The European Court of Human Rights (“the Court”) found the applicants’ claims under Article 10 of the Convention manifestly ill-founded and inadmissible, as the Lithuanian authorities had been justified in expelling them from the country because they had threatened its national security. The applicants, who were Russian journalists working for a state media company, went to Lithuania to interview the participants of a high-level political event being conducted on Russian topical issues. These participants included, among others, various political opposition activists from Russia. The applicants had no accreditation for the event, but still tried to gain access deceptively. On two separate occasions, they behaved aggressively with the participants despite being warned by the police. The Lithuanian authorities decided to expel them from the country and banned them from re-entering the country for one year. The appeals filed by the applicants were rejected by Lithuania’s domestic courts on reasonable grounds. These courts also noted that there had been no interference with the applicants’ freedom of expression. The Court also upheld the same. It noted that the expulsion and ban on re-entry had occurred because of the applicants’ provocative actions, and not on the basis of their opinions or dissemination of information. Further, the Court also emphasized upon the concept of responsible journalism, which includes the lawful conduct of a journalist. Since the journalists in this case breached the law, acted irresponsibly and threatened national security, hence the state was justified in expelling them from the country and banning their re-entry for one year.

Facts

The four applicants worked at the Federal State Unitary Enterprise “All- Russia State Television and Radio Broadcasting Company” in Russia. All four of them performed different functions- the first applicant (Pavel Zarubin) worked as a reporter, the second applicant (Alexander Makarov) worked as a sound operator, the third applicant (Andrey Melnikov) was a cameraman, while the fourth applicant (Alexey Kazakov) acted as a chief editor. (para. 2)

An event called the Vilnius Russia Forum (“the Forum”) was held in Lithuania in 2016, which discussed topical issues relating to Russia. Several political opposition activists from Russia also participated in this Forum. (para. 3) The applicants attempted to interview these participants without any accreditation for the Forum. It was reported that they caused a lot of disruption in trying to gain access to the Forum’s venues. Press interviews recorded the statements of the Head of the State Security Department (“the SSD”) and the Minister of Foreign Affairs in the following manner: "the applicants had engaged in ‘provocations’ and ‘hooliganism’ and they had sought to ‘psychologically terrorise’ the members of the Russian political opposition participating in the event.” (para. 5)

On 9 March 2016, the Migration Department under the Ministry of the Interior decided to expel the applicants from Lithuania under Article 126 § 1 (3) of the Law on the Legal Status of Aliens because their actions constituted a threat to national security. It was also decided that the applicants would be banned from re-entering Lithuania for one year under Article 133 § 3 of the same law. (para. 6)

Later, the applicants appealed against said decisions to the Vilnius Regional Administrative Court (“Vilnius Court”). A joint appeal was lodged by the first three applicants and a separate appeal was lodged by the fourth applicant, but the arguments presented by all of them was essentially the same. (para. 8) It was submitted by the applicants that “they had arrived at the Forum as journalists and had approached its participants in a polite and peaceful manner, but some of them along with the organisers had attacked the applicants and their equipment.” (para. 9) When they had tried interviewing a well-known Russian opposition political activist at a Vilnius hotel, the participants in the Forum had attempted to take away their microphones and video-cameras and call the police. The applicants submitted that the decisions of the Migration Department had not specified which of their actions had constituted a threat to national security, especially since they had not been suspected of any criminal activity.  They had all been subjected to the same decisions, without taking into account that their journalistic roles were different and that all of them had participated in all the events separately, and not together. Furthermore, since the Forum was based on Russian issues and the applicants had only tried to interview Russian public figures, it could not be said that the actions of the applicants at the Forum had threatened Lithuanian national security. The decisions had disproportionately affected their right to freedom of expression. Lastly, the applicants submitted that their right to a fair hearing had also been violated as the decisions were based on classified information to which they did not have access.

The applicants requested the court on different occasions to suspend the Migration Department’s decisions and apply interim measures so as to enable them to attend court hearings. (para. 12) Since the decisions of the Migration Department had been adopted without hearing them in person, the applicants requested for the right to be heard in court. However, these requests were denied by the Vilnius Regional Administrative Court and the Supreme Administrative Court. (para. 12) They held that the purpose of interim measures was to ensure the smooth execution of courts’ decisions and not parties’ procedural rights. Since the applicants were already represented by a lawyer practising in Lithuania and had access to case files and could submit requests or appeals electronically, the Courts found that none of the grounds for ordering interim measures provided for by law were present.

