 2010 the Rector replied to the applicant that he could not agree to any of the proposals.

15. The following day, 23 March 2010, at the meeting of the constituent assembly of the University, the applicant expressed his disagreement with the reorganisation and asked that the decision concerning the merger of faculties be annulled. His request was not upheld. On the same day the national news agency LETA published the applicant's views about the alleged shortcomings in the management of the University. The criticisms referred to the conclusions of the State Audit Office.

16. On 25 and 31 March 2010 the Rector asked an *ad hoc* investigative committee and the ethics committee to review the applicant's conduct.

17. On 6 May 2010 the applicant received a notice of termination of employment (*uzteikums*) from the University, in which he was informed that his employment contract with the University would be terminated ten days after receipt of the notice. The legal basis for the applicant's dismissal was section 101(1)(1) and (3) of the Labour Law, and the applicant was deemed to have acted in contravention of several provisions of the University's staff regulations (see Relevant domestic law part, paragraphs 30 and 34 below). The notice stated, *inter alia*, as follows:

> "The ground for dismissal is the email you sent to the Rector of [the University] on 20 [March] 2010, in which, while addressing the Rector concerning issues of interest to you, you included inappropriate demands, including elements of blackmail and undisguised threats. As a consequence your actions are considered as very grave infringements of basic ethical principles and standards of behaviour, and as absolutely contrary to good morals. The fact of sending such a letter, and its contents, are clearly contrary to good morals, all the more so taking into account the circumstances in which the letter was sent and your attitude."

18. On 17 May 2010 the University dismissed the applicant from his post. Soon afterwards he took up a post in another university in Latvia.

B. Civil proceedings

19. The applicant submitted a claim to the Riga City Kurzeme District Court, asking the court to invalidate the notice of termination and to order his reinstatement and payment of the unpaid salary and benefits together with compensation for non-pecuniary damage.

20. In a judgment of 11 March 2011 the Kurzeme District Court allowed the applicant's claim in part. It held that the fact that the applicant's employer had been offended by his email was not a legitimate reason for his dismissal, since section 101 of the Labour Law did not include such a ground. The court considered that the allegation that the applicant's email had contained elements of blackmail and threats was merely speculation on his employer's behalf. It was additionally found that the applicant had not been given an adequate opportunity 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 in respect of non-pecuniary damage was rejected as unsubstantiated.

21. Both the applicant and the University appealed. During the court hearing the applicant mentioned that he had requested that several illegalities be examined at the meeting of the constituent assembly of 23 March 2010. Counsel for the defendant stated that both the *ad hoc* investigative committees set up by the Rector had found that the content of the letter was to be perceived as blackmail and threats. He contended that the request to receive a certain amount in compensation and the deadline by which the reply had to be received all proved the breach of ethical norms. The defendant further alleged that several "defamatory facts about the University" had been published on 23 March by LETA, and considered that the above activities therefore confirmed the threats made in the applicant's email.

22. 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 in his email 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 departments within the Faculty of Medicine). Such action was deemed to be "unlawful" because annulling decisions of the Senate of the University exceeded the Rector's authority. The court also considered that the applicant had requested "unreasonably high compensation" for the termination of his employment. These two considerations led the appeal court to conclude that the applicant had failed to observe basic ethical principles such as honesty, collegiality and responsibility.

23. The conclusions of the appeal court echoed those reached by the University's ethics committee and by two *ad hoc* investigative committees set up on 25 March and 6 April 2010. In particular, the court observed in point 10.1 that the committee had concluded that the infringements committed by the applicant were demonstrated by the fact that he had sent the email and had carried out "other activities after the Senate's decision of 23 February 2010 ... including making unfounded statements, for example, about the abolition of the department, the circumstances of the reorganisation that had been directed against the applicant, and threats made by G.B. against the applicant. The email of 28 February 2010 ... comprises statements, for example, about ... private life and religious convictions".

24. The court further noted that it was apparent from the materials in the case file that on 23 March 2010 the national news agency LETA had published the applicant's views about events 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 power and set up an authoritarian or even dictatorial regime. The court also referred to the content of the email the applicant had sent on 3 March 2010 (see paragraph 9 above) and came to the conclusion that he had contravened the obligation to treat the staff of the University with respect.

25. The court turned next 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 ethical principles": "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:

> "[11.2] ...no reason to conclude that the applicant had only intended to inform [the Rector] about [his plan] to exercise his democratic rights, [that is], to submit complaints to the courts and to publish information in the media, while respecting the interests of society. The content of the letter [of 20 March 2010] attests to [the applicant's] wish to act for a selfish cause, namely to retain his position as a head of department, contrary to the Senate's decision on reorganisation, or to receive substantial financial compensation, regardless of [the need to use] the budget of [the University] in an economical and reasonable way in compliance with the goals of the [University].
>
> [The appeal court] finds that there is no evidence that prior to the letter of 20 March 2010 [the University] had obstructed the applicant's democratic rights to inform society and the competent institutions about the alleged violations in the [University].
>
> Taking into account the aforementioned finding, [that is], that the [applicant's] aim in writing the letter of 20 March 2010 was selfish, the [appeal court] finds that the [applicant] sought to achieve a result beneficial to himself by trying to persuade [the Rector] to take unlawful steps. In view of the aforementioned considerations, this should be considered a threat."

26. Turning to the applicant's claim for compensation in respect of non-pecuniary damage, the appeal court cited section 9(1) of the Labour Law

(see the Relevant domestic law part, paragraph 29 below) and disagreed that the applicant's dismissal had created "unjustified consequences" (*nepamatotas sekas*) or caused non-pecuniary damage simply because the applicant had expressed legitimate concerns about the reorganisation of the University and about the way its financial resources were used. The court's reasoning in that regard read as follows:

> "[The appeal court], on the basis of experience and logic, finds that a calm and positive atmosphere and a respectful attitude among colleagues best contribute to achieving constructive dialogue.
>
> Having analysed the above-mentioned evidence, the [appeal court] considers that nothing prevented the applicant from expressing his opinion in a manner compatible with ethics and the staff regulations".

