RESPECTING THE PRACTICE OF THE COURT
CASE: SELMANI AND OTHERS V. THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA, (APPLICATION
NO. 67259/14), AS A PREREQUISITE TO SAFE JOURNALISTS
IN PARLIAMENTS

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Abstract

Journalism is a public good from which citizens should benefit. For journalism to accomplish its mission as a public good, journalists and media must be independent and economically sustainable. Most importantly, they must be safe in performing their professional duty to professionally inform the public. Nevertheless, how can journalists report in a situation when they are forcibly expelled from the national parliament? What are the implications of such a case, and what are the lessons learned?

This paper provides an overview of the court case of “SELMANI AND OTHERS V. “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” by the European Court of Human Rights in which violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights is proclaimed for the forcible removal of journalists from the gallery of the Parliament of Macedonia on 24 December 2012.

The methodology in preparing this paper is based on an assessment of the stated court case, other cases relevant to Article 10 of the ECHR, follow-up documents by competent authorities and credible media reports. The importance of this case can be seen from the fact that it represents the first court case of ECtHR for breaching Article 10 of the Convention in Macedonia and second that this case represents an essential practice that gives knowledge to all members of the Council of Europe how to assure that the freedom of speech and freedom of information should be secured within the national parliaments.

Keywords: freedom of expression, freedom of speech, fair trial, safety of journalists

1. INTRODUCTION

This paper briefly elaborates on the case of Selmani and Others v. Macedonia (CASE OF SELMANI AND OTHERS v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, 2017). It makes an overview of the action plans and measures derived from this court judgment later implemented in the Republic of North Macedonia. The follow-up measures give an important knowledge of how to develop preventive mechanisms in keeping journalists safe not only in parliaments but also in other public events and equally important
how courts and judges to be more sensitized and aware of the importance of protecting the fundamental rights of journalists in a society.

The case of Selmani and Others v. Macedonia represents the first judgment by the European Court of Human Rights (ECtHR) for violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR, 1950) in the Republic of North Macedonia. This case was brought in front of the ECtHR by a group of six Macedonian journalists and later confirmed that their right to freedom of expression was breached on account of their forcible removal by members of the parliament security from where the journalists were informing about the adoption of the national budget act for the year of 2013. This incident took place during the parliamentary session on 24 December 2012. In addition, the peculiarity of this judgment is that the case concerns violation of the journalists’ right to a fair trial (Article 6 of the Convention) as well, having in mind that the Macedonian Constitutional Court failed to hold an oral hearing in the domestic legal procedure initiated by the six journalists and facilitated by the national Association of Journalists of Macedonia (AJM).

The judgment contributes to the hypothesis that when political tension is present in the country, the rights of the journalists are more likely to be breached; hence the freedom of information to the public is limited, and in addition, it gives reinforcement of the role of the press during public events (Köksal, 2017). It also stresses the necessity of having journalists on the spot of public events. At the same time, demonstrations or political disputes occur, and the significance of not interfering in their work by the members of the security forces is also emphasized.

The court case is not only crucial in local context in the Republic of North Macedonia, given that it represents the first case by ECtHR for violation of Article 10; it is also a practical example since later in the domestic procedure in front of the competent Court the right of journalists to a fair trial was not respected. This means that two important institutions in the country, the Parliament and the Constitutional Court failed to protect the rights of the journalists for an incident that was of the highest public importance, e.g., the adoption of the national budget in a parliamentary procedure.

2. METHODOLOGY

The methodology of this research is based on the following instruments: 1. legal overview of Selmani and Others v. Macedonia and other related cases; 2. Comment of the Action reports by the Directorate General for Human Rights and Rule of Law of the Council of Europe - Communication from Macedonia concerning the case of Selmani and Others v. Macedonia; and 3. Review of relevant reports that assess the overall context of the case by political and civil organizations and include credible media reports.

3. CONTEXT AND REACTIONS

The events of 24 December 2012 would be remembered for the confrontation of citizens in front of the national Parliament in Skopje and the incident of expelling members of the opposition party, including journalists, with the assistance of the police inside the Parliament. This incident left a political burden that kept the tension in the society afterward because the national budget was adopted by 65 votes from the ruling majority, with the limited debate not being presented to the public. "The decision followed after a 24-hour long drama in front of the Parliament and inside the parliament hallways. On Monday, before
the Parliament, opposition and government party members and supporters were locked in a stand-off separated by a thick cordon of police who prevented an all-out street fight”, would report one of the most credible national newspapers at that time (BIRN Skopje report, 2012).

