

Violation of freedom of expression of journalist whose arrest by police prevented her from gathering and communicating information on an environmental protest

The case of **Tožičková v. the Czech Republic** (application no. 21512/23) concerned the arrest of a journalist during an environmental protest at a coal mine, more specifically, while she was in an area designated as out of bounds.

In today's **Chamber judgment**¹ the European Court of Human Rights held, unanimously, that there had been a **violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The Court found that the domestic courts had not provided adequate reasoning to justify the applicant's arrest, the main effect of which had been to prevent the applicant, first, from performing her journalistic duties and communicating to the public information on a matter of general interest, and, secondly, from fulfilling her role as a "public watchdog" reporting on the police's conduct towards the demonstrators. The applicant's arrest had not met a pressing social need and could not be regarded as necessary in a democratic society, taking into account also the narrow discretion enjoyed by the State in the present case.

Principal facts

The applicant is a Czech national who was born in 1977. In September 2020 she attended a demonstration in her capacity as a journalist. During the march, some of the participants deviated from the planned route and entered the operating area of a coal mine which was designated as out of bounds. The applicant, who was wearing a visible press badge, followed them.

The police ordered the demonstrators and journalists to leave the mine and, when they refused to do so, began making arrests. The applicant invoked her status as a journalist and her public-watchdog role to justify her refusal to comply. She was removed from the mine, arrested, then released around two hours later. She was prohibited from making video-recordings throughout the duration of her arrest.

In October 2020 she challenged those measures – namely, the order to vacate the premises; her removal from the mine followed by her arrest; and the ban on making video-recordings for the duration of her arrest – before the domestic courts. Those courts found that the first and third measures amounted to unlawful interference, but considered that, given the applicant's refusal to comply with the order to leave the site of the demonstration – which was subsequently found to be unlawful –, the police had been authorised to arrest her. Her appeal to the Constitutional Court was dismissed as ill-founded.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

The applicant complained that her arrest by the police, following an order that the domestic courts had subsequently found to be unlawful and which had prevented her from continuing to report on a demonstration, had amounted to an interference with the exercise of her freedom of expression as guaranteed by Article 10 of the Convention.

The application was lodged with the European Court of Human Rights on 18 May 2023.

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

María Elósegui (Spain), *President*,
Kateřina Šimáčková (the Czech Republic),
Gilberto Felici (San Marino),
Andreas Zünd (Switzerland),
Diana Sârcu (the Republic of Moldova),
Sébastien Biancheri (Monaco),
Nicholas Emiliou (Cyprus),

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

The Court considered that the applicant's arrest had had the same, practical and irreversible, consequences as the order to vacate the premises, in that she had been required to leave and prevented from taking part, directly and in person, in the events which had still been taking place in the mine, and from gathering the information necessary for her journalistic activities. The subsequent ban on making videos, for the duration of her arrest, had clearly been intended to thwart any attempt on her part to document the police's actions.

Noting that the gathering of information was an essential preparatory step in journalism and an inherent, protected part of press freedom, the Court considered that the applicant's arrest had amounted to an interference in her right to freedom of expression.

The Court also noted the crucial role of the media in providing information on the authorities' handling of demonstrations and the containment of disorder. The "watch-dog" role of the media assumed particular importance in such contexts since their presence was a guarantee that the authorities could be held to account for their conduct *vis-à-vis* the demonstrators and the public at large when it came to policing, including the methods used to control or disperse protesters or to preserve public order. Any attempt to remove journalists from the scene of demonstrations therefore had to be subject to strict scrutiny.

The above considerations were particularly relevant in the present case, given that it had been the applicant's intention to gather and communicate information on a demonstration and on the police's handling of that event and containment of any disturbances, that is, on matters which could legitimately be of interest to the public. The Court reiterated that States' discretion (margin of appreciation) was reduced where a debate on a matter of public interest was concerned.

It appeared from the domestic legislation that, while police officers were permitted, under certain conditions, to arrest an individual, that measure was a matter for their discretion which had, in all circumstances, to respect the principle of proportionality. Failure to comply with a police officer's order did not, by itself, automatically entail the arrest of the individual concerned.

The police therefore ought, before arresting the applicant, to have carried out an individualised assessment of the various measures available to them in response to her refusal to comply with the order to leave the premises, taking into account the actual circumstances of the case, in particular,