27. The applicant submitted an appeal on points of law, disputing, *inter alia*, the appeal court's findings to the effect that, by sending one confidential letter to one recipient (namely the Rector of the University), in which he had raised points concerning the unjustified use of funds from the State budget, he had committed an infringement of work-related rules and ethics of such gravity as to justify his dismissal. The applicant also invoked in this connection that he had an obligation to inform the society about the unjustified use of funds, therefore the appellate court had erred in finding that the impugned email was unethical. 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.

C. Criminal proceedings

28. 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 on the basis of section 183 of the Criminal Law (extortion) and the applicant was ordered not to leave his permanent residence for more than twenty-four hours without the permission of the competent investigative authority. The criminal proceedings were discontinued on 9 February 2012 for lack of *corpus delicti*. The decision to discontinue the criminal proceedings stated, *inter alia*, that according to the linguistic expert's conclusions the impugned email contained clearly expressed demands to pay a certain amount of money as well as undisguised threats to disclose disreputable information about [the Rector] prior to the meeting of the Senate. It also noted that the email demonstrated the applicant's wish to act selfishly, either in order to maintain his post or to receive a significant amount in compensation for the termination of his employment contract. However, as the Rector's attitude demonstrated that the threats were not perceived as real, the court ruled that the criminal proceedings should be terminated and that the Rector had the right to institute defamation proceedings.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

Relevant domestic law and practice

1. Labour Law

29. Section 9 of the Labour Law (a whistle-blowers' protection clause) provides that an employee may not be punished or otherwise directly or indirectly subjected to unfavourable treatment, in the context of employment relations, for exercising his rights in a permissible manner [*pieļaujamā veidā*] or informing the competent authorities or officials about suspicions of criminal or administrative offences in his place of employment. If, in the event of a dispute, an employee reports such circumstances which could serve as a basis for unfavourable treatment by his or her employer, it is the employer's duty to prove that the employee has not been punished or otherwise unfavourably affected, either directly or indirectly, for having exercised his or her rights in the context of employment relations in a permissible manner.

30. Section 101(1)(1) and (3) of the Labour Law authorises employers to dismiss an employee only on the basis of circumstances related to the employee's conduct or his or her abilities, or in connection with the performance of economic, organisational, technological or similar functions within the company if (1) "the employee, in the absence of extenuating circumstances, has committed significant infringements of his or her employment contract or terms of employment" and (3) "the employee has fulfilled his or her duties in a manner that disregards good morals [*labi tikumi*] and such actions are not compatible with his or her continued employment."

31. The same section further provides that if an employer intends to issue a notice of termination of an employment contract on the basis of, *inter alia*, the first paragraph, sub-paragraphs 1 and 3 of this section, the employer has a duty to request written explanations from the employee. When deciding on the possible termination of the employment contract the employer has a duty to evaluate the severity of the violation at issue and the circumstances in which it was committed, as well as the personal characteristics of the employee and his or her previous work record.

2. Relevant provisions regulating the functioning of the University

32. Point 3.2 of the constituent document of the University (*Rīgas Stradiņa universitātes Satversme*) provides that the Rector or the Senate may convene the constituent assembly of the University. The Rector, the Senate or the student self-government body may convene an extraordinary meeting of the constituent assembly. Pursuant to point 3.8 the Rector has a

right of suspensive veto (*atliekošā veto tiesības*) over decisions adopted by the Senate.

33. Point 5.1 of the statue of the Senate (*Senāta nolikums*) provides that Senate meetings are convened, *inter alia*, at the initiative of the Rector.

34. The relevant provisions of the staff regulations in force at the University at the material time read as follows:

6.1.2. – employees must carry out their tasks conscientiously and honestly;

6.1.7. – employees must treat other members of the University staff with respect;

6.2.1. – employees have a responsibility to carry out work of good quality in accordance with their contract and job description, the constitution of the University, decisions of the Senate, internal regulations and orders and the external legislation of the Republic of Latvia.

3. Practice on the interpretation of certain provisions of the Labour Law

35. According to the view of the Senate of the Supreme Court, published in a compilation of case-law on employment disputes, the final assessment of whether an infringement [of an employment contract or staff regulation] is grave lies with the domestic courts. Furthermore, the term "good morals" (section 101, paragraph 1, sub-paragraph 3 of the Labour Law) is applicable not only to work carried out within the specified working hours but may also refer to employment-related functions performed outside regular working hours. Since the legislature failed to define the term "good morals", this term has been acknowledged to be a general clause the content of which has to be defined by the courts' case-law. According to present-day case-law and legal science, the term "good morals", in addition to its social character, also has a legal dimension, that is, it encompasses not only generally accepted moral standards but also ethical principles and values enshrined, *inter alia*, in the Constitution. Thus, according to the Senate, the reference to the term "good morals" is a general clause the content of which has to be determined by those who apply the law.

THE LAW

I. ADMISSIBILITY OF THE APPLICATION

36. The Government advanced two sets of preliminary objections. Firstly, they contended that the applicant could not claim to be a victim within the meaning of Article 34 of the Convention. Secondly, the

Government put forward two grounds on the basis of which, in their view, the present application fell outside the Court's jurisdiction *ratione materiae*.