The ECtHR brought the judgment on 9 February 2017; it confirmed that the forcible removal of the applicant, in this case, six journalists, was indeed violation of their right to freedom of expression. The incident occurred while a debate was held in the Macedonian Parliament. During this time, members of the opposition party began with disruptive actions within the main parliamentary chamber where the session was held, after which members of the parliamentary security were removed. After this took place, other members of the security of the Parliament reached the journalists who were located above the parliamentary chamber caller parliamentary gallery – a designated spot for media that is physically separated from the room where the primary incident occurred. Within the gallery, a group of journalists, accredited by the Parliamentary, peacefully monitored the events below. Suddenly, security members entered this spot and asked the journalists to leave. Most of the journalists did leave the gallery; however, the six applicants refused to do so, claiming that they had the right to observe the events, so members of security forcibly removed them; interesting to be noted is that based on the judgment, it was claimed that one of the security officers was allegedly pushed in the chest and his badge was removed and also he suffered injuries on his leg however for this accusation the state failed to provide evidence nor brought to attention the identity of the individual. Later, the journalists initiated procedure at the Constitutional Court appealing this act; however, this Court later failed to hold an oral hearing with journalists as applicants, which later ECtHR confirmed that this was a violation of Article 6. The Constitutional Court dismissed the claim that the journalists were dislocated to a safer place and that the freedom of speech was not breached, given that the event was broadcasted on the public broadcaster. The complaints argued that the camera of the parliamentary channel that was indeed broadcasting at the time of the incident was zoomed in a way that did not give a realistic image of the incident.

It is essential to mention that the ECtHR agreed with the government that the removal of the journalists was “prescribed by law” and pursued the “legitimate aim” of ensuring public safety and the prevention of disorder. The ECtHR, however, believed the government had failed to establish that the removal of the journalists was "necessary in a democratic society". There was no indication that there had been any danger from the protests which had taken place outside the parliamentary building on the day of the incident, either from the journalists themselves (who had neither contributed to nor participated in the disturbance in the chamber) or from the MPs who had been at the origin of the disorder. Nor was the ECtHR convinced that the journalists had effectively been able to view the ongoing removal of the MPs, a matter which had been of legitimate public concern (Voorhoof, IRIS – 2017 – 4, The legal database IRIS Merlin has covered all audiovisual media, key areas, key players, and legal developments since 1995, 2017).

The incident was reported widely not only by local but also by global media (Report, 2012). It also provoked a series of reprehensions and reactions by political and civil organizations that monitor journalists' freedom of expression and safety. The International Federation of Journalists condemned the media ban in Macedonia: "The decision is more about attempting to control information than addressing any security consideration,” said President Arne König. "Our colleagues deserve an apology and assurances that such a measure must never be repeated. (IFJ, 2012)".

This incident was also noted by several European political organizations, including the Parliamentary Assembly of the Council of Europe, in a report in which the designated
Rapporteur stressed, “I criticized this latest development and expressed my concerns about both the forced eviction of parliamentarians and journalists from the Parliament as well as the subsequent boycott launched by the opposition. I urge all political parties to pursue dialogue and contribute, in a constructive way, to the work of the Parliament. (Report. & 13227, 2013)”.

Local journalists and media organizations including the Association of Journalists of Macedonia issued the following statement: “AJM condemns today's incident in the Parliament, where journalists were forcefully expelled from the “gallery room” from which they were following the plenary session. With this act, the Constitution, which guarantees the freedom of expression and media freedom, was grossly violated. The authorities who gave the orders for this shameful act have formalized censorship and decided what must and what must not be reported by the journalists. The forcibly evicted journalists did nothing to cause a security reaction, nor was there a legal basis for their removal. AJM will use all the legal mechanisms to protect the freedom of expression and media freedom. Also, we will alert the domestic and foreign public about these events in the Parliament (GlobalVoices, 2012)”.

The incident was brought up in the spotlight by the media and different important political and civil organizations in joint condemnation for violating the right of journalists to report from the parliamentary session on 24 December 2024, and this reaction should have been an indicator for the violation of Article 10 of the ECHR.

