

European Court of Human Rights: Selmani and Others v. the former Yugoslav Republic of Macedonia

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On 9 February 2017, the European Court of Human Rights (ECtHR) delivered an important judgment, condemning the forcible removal of journalists from the national parliament gallery where they were reporting on a parliamentary debate in the former Yugoslav Republic of Macedonia. During the debate a group of opposition members of parliament (MPs) had started creating a disturbance in the parliamentary chamber, and had been ejected by security officers. The applicants, all accredited journalists, had refused to leave the gallery but were finally forcibly removed by security officers. The journalists brought proceedings before the Constitutional Court to complain about the incident, and contested the fact that there was no oral hearing in order to challenge the facts as disputed between them and the government. They submitted that the parliamentary debate, and the related events regarding the approval of the State budget, had been of particular public interest, and that the intervention of the parliament security officers had been neither “lawful” nor “necessary in a democratic society”. The Constitutional Court dismissed the journalists’ complaint, emphasising that in the circumstances of the case at issue, the Parliament security service was entitled to move the journalists to a safer place, where they would not be in danger. Such an assessment should not be viewed as conflicting with the journalists’ right to attend parliamentary proceedings and report on events they witnessed. In fact, the journalists published their reports in the evening editions of their newspapers, which implies that there was no violation of their freedom of expression.

The journalists lodged an application with the ECtHR, complaining about their forcible removal from the parliament gallery from where they had been reporting. In its judgment, 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 was of the opinion that the government had failed to establish that the removal of the journalists was “necessary in a democratic society”. 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, 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. In its reasoning the ECtHR referred to the crucial role of

the media in providing information on the authorities' handling of public demonstrations and the containment of disorder, such as in the present case. It reiterated that the "watchdog" role of the media assumes particular importance in such contexts, since their presence is a guarantee that the authorities can be held to account for their conduct vis-à-vis the demonstrators and the public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order. 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 behaviour of elected representatives in Parliament and about the manner in which authorities handle disorder that occurs during Parliamentary sessions". According to the ECtHR, it was not presented with any evidence that the disturbance in the chamber had been violent or that anyone, in the chamber or elsewhere, had sustained an injury as a result of that disturbance. The journalists' removal, on the other hand, entailed immediate adverse effects that instantaneously prevented them from obtaining first-hand and direct knowledge based on their personal experience of the events unfolding in the chamber. The Court found that these are important elements in the exercise of the applicants' journalistic functions, of which the public should not have been deprived in the circumstances of the present case. Against this background, the ECtHR considered that the government failed to establish convincingly that the journalists' removal from the gallery was necessary in a democratic society, and came to the conclusion that there has been a violation of Article 10 of the European Convention on Human Rights (ECHR). It also found a breach of Article 6 of the ECHR, as the journalists were refused an oral hearing before the Constitutional Court, without being provided any reasons for this refusal.

Judgment by the European Court of Human Rights, First Section, Selmani and Others v. the former Yugoslav Republic of Macedonia, Application no. 67259/14, 9 February 2017

<http://hudoc.echr.coe.int/eng?i=001-170839>