A. Incompatibility *ratione personae*

1. The parties' submissions

37. The Government were firmly of the opinion that in the instant case the applicant could not arguably claim that he had suffered interference with his right to freedom of speech, as he had never been prevented from or punished for exercising that freedom. In this regard the Government referred to the judgment of the Riga Regional Court of 18 January 2012 in which it was acknowledged that the applicant's employer had never prevented the applicant from exercising his democratic right to inform society and the competent authorities about the alleged shortcomings at the University.

38. The applicant contested that argument. He pointed out that his employer had subjected him to unfavourable treatment both before and after he had had the information published by the local news agency. The establishment of the *ad hoc* investigative committees and the Rector's demands for the applicant to provide explanations for his email of 20 March 2010 had both contributed to the existence of an infringement.

2. The Court's assessment

39. Since the arguments outlined above are pertinent and closely related to the analysis of the complaint under Article 10, the Court considers that the objection is closely linked to the merits of the applicant's complaint. It will therefore deal with the objection in its examination of the merits below (see paragraphs73-74 below).

B. Incompatibility *ratione materiae*

1. The parties' submissions

40. The Government alleged that the applicant's complaint did not fall under Article 10 of the Convention as it essentially concerned an employment dispute as to whether the applicant's dismissal had been lawful under domestic law; it therefore concerned a labour dispute of a private-law nature. They noted that the reasons for the applicant's dismissal had been gross infringements of the staff regulation and of ethical and behavioural norms which affected the University. Moreover, the Government emphasised that in his civil claim of 11 May 2010 the applicant had not made any allegations that the University had acted in violation of his freedom of speech.

41. Alternatively, the Government contended that the present application was incompatible with the provisions of the Convention in that freedom of expression had been invoked in disregard of Article 17 of the Convention. In particular, the Government argued that the approach adopted in the Court's case-law concerning Holocaust denial and related issues should not be interpreted in too formalist and restrictive a manner. In support of this argument the Government contended that the impugned email addressed to the applicant's employer had contained blackmail and undisguised threats and that such statements were not covered by the protection afforded under Article 10 of the Convention.

42. The applicant contested the Government's objections and argued firstly that his dismissal had come after he had drawn his employer's attention to shortcomings in the University's management. Secondly, the applicant contended that the information to which he referred in the impugned email and which was later published was true and was of public interest.

2. The Court's assessment

43. At the outset the Court will address the Government's argument that Article 10 is not applicable because the complaint essentially concerned an employment dispute.

44. In this connection the Court first observes that it is not disputed between the parties that the University was a public-law body (see *Lombardi Vallauri v. Italy*, no. 39128/05, § 38, 20 October 2009). Even assuming that in its employment relationships the University acted in the area of private law, the Court has previously held that in the sphere of private-law relationships the responsibility of the authorities would nevertheless be engaged if the facts complained of stemmed from a failure on their part to secure to the applicants the enjoyment of the right enshrined in Article 10 of the Convention (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 60, ECHR 2011).

45. Turning to the question of whether such conditions existed in the present case, the Court observes that the applicant's dismissal was mainly based on an email of 20 March 2010 in which he proposed two ways of settling his dispute with the University and asked the Rector to agree to one of the options before the meeting of the constituent assembly took place (see paragraph 13 above). The applicant also referred to several existing problems at the University (point 8 of the email) and informed the Rector of his intention to inform the members of the assembly about the problems if no agreement was reached (point 10 of the email). The applicant's employer considered that the above email amounted to serious misconduct, a finding that was upheld by the domestic courts. The Court considers that, even before entering into an analysis as to whether there was interference with

the applicant's rights under Article 10, it is apparent from the facts of the case and the review of the domestic courts (see paragraphs 22-26 above) that the crux of the employment dispute was the allegedly unethical manner of expression used by the applicant in communication with his employer.

46. Moreover, the applicant in substance brought the issue concerning the infringement of his freedom of expression before the domestic courts (see paragraph 27 above), and the domestic courts addressed it (see paragraph 26 above). In any event the Government did not raise any objections claiming non-exhaustion.

47. Having regard to the central issue in the dispute the Court accepts that Article 10 is applicable to the facts of the case (compare and contrast *Nenkova-Lalova v. Bulgaria*, no. 35745/05, § 53, 11 December 2012; see also and *Lombardi Vallauri*, cited above, § 30).

48. Turning to the next preliminary objection raised by the Government, namely that the impugned email contained remarks not covered by the protection of the Convention in the light of Article 17 thereof, the Court considers that the present application is to be clearly distinguished from the cases relied on by the Government in which the expression of negation or revision of certain facts was removed from the protection of Article 10. In the present case, the Court is unable to conclude from the text of the impugned email that it contained anything aimed at weakening or destroying the ideals and values of a democratic society (see, for example, *Ždanoka v. Latvia* [GC], no. 58278/00, § 99, ECHR 2006-IV).

49. The Court therefore dismisses the Government's preliminary objection that the present application falls outside the Court's jurisdiction *ratione materiae*.

C. Conclusion

50. The application cannot therefore be declared inadmissible as being incompatible *ratione materiae*. The Court further considers that the application raises issues of law and fact which require examination of the merits.

51. It accordingly concludes that the application is not manifestly ill-founded. Having also established that no other obstacles to its admissibility exist, the Court, having joined to the merits the objection raised in connection with incompatibility *ratione personae*, declares it admissible.

II ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

52. The applicant complained 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. Article 10 of the Convention reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

1. The applicant

(a) The interference

53. The applicant drew attention to the chronology of the events and contended that the impugned email of 20 March 2010 had merely been used as a pretext to dismiss him and that the real reason for his dismissal was his persistent criticism of the University. He dismissed the Government's argument that he had not been prevented from exercising his right to freedom of expression and considered that his dismissal constituted interference with his rights protected under Article 10 of the Convention.

