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FREEDOM OF SPEECH AND DISMISSALS FROM WORK AT TIMES OF WAR: THE MEIR BARUCHIN'S CASE

A rich body of literature has been written through the years about the right to freedom of speech. Court decisions - throughout many regions - have dealt with cases regarding the infringement of the right to freedom of speech. Literature and case law have also addressed questions regarding freedom of speech inside and outside the workplace¹. Nonetheless, less literature and fewer court cases have dealt with questions regarding the right to political speech outside the workplace at times of national crises and its possible implications on employment. What are the limits of the right to political speech outside the workplace? Do these limits change at times of war?

In Israel, these questions have become acute since October 7, 2023. On October 7 the Hamas led a deadly attack on Israel. In the attack, over a thousand of people were killed, most of them civilians, and about 250 people were taken as hostages to Gaza, including children. Following the attack, Israel responded through air strikes and later through a ground assault of Gaza. As of August 2024, according to the UN, about 40,000 Palestinians have been killed by Israel's army, most of them civilians². Many Palestinians lost their homes as well as their loved ones³.

On the political level in Israel, since October 7, many demonstrations have been held against the government, demanding it to resign, and to sign a deal with Hamas that would return the hostages to Israel. Many people posted scathing criticism on social media against the Israeli government and, in several cases, against the IDF. Several posts endorsed the Hamas and the terror attack against Israel. In

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- 1 See for example D. McGoldrick, « The Limits of Freedom of Expression on Facebook and Social Networking Sites: A UK Perspective », *Human Rights Law Review*, no. 13, 2013, p. 125; D. Mangan, « Online Speech and the Workplace: Public Right, Private Regulation », *Comparative Labor Law & Policy Journal*, no. 39, 2018, p. 357; V. Mantouvalou, « "I Lost my Job Over a Facebook Post - Was that Fair?" Discipline and Dismissal for Social Media Activity », *The International Journal of Comparative Labour Law and Industrial Relations*, no. 35, 2019, p. 101; P. Wragg, « Free Speech Rights at Work: Resolving Differences between Practice and Liberal Principle », *Industrial Law Journal*, no. 44, 2015, p. 1.
 - 2 United Nations, *40,000 Palestinian lives lost in Gaza: UN Human Rights Chief pleads for end to fighting stating that 130 people have been killed every day in Gaza over the past 10 months* (August 14, 2024): <https://www.un.org/unispal/document/gaza-40000deaths-turk-ohchr-15aug24/>
 - 3 According to the UN, the situation in Gaza is catastrophic, and there is a high and sustained risk of famine across the whole Gaza Strip. See: United Nations, *Famine Review Committee: Gaza Strip*, June 2024 - IPC's third review report (June 25, 2024): <https://www.un.org/unispal/document/ipc-famine-third-review-report-25jun24/>

several cases Israel's law enforcement agencies acted against people due to their expressions on social media. At the same time, employers dismissed workers from their jobs due to their expressions on social media. One of these workers was Dr. Meir Baruchin, a high school teacher.

I - THE CASE

Meir Baruchin has worked thirteen years as a teacher in a high school in a city named *Petach Tikva* in Israel (and thirty years as a teacher in general). Through the years, he has published many posts in his private Facebook account regarding the harsh life of Palestinians in the occupied territories. He has expressed critical opinions regarding the IDF (Israel Defense Forces) in these posts. He continued to publish identical posts after the Hamas terror attack on Israel on October 7, 2023. His private Facebook account was open to the public, therefore, anybody could read the posts. On October 15, 2023, several days after the deadly terror attack, the Petach Tikva Municipality (which was Dr. Baruchin's employer) summoned Dr. Baruchin to a hearing before dismissal. In the summon, the municipality accused Dr. Baruchin of expressing opinions on social media during wartime, which were against the state of Israel and its army and in favor of terrorism. A day after the hearing, on October 19, 2023, the municipality informed Dr. Baruchin that he was dismissed from his job and that he was not allowed to return to teach in the school. Several days after Dr. Baruchin's dismissal, the Ministry of Education informed Dr. Baruchin that he is not allowed to teach in any other public school in Israel and that his license to teach is revoked.

Following his dismissal, Dr. Baruchin filed a lawsuit against the city of Petach Tikva and the Ministry of Education. Dr. Baruchin claimed that his dismissal was illegal and that the City of Petach Tikva should return him to his work. The City of Petach Tikva claimed that Meir Baruchin's Facebook posts supported terrorism, harmed the values of Israel and weakened the IDF. Meir Baruchin claimed that he does not support terrorism, that he condemns the Hamas Massacre and that he did not harm Israel or its institutions.