On 28 October 2016, the Vilnius Court dismissed the appeals of the first, second and third applicants. It noted that as per the information relayed by the SSD which was further substantiated by testimonies of police officers and official reports, the applicants had behaved violently at the Forum venues in Trakai and Vilnius. On 8 March 2016, they had deceived security staff to gain access to the venues, and had provoked confrontations with some participants and security guards. Despite being warned by the police, the very next day the applicants had provoked yet another conflict by filming the residents at a hotel in Vilnius where the participants had been staying.  The Vilnius Court, in its assessment of the threat posed to national security by the applicants, noted that, “according to partly declassified material provided by the SSD, the applicants belonged to ‘the President’s Pool’—a group of Russian journalists accredited to regularly cover the activities of the President of Russia and the top Russian government officials.” (para. 15) While some of the information relayed by the SSD had already been declassified, a complete declassification of such information would be injurious to public interest and national security. At the hearing, a representative of the SSD had already been interrogated, and he had confirmed that the remaining part of the classified information was accurate. (para. 16) Since the applicants had arrived in Lithuania together, they had a common purpose, worked for the same media company and had acted in a coordinated manner—hence, as a group, they posed a threat to national security. The Vilnius Court found that “in totality, their presence had constituted a real and evident threat to national security.” (para. 18) Lastly, the Vilnius Court also noted that the expulsion and entry ban on the applicants had not affected their rights under Article 10 of the Convention. This punishment was not imposed due to their propagation of ideas, but rather, due to their inciting actions that had threatened national security. The appeal of the fourth applicant was also dismissed on similar grounds by the Vilnius Court on 3 November 2016. (para. 20)

The applicants lodged another appeal to the Supreme Administrative Court (“Supreme Court”), submitting essentially the same arguments. On 21 March 2017, the Supreme Court dismissed the appeal of the first, second and third applicants. The Supreme Court drew a parallel with the Court’s decision in C.G. and Others v. Bulgaria, and noted that it was not required for Lithuanian domestic law to specify the exact grounds constituting threats to national security. (para. 22) In C.G. and Others v. Bulgaria, it was specified that the concept of “national security” is broad and threats under it cannot be defined in advance; hence, a large margin of appreciation is allowed to states to determine which actions may constitute a threat. Even Article 8 of the Convention does not require states to enact detailed legal provisions relating to the expulsion of an individual on national security grounds. Moreover, the expulsion of an alien was not a sanction under criminal law and the existence of a threat to national security did not have to be assessed in accordance with criminal law standards. Thus, “it was immaterial whether an individual in respect of whom an expulsion decision had been issued had been convicted of any criminal offence or whether his or her relevant actions were punishable under criminal law.” (para. 23) The Supreme Court observed that the applicants had arrived in Lithuania on an assignment to cover the Forum, but they had not obtained any accreditation for the event. They had deceptively gained access to the Forum’s venues by engaging in a tussle with the security guards. (para. 24) During the incident at the hotel on 9 March 2016, the applicants had not used professional video equipment but had been filming with a mobile phone. This demonstrated that the applicants’ real motive was to indulge in inciting actions, rather than simply obtaining information to prepare a video report. (para. 24)

The Supreme Court tried to view the applicants’ actions within the broader context. According to publicly available information provided by UNHCR and Human Rights Watch, the Russian state media was controlled by the Russian Government and often pressured to mirror the Government’s position. In addition, the SSD, in an assessment of threats to the national security of Lithuania that it had issued in 2016, had stated that “the Russian media [remained] a primary tool for disseminating the official position of the Russian Government and pro-Russian propaganda, aimed primarily at internal audiences, but also available in all the Baltic states”. Further, the Supreme Court indicated how another Russian television network had previously been suspended in Lithuania on the grounds of “incitement to war, discord and national hatred”, and the same owner of this television network also owned the network where the applicants worked. (para. 25) Taking all this into consideration, the Supreme Court decided that the applicants’ actions during the Forum were sufficient to constitute a threat to national security. This decision was primarily arrived at on the basis of publicly available information. Even though the classified information had been examined, it was considered only to the extent of supplementing the publicly available data, without having any “decisive and independent significance in this case.” (para. 26) Lastly, the Supreme Court noted that freedom of expression was not absolute and could be restricted to protect other important interests. Given the overall situation, the applicants’ rights had not been affected disproportionately; they had not been prevented from obtaining and disseminating information, or expressing their opinions in any way. (para. 27) The appeal lodged by the fourth applicant was also dismissed on similar grounds on 27 March 2017. (para. 28)