(b) Whether the interference was prescribed by law and pursued a legitimate aim

54. The applicant further contested the assertion that the interference was prescribed by law and pursued a legitimate aim. Firstly, he contended that the legal basis on which the interference was grounded fell short of the requisite quality in that the court had assessed facts that were not included in the notice of termination (*uzteikums*). In particular, he drew the Court's attention to the fact that even though the notice of termination referred solely to his email sent on 20 March 2010, the Riga Regional Court had reached its conclusions by relying on other events which had taken place before and after the impugned email. He also noted that it was only after the LETA news agency had published his views that his employer had found the email to be threatening and contrary to good morals.

55. Secondly, the applicant disputed that the interference had pursued a legitimate aim and alleged that, as the University was a State-owned establishment, the public had a right to find out how their tax money was spent. He claimed that other colleagues had also opposed the lack of

transparency in the restructuring of the University and that those who did not oppose it were afraid of losing their jobs.

(c) Whether the interference was necessary

56. The applicant further emphasised that nothing in the impugned email could be interpreted as unethical and at odds with good morals, as he had merely indicated his intention to publish true information, namely the conclusions adopted by the State Audit Office concerning the mismanagement of public finances at the University, and it was his duty to inform society thereof. He contended that the authorities had failed to prove that the content of the email overstepped the bounds of remarks that "shock, offend and disturb".

57. The applicant also contended that the domestic courts had failed to strike a fair balance and had erred in finding that the impugned email contained unlawful requests. Firstly, he alleged that although the two requests included in the email had been addressed to the Rector, the applicant had nevertheless referred to "the University" in brackets, thus making clear that the Rector was a senior official of the University who, in accordance with the Constitution of the University, had the right of veto over Senate decisions. Secondly, he argued that his request to settle the dispute with the University had been based on his employment contract, which stated that all disputes were to be settled by mutual agreement. In this connection the applicant raised objections against the expert's findings in the course of the criminal proceedings, alleging that the findings had never been sent to him and could not be used as evidence in the civil proceedings.

58. Finally, the applicant considered that the sanction – his dismissal – was not proportionate and that it had a dissuasive effect. This conclusion could not be altered by the fact invoked by the Government that the applicant had taken up a post in another major Latvian university soon afterwards.

2. The Government

(a) The interference

59. The Government maintained their argument stated above (see paragraph 40) that the present case essentially concerned a labour dispute governed by the provisions of private law. They reiterated that the applicant had been dismissed after having addressed an email to the Rector of the University which contained illegal requests as well as threats and blackmail. They considered that a distinction should be drawn between the expression of criticism that might disturb or offend other persons, on the one hand, and incitement to perform unlawful activities that infringed individuals' honour and dignity on the other. The latter was at issue in the present case, as the applicant's behaviour constituted a particularly grave infringement of the

principles of ethics and breached the University's staff regulations and the provisions of the Labour Law. Therefore the content of the email written by the applicant – an incitement to perform illegal activities – did not enjoy the protection afforded by Article 10 of the Convention. Moreover, the Government asserted that the applicant had failed to substantiate which prior public remarks had formed the alleged basis for his dismissal, and pointed out that the Rector had not made any statements to the effect that the applicant should be dismissed from the University because of his criticism towards it.

60. Accordingly, the Government contended that there had been no interference with the applicant's rights under Article 10. Nevertheless, should the Court consider that there had been interference with the applicant's rights protected by Article 10, the Government alleged that it had been prescribed by law, had pursued a legitimate aim and had been necessary.

(b) Whether the interference was prescribed by law and pursued a legitimate aim

61. The Government contended that the alleged interference – the applicant's dismissal – was based on section 101(1) and (3), which allowed the termination of employment relationships in the event of grave and unjustified breaches of an employment contract or staff regulations or if the employee, when performing his or her duties at work, acted contrary to good morals. Similarly, the Government argued that the interference had pursued the legitimate aim of protecting the reputation or rights of others within the meaning of Article 10.

(c) Whether the interference was necessary

62. Relying on the Court's case-law the Government observed that the Court must examine the question of necessity essentially from the standpoint of the relevance and sufficiency of the reasons provided by the domestic courts. In doing so the Court might be required to take into account whether the domestic courts had struck the requisite balance between, on the one hand, freedom of expression and, on the other hand, the right of others to respect for their private life, and that a distinction must be made between criticism and insult.

63. The Government referred to the protection afforded to employees under section 9 of the Labour Law and subscribed to the principle that the applicant, as a professor, was entitled to express his criticism and present his opinion to the university's management. At the same time employees were expected to act in good faith and had a duty of loyalty and discretion towards their employers (see *Heinisch v. Germany*, no. 28274/08, § 64, ECHR 2011 (extracts)), and national authorities could be justified in insisting that employment relations should be based on mutual trust (see

Nenkova-Lalova v. Bulgaria, no. 35745/05, § 60, 11 December 2012). In applying the above principles to the present case the Government emphasised that the impugned email had contained personal threats directed against the Rector and that the applicant had been well aware of the unlawfulness of the proposals made in the email. Moreover, according to the Government, the contested email did not fall within the scope of a public debate, as the applicant had been guided by a personal desire not to lose his job. The Government stressed that the domestic court and the prosecutor's office had come to the same conclusion, namely that the email demonstrated bad faith on the part of the applicant.

64. The Government also considered the sanction imposed on the applicant to have been proportionate and pointed out that after his dismissal the applicant had not been prevented from pursuing his professional activities both in a professional organisation and in another major university. Moreover, in 2012 the criminal proceedings initiated against the applicant had been terminated.

65. The Government also produced a letter in which the University provided replies to the Government's questions. It stated, *inter alia*, that the University had assessed the question whether a less restrictive measure could be applied to the applicant and had also examined the employee's right to freedom of expression, as attested to by the analysis of the impugned email carried out by the ethics committee and the *ad hoc* investigative committee.