II - THE DECISION

The Regional Court ruled - at a majority decision - that the dismissal of Meir Baruchin was void and that the City of Petach Tikva should return Meir Baruchin to his work as a teacher in the high school where he had worked before his dismissal. The court based most of its decision on procedural flaws in the dismissal process. The court declared that the City of Petach Tikva did not act according to the proper disciplinary process in order to dismiss Dr. Baruchin. Dr. Baruchin was entitled to a due disciplinary process, which he did not receive. According to the law - regarding employees of municipalities - in order to dismiss an employee due to a disciplinary offense, the municipality should bring the case to an internal disciplinary court⁴, and this has not been done in Baruchin's case. The court also mentioned that there

4 The Local Authorities (Discipline) Law, 1978 ; Municipal Ordinance [new version].

were several other flaws in the dismissal process, including flaws in the hearing process⁵.

In addition to the procedural flaws, the court declared that Baruchin is entitled to freedom of speech. The court ruled that the opinions that Baruchin expressed did not support terror, nor the Hamas or the deadly terror attack of October 7⁶. While Baruchin criticized Israel's army in his posts, he did not call people to refuse to serve in the army⁷. The court wrote in its decision that the war did not change the limitations on the freedom of speech regarding the specific situation of Baruchin⁸. The court emphasized that there is a difference between expressing political opinions in front of students in class and expressing them outside the workplace in a private Facebook account⁹. According to the court decision, Baruchin was entitled to publish his political opinions outside the workplace on his Facebook account¹⁰.

The City of Petach Tikva appealed to Israel's National Labor Court against the decision. The National Labor Court urged the parties to compromise. Following the National Court's recommendation, the City of Petach Tikva agreed to return Dr. Baruchin to his work as a high school teacher. The court gave effect of a judgment to the agreements between the parties¹¹.

Conclusion

In Meir Baruchin's case, Israel's labor courts - the Regional and National Labor Courts - played an important role in protecting the right to freedom of speech in general and the right to express political opinions in times of war. Baruchin's case is an important decision because it emphasizes that the limits to freedom of speech - including political speech - do not change at times of war and national crisis.

Nonetheless, it is not clear yet if Israel's labor courts will be able to continue protecting the right to political speech in the future. Following Meir Baruchin's case, members of Israel's parliament (the Knesset) introduced two bills that aim to restrict the right of political speech outside the workplace of both: teachers in schools and lecturers in Israel's universities and colleges¹². Moreover, parallel to Meir Bruchin's case, two other cases were brought to Israel's labor courts regarding the dismissal of workers due to their expressions on social media. While in one of these cases,

5 Regional Labor Court (Tel-Aviv) 40668-11-23 *Meir Baruchin - The City of Petach Tikva* (April 2, 2024), sec. 121-127.

6 *Ibid.*, sec.100-105.

7 *Ibid.*, sec. 108.

8 *Ibid.*, sec. 120.

9 *Ibid.*, sec. 116-117.

10 *Ibid.*

11 National Labor Court 45370-04-24 *The City of Petach Tikva - Meir Baruchin* (June 18, 2024).

12 The Council for Higher Education (amendment - dismissal of academic staff due to incitement or support for terrorism and reduction of budget) 2024 (P/4684/25); Prohibiting the employment of teaching staff and denying a budget from educational institutions due to identification with a terrorist act or a terrorist organization (legislative amendments) 2024 (P/2265/25).

the court ruled (in an interim decision) that the employee would return to the work from which she had been dismissed¹³, the court confirmed the dismissal in the other case¹⁴. Thus, the legislative and case law landscape is unstable and may prove lacking in the future protection of employee's freedom of speech.

13 Regional Labor Court (Tel-Aviv) 20572-11-23 *Limor Kraus - Mishan* (November 20, 2023) ; National Labor Court 9967-12-23 *Mishan - Limor Kraus* (December 25, 2023).

14 Regional Labor Court (Tel-Aviv) 66739-11-23 *Munstar Abasi - Clalit* (April 30, 2024). An employee was dismissed from his jobs after publishing WhatsApp status that included versus from the Koran. The court approved the dismissal decision and ruled that a possible interpretation of the versus from the Koran is support of terrorism.