



Forcible removal of journalists during parliamentary debate breached their freedom of expression

The case [Selmani and Others v. “the former Yugoslav Republic of Macedonia”](#) (application no. 67259/14) concerned the forcible removal of journalists from the national Parliament gallery where they were reporting on a parliamentary debate about approval of the State budget for 2013. During the debate a group of opposition MPs had started creating a disturbance in the parliamentary chamber, and had been ejected by security officers. The applicants, accredited journalists, had refused to leave the gallery, a designated area for journalists, and ended up being forcibly removed by security. They brought proceedings before the Constitutional Court to complain about the incident, and contest the fact that there was no oral hearing before this court for them to challenge the facts as disputed between the parties.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 (right to a fair hearing) of the European Convention on Human Rights on account of the Constitutional Court's failure to hold an oral hearing, and

a violation of Article 10 (freedom of expression) of the European Convention on account of the applicants' removal from the Parliament gallery by security.

The Government had notably failed to convince the Court that it had been necessary or justified to remove the applicants from the Parliament gallery. In particular, there was no indication that there had been any danger from the protests which had taken place outside the Parliament building on the day of the incident, from the applicants 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 Court convinced that the applicants had effectively been able to view the ongoing removal of the MPs, a matter which had been of legitimate public concern.

Furthermore, the applicants' case before the Constitutional Court had not involved exclusively issues of law, but issues of facts which were contested and which were relevant for the outcome of the case; they had therefore been entitled to an oral hearing. However, despite their request, the Constitutional Court had not held an oral hearing on their case without providing any reasons why it had not been necessary.

Principal facts

The applicants, Naser Selmani, Toni Angelovski, Biljana Dameska, Frosina Fakova, Snežana Lupevska, and Nataša Stojanovska, are six Macedonian nationals who live in Skopje.

On 24 December 2012 the applicants, together with other accredited journalists, were reporting from the Parliament gallery, the designated area for journalists authorised to report on the work of Parliament. They were following the debate about approval of the State budget for 2013, which had been a source of tension between the opposition and ruling party MPs and had attracted

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.

considerable public and media attention. At the same time two opposing groups of people were protesting in front of the Parliament building.

The strained atmosphere culminated in a group of MPs creating a disturbance in the parliamentary chamber. They surrounded the Speaker, slapped his table, prevented access to the podium and started damaging technical equipment. The Speaker, who had been pulled out of the chamber, ordered security to restore order. Security officers then forcibly ejected opposition MPs. Other officers started removing journalists, including the applicants, from the gallery. Some journalists complied. However, the applicants refused to leave, as they felt that the public had the right to be informed as to what was going on. They ended up being forcibly removed. The applicants deny that they were informed that they had to leave for security reasons and that a security officer had been injured by one of the applicants during their forcible removal. They also contest that they had been allowed to follow the events in the parliamentary chamber via a live broadcast in the Parliament's press room or that there had been a live stream while the opposition MPs were being ejected.

The applicants subsequently lodged a constitutional complaint, alleging that their right to freedom of expression (under Article 10 of the European Convention on Human Rights) on a parliamentary debate of particular public interest had been breached. They also urged the Constitutional Court to hold a public hearing on their case.

Following a hearing held in April 2014 in the absence of the parties, the Constitutional Court dismissed the applicants' complaint. It found that the applicants' removal from the Parliament gallery had been based on section 43 of the Parliament Act and Articles 91-94 of the parliamentary Rules of Procedure and that those provisions had applied to all participants of the parliamentary proceedings, including the journalists in the gallery. It also concluded that it had been necessary to remove the applicants from the gallery for security reasons in view of a number of incidents during the proceedings, notably objects had been thrown in the chamber – some in the direction of the gallery. The purpose of the measures had therefore been to protect the journalists by taking them to a safer place and not to restrict their freedom of expression. In fact, the journalists had been able to follow the live broadcast of the debate from other premises and most of them had submitted and published their reports in the evening editions of their newspapers.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) Article 6 § 1 (right to a fair hearing), the applicants complained about their removal from the Parliament gallery and about the lack of an oral hearing in the ensuing proceedings before the Constitutional Court.

The application was lodged with the European Court of Human Rights on 3 October 2014.

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

Ledi **Bianku** (Albania), *President*,
Mirjana **Lazarova Trajkovska** (“the former Yugoslav Republic of Macedonia”),
Kristina **Pardalos** (San Marino),
Linos-Alexandre **Sicilianos** (Greece),
Robert **Spano** (Iceland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 6 (right to a fair hearing)

The Court considered that the applicants had been entitled to an oral hearing before the Constitutional Court. The Constitutional Court was the only body which had examined and decided on the merits of the applicants' case, acting as a court of first and only instance. The case did not involve exclusively issues of law, as argued by the Government, but issues of fact which had been relevant for the outcome of the case. Indeed, the Constitutional Court's decision had been based on facts which the applicants had contested, notably: whether the reasons for the applicants' removal had been explained to them; the level of force used by the security officers; whether a security officer had been injured during the incident; the security risk that had allegedly required their removal; and whether the applicants had been able to follow the events in the parliamentary chamber after their removal.

However, no oral hearing had been held, even though the applicants had explicitly requested one. Moreover, the Constitutional Court had not given any reasons why it had considered that no hearing had been necessary.

Finding that there had been no exceptional circumstances that could justify dispensing with an oral hearing before the Constitutional Court, the Court therefore held that there had been a violation of Article 6 § 1.

Article 10 (freedom of expression)

The Court reiterated the crucial role of the media as public watch-dog, and particularly in situations such as in the applicants' case where the authorities had had to handle disorderly behaviour of MPs during a Parliamentary session.

First, the Court was satisfied that the applicants' removal from the Parliament gallery, based on the relevant provisions of the Parliamentary Act and the parliamentary Rules of Procedure, had been "prescribed by law". In particular, those provisions, which were accessible to the public, meant that the applicants had been able to foresee, to a reasonable degree, that the intervention of security officers could affect their reporting from the gallery. Furthermore, their removal had pursued the aims of ensuring public safety and the prevention of disorder.

However, the Government failed to convince the Court that it had been necessary or justified to remove the applicants from the gallery. In its decision the Constitutional Court had not referred at all to the protests which had taken place outside the Parliament building and to what extent they could have threatened the safety of those inside the building, including the applicants. As concerned the applicants' conduct, the Government had conceded that they had neither contributed to nor participated in the disturbance in the chamber; passive bystanders, they had simply been observing the events and doing their work. The applicants had in effect refused to obey the security officers' orders and leave the chamber, but their behaviour had not led to any proceedings being brought against them. Nor was any information provided as to one of the security officers sustaining a leg injury during the applicants' resistance. Indeed, the applicants' removal had not been because of their refusal to leave, but because the security service had assessed that it was necessary to move them to a safer place. Nor was there any indication that the MPs disorderly behaviour in the chamber had put the applicants in danger either. The Constitutional Court had referred to objects having been thrown in the chamber and towards the gallery, but no further explanation had been provided as to the type or number of objects and whether any of them had actually reached the gallery.

Lastly, the Court noted that the applicants' removal from the gallery had prevented them from obtaining knowledge based on their personal experience of the events unfolding in the chamber.

In view of the fact that the Constitutional Court had not provided sufficient reasons, in the circumstances, to justify the applicants' removal from the gallery, there had accordingly been a violation of Article 10 of the Convention.

Article 41 (just satisfaction)

The Court held that the "former Yugoslav Republic of Macedonia" was to pay the applicants 5,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.