66. Finally, reiterating the arguments employed by the Riga Regional Court (see paragraph 25 above), and referring to the principle of subsidiarity reiterated in the *Palomo Sánchez* judgment, the Government maintained that the domestic court had thoroughly analysed the evidence brought before it, thus rendering the sanction proportionate to the legitimate aim of protecting the reputation and dignity of those against whom the email was directed.

B. The Court's assessment

1. *Whether there was "interference" with the applicant's rights under Article 10*

67. According to the Court's case-law, in order to determine whether an applicant's right protected under Article 10 of the Convention has been infringed it must first be ascertained whether the disputed measure amounted to interference with the exercise of freedom of expression, in the form, for example, of a "formality, condition, restriction or penalty" (see *Glasenapp v. Germany*, 28 August 1986, § 50, Series A no. 104, *Kosiek v. Germany*, 28 August 1986, § 36, Series A no. 105).

68. It is clear from the parties' submissions that the existence of the interference is in dispute between the parties, as they are not in agreement as

to whether the dismissal was based solely on the impugned email sent by the applicant to the Rector of the University on 20 March 2010, or rather on the persistent criticism expressed by the applicant prior to sending the impugned email.

69. In this connection the Court observes that in reaching their conclusion about the lawfulness of the applicant's dismissal the domestic courts relied on evidence which contained references to other activities carried out by the applicant prior to his sending the impugned email (see paragraph 23 above). This would imply that the applicant's prior activities in expressing criticism played some role in deciding whether the applicant's dismissal had been lawful.

70. But even assuming that the dismissal was based solely on the impugned email, the Court refers back to its reasoning in relation to the nature of the dispute in question and the applicability of Article 10 (see paragraph 45 above), and considers that the applicant's dismissal did amount to interference within the meaning of that provision. Such interference will constitute a breach of Article 10 unless it is "prescribed by law", pursues a legitimate aim under paragraph 2 of that Article and is "necessary in a democratic society" for the achievement of such an aim. These issues will be discussed below.

71. The Court further dismisses the Government's preliminary objection that the applicant cannot claim to be a victim of the alleged violation of Article 10 (see paragraph 37 above).

2. Whether the interference was "prescribed by law" and served a legitimate aim

72. The Court observes that the applicant also disputed the lawfulness of the impugned measure and its aim. In particular he contested the quality of section 101 of the Labour Law.

73. The Court notes that the applicant's dismissal was based on section 101 of the Labour Law (see "Relevant domestic law", paragraph 30 above). It was alleged that in carrying out his duties he had acted contrary to "good morals" [*labi tikumi*] and that such actions were incompatible with his continued employment. The notice of dismissal also referred to three paragraphs of the University staff regulations (see paragraphs 32-34 above). In applying the above legislation to the facts of the case the domestic courts analysed whether the content of the impugned email was compatible with several ethical principles; this, according to domestic practice, was sufficiently foreseeable (see paragraph 35 above). Although the applicant contested the quality of the above provisions and their application by the domestic courts, the measure was based on sufficiently clear provisions of domestic law according to which employees owed to their employer a duty of loyalty, reserve and discretion (see *Guja v. Moldova* [GC], no. 14277/04, § 70, ECHR 2008). The Court reiterates in this connection that even if the

requirement to act in good faith in the context of an employment contract does not imply an absolute duty of loyalty towards the employer or a duty of discretion to the point of subjecting the worker to the employer's interests, certain manifestations of the right to freedom of expression that may be legitimate in other contexts are not legitimate in that of labour relations (see *Palomo Sánchez and Others*, cited above, § 76). Thus the Court is ready to accept that the interference had a basis in domestic law which served a legitimate aim.

74. Mindful of the Court's supervisory role, according to which it is not for the Court to take the place of the competent national authorities but rather to review the decisions taken by the latter pursuant to their power of appreciation, the Court will next ascertain whether the national authorities adequately secured the applicant's right to freedom of expression in assessing the necessity of the interference in the context of labour relations (ibid.,§ 61).

3. Whether the interference was "necessary in a democratic society"

(a) General principles

75. The Court will first reiterate the fundamental principles deriving from Article 10 case-law. These principles provide that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly. Moreover, Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see, among many other authorities, *Palomo Sánchez and Others*, cited above, § 53 and the case-law cited there).

76. In this connection the test of "necessity in a democratic society" is applied, which requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30).

77. In carrying out its supervisory role the Court has to satisfy itself that the national authorities did apply standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based

themselves on an acceptable assessment of the relevant facts (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

78. In the context of employment disputes the Court has noted that employees owe to their employer a duty of loyalty, reserve and discretion (see, for instance, *Kudeshkina v. Russia*, no. 29492/05, § 85, 26 February 2009, *Heinisch v. Germany*, no. 28274/08, § 64, ECHR 2011 (extracts)), and that in striking a fair balance the limits of the right to freedom of expression and the reciprocal rights and obligations specific to employment contracts and the professional environment must be taken into account (see *Palomo Sánchez and Others*, cited above, § 74).

79. Therefore the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the professional context in which he made them (see *Lingens v. Austria*, 8 July 1986, § 40, Series A no. 103, and *Palomo Sánchez and Others*, cited above, § 70).

(b) Application of those principles

80. The Court refers to its observations and findings set forth above (see the paragraphs 67-71 above) and observes that the crucial issue before the domestic courts was whether the content of the impugned email sent by the applicant amounted to a violation of the provisions of the Labour Law and the University staff regulations, which require employees to carry out their professional duties in accordance with "good morals". In this connection the Court refers to the defendant's submissions during the court hearing in which it submitted that the email contained threats and blackmail and that the applicant had fulfilled his threats by publicly divulging defamatory statements about his employer (see paragraph 21 above). The applicant, on the other hand, alleged both in his appeal on points of law and during the court hearing that an indication of an intention to publish true information about the mismanagement of State funds could not possibly be considered as blackmail or threats (see paragraph 27 above). In reaching their conclusion about the lawfulness of the applicant's dismissal the domestic courts analysed the applicant's motivation and concluded that it ran counter to the ethical principles enshrined in the concept of "good morals" under section 101 of the Labour Law.

