

JOURNALISTS REPORTING ON DEMONSTRATIONS AND OTHER PUBLIC EVENTS

Pentikäinen v. Finland, Selmani v. FYROM, Butkevich v. Russia

ECHR PRINCIPLES

1. Any interference with newsgathering must be justified as necessary and proportionate
2. Degree of public interest in the journalism concerned?
3. Was there a formal and justified order requiring journalists to leave the area and how did the journalist respond?
4. What sanction is imposed?

Key European Court of Human Rights judgments:

- ▶ Pentikäinen v. Finland
- ▶ Selmani v. FYROM
- ▶ Butkevich v. Russia

PENTIKAINEN V FINLAND: FACTS

The Asia-Europe Meeting (ASEM), a biannual summit fostering cooperation between European and Asian leaders, faced significant protests during its 2006 Helsinki event. Journalist Pentikäinen, assigned to cover the demonstrations, chose to embed himself in the protest rather than staying in the designated media area. During the “Smash ASEM” protest on 9 September 2006, violence erupted, and the police ordered dispersal. While most attendees left without consequences, Pentikäinen remained within the police cordon, asserting his journalistic role.

PENTIKAINEN V FINLAND: FACTS

Despite warnings, he refused to leave, leading to his arrest alongside other protesters. Pentikäinen claimed he identified himself as a journalist during the arrest, but the police denied hearing this. He was detained for 17.5 hours. In 2007, Helsinki prosecutors charged him with disobeying a lawful order. Although the District Court found him guilty, it imposed no penalty, considering his actions “excusable.” Appeals to higher Finnish courts were unsuccessful.

PENTIKAINEN V FINLAND: JUDGMENT

The Grand Chamber delivered a majority judgment (thirteen votes to four). The Court first stated that

“[e]ven if the impugned measures were not aimed at the applicant as a journalist but were the consequence of his failure to comply with police orders to disperse, addressed to all those present in the cordoned-off area, his exercise of his journalistic functions had been adversely affected. . .” [para. 83]

The Grand Chamber then held that the main issue was compliance with police orders.

It found it highly relevant that all other journalists except Pentikäinen had obeyed the police orders and left the area and that he had given the opportunity to leave without any consequences at any time.

The Grand Chamber also considered that the police did not confiscate his camera equipment and memory cards during the demonstration, but only during the apprehension process in accordance with normal procedures.

The Grand Chamber noted that his arrest was made pursuant to a law and his conviction did not have adverse material consequences for him as no penalty was imposed and the conviction was not entered into his criminal record.

It concluded that “the authorities did not deliberately prevent or hinder the media from covering the demonstration in an attempt to conceal from public gaze the actions of the police with respect to the demonstration in general or to individual protesters.”
[para. 114]

Accordingly, the Grand Chamber ruled that the interference with Pentikäine's right to freedom of expression was "necessary in a democratic society" and did not amount to a violation of Article 10 of the European Convention on Human Rights.

Key considerations:

- ▶ when is an order to disperse justifiable, proportionate, lawful?
- ▶ when is requiring a journalist to leave necessary and proportionate?

SELMANI V. FYROM: FACTS

On 24 December 2012, during a contentious parliamentary debate in Macedonia over the 2013 Budget Act, journalists reporting from the Parliament gallery were forcibly removed by security officers. This occurred amidst protests outside and escalating tensions inside the Chamber, as opposition members disrupted proceedings. The journalists resisted removal, arguing it impeded public access to information about the significant political event. They were redirected to follow the session via live broadcast in the press room or online.

SELMANI V. FYROM: FACTS

On 24 December 2012, during a contentious parliamentary debate in Macedonia over the 2013 Budget Act, journalists reporting from the Parliament gallery were forcibly removed by security officers. This occurred amidst protests outside and escalating tensions inside the Chamber, as opposition members disrupted proceedings. The journalists resisted removal, arguing it impeded public access to information about the significant political event. They were redirected to follow the session via live broadcast in the press room or online.