4. THE IMPORTANCE AND THE RESULTS OF THE JUDGMENT

Consequently, to this judgment by the ECtHR, three more followed for violation of Article 10 in the context of the Republic of North Macedonia, and these are the (CASE OF MAKRADULI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, 2018), the (CASE OF GELEVSKI v. NORTH MACEDONIA, 2021), the (CASE OF KOSTOVA AND APOSTOLOV v. NORTH MACEDONIA, 2022). Valuable to be said is that two of these four judgments only refer to journalists; the first one is the one about Selmani, and the second one, approximately five years after, in the case of Kostova and Apostol v. Macedonia.

The local significance of the judgment is evident; however, important aspect arises from the impact that this case in the practice of ECtHR confirms the importance of securing the presence of media workers at public events and argues with other prior judgments of the Court that were subject of public criticism.

Before this judgment, the importance of the role of journalists in covering public events in a critical context is the judgment in the case of Pentikäinen v. Finland. In this case, it is concluded that the interference with a press photographer’s right to freedom of expression and the right of journalists to gather because of disobeying a police order to leave the scene of a demonstration that had turned into a riot can be said to have been "necessary in a democratic society" within the meaning of Article 10 of the Convention (Voorhoof, JOURNALIST MUST COMPLY WITH POLICE ORDER TO DISPERSE WHILE COVERING DEMONSTRATION, 2015).

In this case, dating as of 20 October 2015, the ECtHR concludes that the domestic authorities based their decisions on relevant and sufficient reasons and struck a fair balance between the competing interests at stake. It transpires from the case file that the authorities did not deliberately prevent or hinder the media from covering the demonstration in an attempt to conceal from the public gaze the actions of the police concerning the rally in
general or to individual protesters. Accordingly, there has been no violation of Article 10 of the Convention. (CASE OF PENTIKÄINEN v. FINLAND, 2015).

To conclude, the ECtHR, in the case of Pentikäinen v. Finland did not find a violation of Article 10. In the case of Selmani and Others v. Macedonia, there is a conclusion for breach of Article 10. Why does this practice matter, and what is the importance of the comparison?

In both cases, there is a legitimate presence of journalists at critical events in which public interest actions were taking place. In both cases, journalists were accredited and performed their duty professionally (there is a contra argument in this regard that is evidence-based on both sides towards the journalists). The sole difference between the cases is that in the first one (Pentikäinen case), the actions took place in an open space where demonstrations were taking place. In the second case (Selmani case), the activities took place within the Macedonian Parliament at the gallery (designated spot for journalists reporting). However, the essential common element is that in both cases, journalists disobeyed orders by members of the police because they had the right to be on the spot to report on the events, especially since, in both cases, they did not jeopardize the safety of other individuals, nor they presented a risk in the ongoing incidents.

The link between Selmani vs. Pentikäinen judgment demonstrates double standards by the ECtHR regarding the respect of Article 10. The case of Selmani sets new standards in respecting the freedom of expression and gives a lesson to the member states of the Council of Europe on how the law enforcement bodies should be treating journalists at events in which a potential crisis is taking place where the public interest is prevailing. In this regard, the credible blog Strasbourg Observer in the context of the Selmani case points out: “The judgment also distances itself from the Grand Chamber of the European Court’s judgment in Pentikäinen v. Finland, a decision that has been criticized by commentators, by analyzing closely whether the threat to public safety posed by the journalists had a solid basis in fact and by placing less weight on whether the journalists still reported on the events that took place. Instead, the Court placed greater emphasis on whether the journalists could "effectively view" what was going on in the Parliament. This is a welcome approach for safeguarding newsgathering practices in Europe and beyond (The International Forum for Responsible Media Blog).”

5. MEASURES ARISING FROM THE JUDGMENT

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the ECHR, which provides that the Committee supervises the execution of final judgments of the ECtHR having regard to the final decision transmitted by the Court to the Committee in this case and the violations established from North Macedonia required two sets of measures. The first measures were individual measures to end violations established and erase their consequences to achieve as far as possible, and the second ones were general measures preventing similar breaches.

In chapter II of the Revised action plan by the Secretariat General of the Council of Europe (Resolution CM/ResDH(2018)216, 2018) the European Court considered that the applicants must have sustained non-pecuniary damage, which cannot be compensated for solely by finding violations of the Convention. Ruling on an equitable basis, it awarded each applicant (six in total) the sum of EUR 5,000 in respect of non-pecuniary damage. Furthermore, it is added that there is no possibility of taking any measures to place the
applicants in the same position they had before the violations; no other individual actions are possible to execute this judgment.