81. The Court considers that the above reasoning by the domestic courts is relevant in the context of the specific features of labour relations, especially when it comes to weighing up conflicting interests in the workplace (see *Palomo Sánchez and Others*, cited above, § 65).

82. As to the further question whether those reasons were sufficient for the purposes of Article 10, the Court must take into account the nature of the applicant's labour dispute and the overall background against which the impugned email was written. The Court will therefore look at such factors as the public interest of the impugned remarks, their form and

consequences, and the severity of the measure. As the Government also challenged the true motives of the applicant's statements, the Court shall include it in its assessment.

(i) Public interest

83. The Government argued that no public interest was involved in the email and that it had been a personal threat against the Rector.

84. The Court considers that the content of the email cannot be assessed in isolation and that particular attention should be paid to what information the applicant was going to disclose and did actually disclose. Firstly, the Court notes that in his email the applicant referred to shortcomings identified by the State Audit Office. He also raised an issue about cases of plagiarism at the University which had been confirmed by the report of a professional association. The truthfulness and authenticity of both pieces of information were not contested by the parties either before the domestic court or before the Court. Secondly, even though in reaching its conclusion that the applicant's actions had been unethical the domestic court referred to the publication of his views by LETA (see paragraph 24 above), it did not provide any reasoning as to whether the information was true (see, *mutatis mutandis, Frankowicz v. Poland*, no. 53025/99, § 50, 16 December 2008). The Court notes in this regard that the validity of the information which was later published by LETA was not contested by the University in any defamation proceedings.

85. The Court reiterates that the University was a State-financed education establishment. It appears that the issues invoked by the applicant were of some public interest and that the truthfulness of the information was not challenged by the parties. Nevertheless it is apparent from the appellate court's judgment that these aspects – the public interest and truthfulness of the information – were not assessed at all.

(ii) The applicant's motives

86. The Government further argued that the applicant's motives had been purely selfish, namely to keep his post at the University. Moreover, as recognised by the domestic courts, the applicant had known that the requests made in the email were unlawful (see paragraph 22 above).

87. The Court observes that the domestic court explicitly invoked the whistle-blowing protection clause enshrined in the Labour Law and touched upon this question, albeit briefly (see paragraph 26 above). The Court could understand the Government's argument regarding the applicant's motives as relevant if the case was one of the protection of whistle-blowers. However, the Court does not consider that to be the case. The Court examines whether in view of the applicant's freedom of expression exercised in the context of a labour dispute, the national courts have carried out the appropriate balancing exercise. In this regard, the Government's arguments about the

applicant's motives for the impugned statements are relevant for the assessment of the proportionality of the interference in the applicant's exercise of his freedom of expression.

88. The Court points to the following circumstances of the case which are of importance when addressing the motives which guided the applicant. Firstly, it was not disputed that it was the reorganisation of the department which prompted the applicant to raise complaints and to question the transparency of the procedure. In this connection the Court notes that before sending the impugned email the applicant came up with several proposals and explicitly asked the Rector to forward them to the members of the constituent assembly (see paragraph 11 above). Thus, the applicant attempted first to address the issues within the hierarchy (see, *mutatis mutandis*, *Heinisch*, cited above, §§ 72-76, and *Guja*, cited above, § 73). Secondly, in view of the structure of the University, it was not completely unreasonable to address the demands to the Rector, given that the latter was the respondent in the appeal proceedings and, in accordance with the constitution of the University, could convene the constituent assembly (see paragraph 32 above). In addition, he had a right of suspensive veto in the Senate (ibid.) and was the highest-ranking official managing the University, and represented it without specific authorisation. The Court also notes that in the contested email the applicant explicitly expressed his intention to inform the constituent assembly before it took its decision, and that the deadline by which the applicant asked the Rector to reply coincided with the meeting of the constituent assembly. Thirdly, as regards the calculation of the compensation, the amount requested was not unreasonable, in view of the fact that the applicant had been elected as a professor until April 2013 and that the proposed settlement was based on his average monthly income as well as on the terms laid down in his employment contract, according to which all disputes should first be settled in an amicable manner.

89. The Court cannot speculate as to how the national courts would assess the above facts but it notes that they are relevant for the purposes of the analysis of the proportionality of the alleged interference. In the present case, however, the Court does not have the benefit of the relevant assessment by the domestic courts.

(iii) Harm to the reputation of others

90. The Government, relying on *Palomo Sánchez and Others* (cited above), further argued that the use of insulting or offensive expressions in the professional environment was capable of justifying sanctions.

91. The Court finds it necessary to distinguish the case of *Palomo Sánchez and* Others, cited above, from the present case. In the present case, although the Government alleged that the impugned email contained insults, this was not analysed and found to be established by the domestic courts. While the applicant's previous remarks could raise certain questions in this

regard (see paragraph 10 above), the national court did not assess the language used therein. Moreover, as the Court has already noted (see paragraph 84 above), neither in the impugned email nor in the subsequent publication did the applicant divulge any private information damaging to the honour and dignity of his colleagues or his employer in general.

(iv) Severity of the measure

92. Lastly, the Government submitted that the applicant's career had not been affected and that therefore the measure – his dismissal – could not be considered as severe. The Court notes that this was the harshest sanction available and, disregarding the fact that the applicant took up a post in another university soon afterwards, was liable to have a serious chilling effect on other employees of the University and to discourage them from raising criticism (see *Palomo Sánchez and Others*, cited above, § 75). The Court finds that it is difficult to justify the application of such a severe sanction.