Decision Overview

Before delivering the decision, the Court took into account relevant Lithuanian domestic laws and practice. (paras. 29-36) Amongst them, the most important laws concerned Articles 126 § 1 (3) and 140 § 5 of the Law on the Legal Status of Aliens. According to the former provision, “an alien has to be expelled from Lithuania if his or her presence constitutes a threat to national security or public order.” (para. 29) According to Article 140 § 5, “classified information could be used as evidence when examining administrative cases concerning the expulsion of aliens on the grounds of national security.” (para. 35) The Court also took into account relevant international and European material concerning media responsibility, ethics of journalists, and evidence pertaining to Russian disinformation and propaganda warfare. (paras. 37-40)

The Second Section of the Court delivered the judgment. The main issue before the Court was whether the applicant’s right to freedom of expression under Article 10 of the Convention had been violated.

The applicants complained that their expulsion and one-year entry ban had been imposed on them due to their journalistic activities. Their actions concerning the Forum were within the acceptable limits of journalistic activity, which had not threatened the national security of Lithuania in any way. (para. 50) Thus, by seeking to punish them, the state had breached their freedom of expression under Article 10 of the Convention. Further, they also submitted that they had not been heard in person either by the Migration Department or the Lithuanian Courts, and the decisions had been delivered on the basis of classified information to which they had no access. This had breached their rights under Article 6 § 1 of the Convention.

The Court noted that given the facts of the case, it was doubtful whether Article 10 of the Convention could be applied. The applicants had been expelled from Lithuania due to their aggressive and provocative actions during a high-level political event (which had also been established by the domestic courts), and not on the basis of their opinions, statements or publications. Thus, the Court found that the present complaint was inadmissible under Article 10 of the Convention. (para. 51)

Nevertheless, the Court proceeded on the assumption that the expulsion and ban on the applicants’ re-entry interfered with their freedom of expression. It was observed that these measures were prescribed by law and in the interests of national security. Hence, it had to be seen whether the interference was necessary in a democratic society.

The Court made the same observations as the domestic courts had: “that the applicants had arrived in Lithuania to gather information about the participants of the Forum, that they had gained access deceptively and without any accreditation for the Forum, that they had behaved aggressively and provocatively at this high-level political event and that they had provoked further confrontation despite repeated warnings.” (para. 53) All this had led Lithuanian authorities to believe that the applicants posed a threat to their national security. The Court specifically noted that defining national security lies within the exclusive sphere of state sovereignty, with which the Court could not interfere. However, when there is an interference with rights under Article 10 of the Convention, it is within the purview of the Court to examine the fairness of proceedings that could have resulted in such interference. (para. 54)

The Court found that in keeping with Lithuanian law, the domestic courts had full access to the classified information and were therefore able to exercise their power of scrutiny. Furthermore, the domestic courts had also affirmed that “this classified information had not been of decisive value in the proceedings and that it had been corroborated by publicly available data, such as the statements of the police officers who had been present during the events in question and public documents relating to the general context surrounding the Russian media.” (para. 55) As far as proportionality was concerned, the applicants were not prohibited from making any statements or disseminating information about the Forum. Hence, the Court was satisfied with the decisions of the domestic courts.

The Court remarked that the protection afforded by Article 10 of the Convention is subject to the proviso that journalists act in good faith. (para. 58) They should strive to provide accurate and reliable information. The concept of responsible journalism also embraces the lawfulness of the conduct of a journalist and if a journalist has breached a law, then that is a relevant factor in determining whether he/she acted responsibly (Bédat v. Switzerland). Given the facts of the case, the journalists did not act responsibly and the domestic courts were correct in expelling them from the country and banning their re-entry for one year. This was necessary in the interests of national security, and proportionate to the legitimate aim pursued. Hence, the Court found the complaint of the applicants to be “manifestly ill-founded” under Article 10, and thus declared it to be inadmissible in keeping with Article 35 §§ 3 and 4 of the Convention. (para. 60)

On the issue of breach of the applicants’ rights under Article 6 § 1 of the Convention, the Court concluded that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant’s civil rights or obligations or of a criminal charge against him/her, as far as this provision is concerned. Hence, the applicants’ complaint was incompatible ratione materiae with the provisions of the Convention or the Protocols thereto. Thus, this complaint was also declared inadmissible by the Court.

Complaints under certain other provisions of the Convention too were declared inadmissible by the Court. Hence, the Court unanimously joined the applications of all four applicants and declared them to be inadmissible by a majority.