SELMANI V. FYROM: JUDGMENT

The Court held that it had not been demonstrated that it was 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.

The removal of the journalists therefore violated their right to freedom of expression.

BUTKEVICH V. RUSSIA: FACTS

This case involves Ukrainian journalist Maksim Butkevich, who was arrested in St. Petersburg, Russia, on 16 July 2006 while photographing an anti-globalisation protest during the G8 summit. Although Butkevich claimed he was not participating in the protest and presented his press credentials, the Russian police alleged he disobeyed orders to stop his “unlawful actions” and to enter a police vehicle voluntarily. He was forcibly detained and charged with participating in an unauthorised demonstration and disobeying lawful police orders.

At a trial later that day, Butkevich was convicted based on police reports and sentenced to three days’ detention, later reduced to two days on appeal. Butkevich argued that the authorities disregarded his status as a journalist and failed to recognise his right to seek and report information. He brought his case to the European Court of Human Rights.

BUTKEVICH V. RUSSIA: JUDGMENT

The Court found in particular that neither the domestic courts nor the Russian Government had justified Mr Butkevich's arrest or a six-hour delay in releasing him on 18 July 2006. Furthermore, the proceedings in which he had been convicted were in breach of the requirement of objective impartiality on account of the lack of the prosecuting party at the court hearing on his case. Those proceedings were also unfair because the police officers who had arrested him and produced the pre-trial reports on which his conviction had been based were not questioned during that hearing.

The Court found furthermore that the domestic decisions had not weighed in the balance Mr Butkevich's right to freedom of expression against the prevention of disorder, ignoring his argument that he had been acting as a journalist and not examining adequately whether the demonstration had been peaceful or not.

RECOMMENDATION (2016)4

When policing protests or other situations of unrest where media are likely to be present, police should:

- ▶ respect the role of journalists and other media actors covering demonstrations and other events. Press or union cards, relevant accreditation and journalistic insignia should be accepted by State authorities as journalistic credentials
- ▶ where it is not possible for journalists or other media actors to produce professional documentation, every possible effort should be made by State authorities to ascertain their status.
- ▶ Dialogue between State authorities and journalists' organisations is moreover encouraged in order to avoid friction or clashes between police and members of the media. (par. 14)

PRESS CARD / CREDENTIALS / INSIGNIA

- ▶ a lack of official documentation should not be used as a pretext to restrict journalistic activity
- ▶ there may be times when it is not safe for a journalist to display their credentials visibly, especially during protests when the anger of participants is directed at the media
- ▶ law enforcement officials should make reasonable efforts to verify their status rather than obstruct their work, through journalistic organisations, professional associations, or media outlets

EXAMPLES OF NATIONAL PRACTICES

- ▶ UK: [National Action Plan for the Safety of Journalists](#); Public Order training for police officers expanded to prevent the unlawful arrest of journalists covering news events. There are frequent meetings.
- ▶ France: the [National plan for the maintenance of order \(SNMO\)](#) facilitates journalists reporting on protests. Press pass, or letter from employer, accepted as means of identification.
- ▶ Netherlands: Special protocols during protests and other incidents; journalists can contact the operational commander of the unit that polices a demonstration so the police know that media are present.

EXAMPLES OF NATIONAL PRACTICES (CONTINUED)

- ▶ Spain: standard protocols for conduct during protests and demonstrations “collaboration agreement with journalists unions and interior ministry - primary objective is to facilitate the work of media professionals, particularly during events or in locations where situations of risk or conflict may arise.”
- ▶ Croatia: [Cooperation Agreement](#) between the Republic of Croatia and the Ministry of the Interior affairs and the Croatian Journalists' Association and the Union of Croatian Journalists, covering police handling of incidents of violence against media and procedures and responsibilities to ensure safe media coverage of public gatherings
- ▶ Austria: [police protocols to facilitate journalists' work](#) during public events and police operations, while ensuring safety and maintaining order