(c) Conclusion

93. In the light of the above the Court dismisses the Government's preliminary objection as to the incompatibility *ratione personae* of the application and finds that the reasons relied on by the domestic courts, although relevant, are not sufficient to show that the interference with the applicant's right to freedom of expression was proportionate to the legitimate aim pursued and, accordingly, was "necessary in a democratic society". The Court concludes that there has been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

95. The applicant claimed 58,703.50 euros (EUR) in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage.

96. The Government contested the claim and argued that the applicant's claims were speculative and excessive.

97. The Court considers that the applicant must have suffered pecuniary and non-pecuniary damage as a result of his dismissal. Making its assessment on an equitable basis, it awards him EUR 8,000.

B. Costs and expenses

98. The applicant also claimed EUR 2,280 for the costs and expenses incurred before the Court.

99. The Government contested the claim and argued that the sum was exorbitant.

100. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,280 covering costs for the proceedings before the Court.

C. Default interest

101. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Joins to the merits* the Government's preliminary objection as to the compatibility *ratione personae* of the application, and dismisses it;

2. *Declares*, unanimously, the application admissible;

3. *Holds*, by five votes to two, that there has been a violation of Article 10 of the Convention;

4. *Holds*, by five votes to two,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and EUR 2,280 (two thousand two hundred and eighty euros) covering costs for the proceedings before the Court;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Mahoney and Wojtyczek are annexed to this judgment.

P.H.
F.A.

DISSENTING OPINION OF JUDGES MAHONEY AND WOJTYCZEK

1. We have been unable to agree with our colleagues that the applicant has been the victim of an unjustified interference with his freedom of expression as protected by Article 10 of the Convention. In our view, the facts of the present case present the characteristics of a classic employment dispute and, in so far as any issue of freedom of expression arose, it was adequately dealt with by the national courts for the purposes of Article 10 of the Convention. As far as we are concerned, the applicant has not produced to this Court any grounds for arriving at a conclusion other than the one arrived at by the national courts.

A. Paragraph 1 of Article 10: Existence of an interference with the exercise of the right to freedom of expression

2. When considering cases concerning freedom of expression in the context labour relations it is necessary to distinguish two main types of situations.

In the first one, an employee expresses - in public or in private - views on questions of public interest, which may or may not be related to his or her employer. The employer imposes on the employee a sanction for the views expressed.

In the second one, an employee communicates to the employer his or her views concerning matters directly related to his or her employment in order to influence the employer's attitude and to shape the relations between the two parties. The employee's utterances are an integral part of interactions between two parties within the framework of a labour relationship. The employer reacts to what it considers to be misconduct in these interactions.

The two situations require a different approach as the legally protected values and interests at stake are different. As we explain below, the instant case belongs to the second type of situations.

3. The majority of our colleagues assert that "the allegedly unethical manner of expression used by the applicant in communication with his employer" constituted "the crux of the employment dispute" (paragraph 45 *in fine* of the present judgment – emphasis supplied). It is this conception of "the central issue in the dispute" and of "the nature of the dispute in question" that prompts the majority to hold that the applicant's dismissal from his post amounted to an interference with the exercise by him of his freedom of expression (paragraphs 47 and 70 of the present judgment).

4. In our view, however, the applicant's e-mail of 10 March 2010 to the Rector of the University, the ensuing notice of termination of employment sent to the applicant by the University and the subsequent decisions of the national courts tell a somewhat different story.

In his e-mail the applicant "proposed" as a settlement of the dispute that either he retain his post as head of department as before or receive a sizeable financial compensation for loss of post, failing which he would appeal to the courts and "make everything public", with a reference added to "the latest news" of events which reflected badly on the management and activities of the University (see paragraph 13 of the present judgment). The ensuing notice of termination of employment (see paragraph 17 of the present judgment) for its part explained that the applicant was dismissed for what the University considered to be "blackmail" in the e-mail of 10 March 2010 in the form of threats to disseminate disparaging information concerning the University as widely and publicly as possible if the applicant did not obtain what he demanded by way of settlement.

5. It was the applicant's conduct, assessed as contrary to the University's regulations, namely the very fact of making threats amounting to "blackmail", which was relied on as the reason for his dismissal, not, as the applicant claims, the expression by him of "a legitimate opinion about problems prevailing in the University" (see paragraph 52 of the judgment, summarising the applicant's complaint to this Court) or, as the majority state, "the allegedly unethical manner of expression used by [him] in his communication with his employer". The domestic appeal court (the Regional Court) thereafter examined and decided the dispute between the applicant and his employer on this basis (see paragraphs 22-26 of the judgment).

6. As the judgment in the present case itself also points out, while it may be that the impugned e-mail could be read as containing insults, this factor was not gone into by the domestic appeal court, which did not analyse the language used from this angle (see paragraph 91 of the judgment).

7. The majority also point out that "in reaching their conclusion about the lawfulness of the applicant's dismissal the domestic courts relied on evidence which contained references to other activities carried out by the applicant prior to his sending the impugned mail". From this the majority deduce that "the applicant's prior activities in expressing criticism played some role in deciding whether the applicant's dismissal had been lawful" (see paragraph 69 of the judgment). The domestic appeal court did indeed refer both to "other activities..., including making unfounded statements" and to the expression by the applicant of "legitimate concerns" about the reorganisation of the University and the management of its financial resources (see paragraphs 23 and 26 of the judgment). However, the incidence of such references for the exercise by the applicant of his freedom of expression was explicitly addressed by the appeal court as follows:

"[The appeal court] finds that there is no evidence that prior to the letter of 20 March 2010 [the University] had obstructed the applicant's democratic rights to inform society and the competent authorities about the alleged violations in the [University]." (see paragraph 25 of the judgment)

In other words, for the domestic appeal court there was no interference by the University with the applicant's exercise of his freedom of expression in relation to his "prior activities" in expressing criticism. In their analysis of interference, the majority pass over in silence this aspect of the domestic appeal court's ruling on the dispute between the applicant and his employer.