The general measures are several and are divided per violations of the Articles, or in this case, measures refer to Article 6 and Article 10.

Considering the violation of Article 6, coming from the first results of the failure of the Constitutional Court to hold an oral hearing in the proceedings concerning their forcible removal from the Parliament gallery, the ECtHR stresses that the Macedonian Constitutional Court should make efforts to align its internal rules with the European Court's findings in the present case in a way to provide the presence of applicants at the public hearings of the Court. Following this, in December 2017, consultations took place with the President of the Constitutional Court to facilitate the measures so that the judgment could be executed. Based on this and as emphasized in the mentioned Revised Action Plan as of February 2017, the Constitutional Court's judges have concluded that this Court will tend to hold an oral hearing in situations when it decides as a court of first and only instance unless there are exceptional circumstances that justify dispensing with such a hearing (for example, where the applicants expressly agreed that no oral hearing should be necessary).

Regarding the violation of Article 10, the ECtHR assesses actions already implemented by concerned parties in the state, and the action is divided into two sections: 1. Training and awareness-raising measures, and 2. Memorandum of cooperation between the Associations of Journalists of Macedonia (AJM) and the Ministry of the Interior (MoI) (RsF Report, 2017).

Since 2015, continuous activities have been held for the judges and the court administration of the Constitutional Court with the support of OSCE Mission in Skopje with the requirements of Article 6 and Article 10 of the Convention and the European Court’s case-law. In addition, other workshops and capacity-building events with the support of the Technical Assistance and Information Exchange (TAIEX) instrument and Horizontal Facility Program of the Council of Europe and the European Union took place with the engagement of judges and members of the administration of the Constitutional Court.

As for the Memorandum for cooperation between AJM and MOI (AJM press release, 2017) by the Association of Journalists, by the President of that time who is the main applicant at ECtHR for this case it was said: "We will give great importance to our future cooperation in organizing joint training. Members of the police will be trained on the importance and role of the media in a democratic society that cannot function without them being independent. A precondition for this is journalists to feel safe in their mission, which is to accurately and timely inform the citizens”.

In this regard, at the Revised Action plan from the 1318 meeting (June 2018) of the Committee of Ministers is noted that in a public statement, the Minister of the Interior Spasovski said: “In the past, we witnessed attacks on journalists, something that must not happen in a democratic country. The Ministry of the Interior will do everything for media workers to be able to do their job freely and safely. The media is the backbone of every democratic society and must have the conditions to work freely and safely”.

To conclude, as stressed in the Revised Action Plan in Chapter IV about individual measures, the authorities consider that due to the nature of the violations, no individual measures that might place the applicants in positions they had been in before the violations are possible. Furthermore, about the possibility of providing redress, the authorities recall that the ECtHR awarded the applicants just satisfaction in respect of non-pecuniary damage. In addition, the authorities furthermore consider that the general measures taken can prevent
similar violations; therefore, consider that Macedonia has thus complied with its obligations under Article 46 paragraph 1 of the ECHR.
6. CONCLUSION

The judgment of Selmani and Others v. Macedonia has a unique significance in the local and global context.

Within the local context, it represents the first case in which the freedom of expression is violated, and this gives a lesson to the national institutions that the safety of journalists must be secured for media workers to fulfill their professional duty to report events which are of public interest. The measures which the authorities need to complete later are in law enforcement and judiciary with the goal of guaranteeing the safety of journalists by members of the police and judges. In relatively young democracies such as the Macedonian, journalists must be persistent for justice when this incident occurs. Later, the institutions take corrective measures that stipulate systematic solutions.

In a broader context, with this judgment, ECtHR sets international and European standards that safeguard journalists’ right to access areas in fulfilling their duties to inform the public. Any attempt to remove journalists from the scene of demonstrations must therefore be subject to strict scrutiny, especially “when journalists exercise their right to impart information to the public about the behavior of elected representatives in the Parliament and how authorities handle disorder that occurs during Parliamentary sessions”.

The proper implementation of the measures that derive from this judgment by any member of the Council of Europe will guarantee the "watchdog" role of the media and the journalists by not only allowing their presence but also ensuring public interest events.

7. REFERENCES

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