8. Consequently, our first doubt as to the majority's analysis of the facts in terms of Article 10 of the Convention is as to the existence of an interference with the exercise of his freedom of expression by the applicant. In sum, it would appear from the material in the case-file that the applicant was not penalised by way of dismissal from his post on account of any expression by him of his opinions, whether in the e-mail of 20 March 201 or before that, the ground that the domestic appeal court relied on for his dismissal being perceived professional and ethical misconduct.

B. Paragraph 2 of Article 10: Whether the interference was "necessary in a democratic society"

9. In any event, even assuming that the applicant's dismissal entailed an interference with his exercise of his freedom of expression, we find no ground for holding that that interference, as upheld by the domestic courts, was not "necessary in a democratic society".

10. The "public interest" in the disclosure of information on management shortcomings and plagiarism at the University relied on by the majority of our colleagues (see paragraphs 83-85 of the judgment) turns out on closer examination of the case-file to be extremely weak in the circumstances of the present case. To begin with, the applicant was perfectly willing to forego any such disclosure "in the public interest" provided that he kept his job as head of department or received significant compensation (see his e-mail of 10 March 2010 – paragraph 13 of the judgment). The possible resort to disclosure of the disparaging information concerning the University was quite evidently mentioned by him as a bargaining tool, among others, in his employment dispute with the University. The truthfulness and authenticity of this disparaging information, to which the majority attaches some importance (see paragraph 84 of the judgment), does not at all detract from the "blackmailing" character of his threat of disclosure, that is to say, from the fact that he was using the threat of disseminating disparaging information as a lever to obtain from the University the settlement that he desired of the dispute.

Thus, on the basis of the material before it and after having heard argument, the domestic appeal court found – again a material factual element passed over in silence by the majority – that there was "no reason to conclude that the applicant had only intended to inform [the Rector] about [his plan] to exercise his democratic rights, [that is] to submit complaints to the courts and to publish information in the media, while respecting the

interests of society" (see paragraph 25 of the judgment). Rather, the appeal court found it established that what the applicant was seeking to achieve was the self-serving objective of preserving his job or obtaining significant financial compensation, not any objective of acting in the public interest.

11. It goes without saying that the lower the degree of public interest involved in the expression of opinion or the dissemination of information in question, the lower will be the level of protection afforded under Article 10 of the Convention. To this extent, the applicant's motives – in having as his main, driving concern the maintenance of his employment and its benefits, rather than bringing to the attention of the public worrying aspects of the University's management and activities – are indeed of primary relevance for the balancing exercise to be carried out under Article 10 and not merely, as the majority suggest (see paragraph 87 of the judgment), in the possible context of whilstle-blowing.

12. On the other hand, the circumstances to which the majority attaches importance when addressing the issue of the applicant's motives – such as the initial communications between the Rector of the University, the functions of the Rector within the University and the amount of compensation sought by the applicant (see paragraph 88 of the judgment) – are matters going to the actual merits of the employment dispute.

13. It is not part of this Court's role to rejudge the merits of the employment dispute. In any event, there is no reason why this – international – Court's assessment, at one remove, of these circumstances should be any more reliable than that of the national courts.

14. In its judgment the appeal court did balance the applicant's freedom of expression against the other conflicting interests in issue. In particular, the appeal court expressly recognised "the applicant's democratic rights to inform society and the competent institutions about the alleged violations in the [University]", while noting that "nothing prevented the applicant from expressing his opinion in a manner compatible with ethics and staff regulations" (see paragraphs 25 and 26 of the judgment).

In this connection, it is difficult to understand how the majority can either say that the domestic appeal court did not at all assess the public interest and truthfulness of the disparaging information that the applicant was threatening to disseminate if he did not obtain satisfaction (see paragraph 85 of the judgment) or criticise the appeal court for not having given this Court "the benefit of [a] relevant assessment" of the factors "relevant for the purposes of the analysis of proportionality" (see paragraph 89 of the judgment). In our view, the considerations relied on by the appeal court were both relevant and sufficient. Given what the appeal court took to be the seriousness of the disloyal conduct of the applicant as established by the evidence before it, the sanction of dismissal cannot be regarded as disproportionate.

15. It is important to add that the assessment of the proportionality of a dismissal of an employee should take into consideration not only the rights of the employee but also the legitimate interests of the employer. The latter is, in principle, entitled to take measures to ensure the smooth running of the enterprise, including for the benefit of the employees taken as a whole, and, in that context, to choose its employees, to propose changes to the terms of their employment contract or to terminate the employment, provided that it respects the applicable national law, notably labour law and contract law.

Furthermore, if the employer is a public university, the analysis should also take into account its position in the domestic law and especially the degree of autonomy it enjoys. Academic autonomy serves democracy in general and freedom of expression in particular. An academic institution is, in principle, entitled to exercise fully its freedom of taking employment decisions, within the limits of its autonomy as laid down in domestic law. We regret that the majority refrained from addressing these questions.

C. Conclusion

16. In sum, we believe that the majority of our colleagues have misconceived the nature of the dispute (that is, the reason for the applicant's dismissal from his post) and the content of the ruling by the national courts in order to arrive at their finding of a violation of the applicant's right to freedom of expression. The approach proposed by the majority brings with it the risk of transforming the European Court of Human Rights into a higher-instance labour court adjudicating on the merits of labour disputes.