**Summary and Outcome**

The Chamber of the European Court of Human Rights (“ECtHR”) in a majority judgment (6 to 1) found a violation of freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) due to the removal of the applicant (an election observer) from the polling station. The court reasoned that the domestic authorities did not give sufficient reasons why the applicant’s alleged filming of the polling station put pressures on the members of the election commission in such a manner that the applicant had to be removed from the station.

**Facts**

The applicant was an election observer delegated by a political party for the Russian legislative elections. He was present during the voting day at one of the polling stations in Moscow. The precinct electoral commission (“PEC”) issued Rules stipulating “that observer could film the electoral process if they so wished” Yet, “[f]ilming had to be carried out continuously, and filming the officials’ faces without their written consent was forbidden, as was commenting on the events while filming” [para. 6]. The applicant signed on the Rules, but wrote “disagree” next to the signature.

Since the applicant was filming the poll and the counting process, the PEC decided that he had violated the Rules because he was filming without the PEC members’ consent and, thus, he had put pressure on them. The police officer escorted the applicant out of the station. The applicant claimed that he was filming the electoral fraud that was taking place, something that was also reported by the other bystanders later. He had also posted the video on his YouTube channel.

The applicant unsuccessfully challenged the PEC decision before domestic courts. The courts ruled that the decision of the applicant’s removal was lawful since he was filming contrary to the Rules and he put a pressure on the PEC members by such filming. The applicant lodged the application before the ECtHR.

**Decision Overview**

The ECtHR had to decide if Russia had violated the applicant’s freedom of expression (Article 10) and the right to free elections (Article 3 of Protocol No. 1.). The claim about the latter rights was unsubstantiated since the case was not about the applicant’s rights related to election, such as the right to vote, or the right to candidature in elections(*Mugemangango v. Belgium* [GC], no. 310/15, §§ 68-69, 10 July 2020, and *Riza and Others v. Bulgaria*, nos. 48555/10 and 48377/10, §§ 136-41, 13 October 2015). Thus, the court declared this part of the application inadmissible.

The government argued that there had been no breach of his rights as an election observer; to the contrary, he was given additional rights of filming. Despite being aware of and consenting to the rules of filming, he had still violated them, thus making the restrictions lawful and necessary in a democratic society to avoid the pressure he was exerting on the PEC. For this, the government relied on the wide margin of appreciation available to the State under the Convention.

On the other hand, the applicant contested that his removal from the polling station was unlawful because the Rules interfered with his rights under the Electoral Rights Act, and were an attempt to shroud the electoral fraud that was taking place. The reason of “putting pressure on PEC” which was given by the PEC was not present in the Electoral Rights Act, and thus had shaky grounds that undermined public trust in elections

Regarding Article 10, the court firstly had to decide if the case falls under the scope of this article ratione materiae. Majority of judges answered affirmatively since the observation of the election process and gathering the necessary information “served the important public interest in free and transparent elections”. Such information was supposed to be conveyed to the public, and, thus, the applicant’s activities in this case could be regarded as the emanation of freedom of expression, especially his role of a “public watchdog”, similar to the role of journalists. This protection also extended to bloggers, authors of literature, academic researchers, users of social media etc (*Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 166-68, 8 November 2016). Since the applicant was an election observer conveying relevant information to the public and ensuring free and fair elections, his role as a “public watchdog” was protected under Art. 10 of the Convention.

The applicant was precluded from collecting and disseminating first-hand information about the electoral process, Thus, the ECtHR opined that the state did interfere with the applicant’s right, but had doubts if the interference was prescribed by law. Namely, the court was not able to see “what the statutory basis for the PEC’s competence to lay down rules was” [para. 32], since it was a “low-level electoral authority”. Nevertheless, the court did not delve further into the legality part of the tripartite test, but continued with the examination if the interference was necessary in a democratic society.

While election observers play crucial role for a fair election and enjoy enhanced protection under Article 10 of the Convention, their role comes with duties and responsibilities. Hence, the court needed to examine “whether the reasons adduced by the authorities were ‘relevant and sufficient’ to justify the applicant’s removal from the polling station” (Bédat v. Switzerland [GC], no. 56925/08, § 48, 29 March 2016 ) [para. 35]. This stems from “necessary” being interpreted as a “pressing social need”.

The PEC did not elaborate in details its decision. Such description was needed for “maintaining a clear audit trail, which is an important guarantee against arbitrariness and a necessary precondition for the thorough examination of a case” [para. 37]. Such obscurity was not remedied by the municipal courts since they failed to provide reasons for their conclusion that the applicant’s filming did negatively affect the PEC’s work. Even if his filming was disruptive, “it was not determined whether it was so serious that it could justify the observer’s removal from the polling station, thus depriving him of any possibility to observe the process during the crucial vote-counting stage” [para. 38]. Finally, the ECtHR noted that the domestic courts did not even consider whether the ban on filming could serve the purpose of protecting the work of PEC, instead of removing the applicant from the site. Thus, there was a violation of the right under ECHR Article 10. The applicant was awarded with EUR 2,000 for non-pecuniary damages.

Judge Lobov dissented. His opinion was based on several arguments. Firstly, in regard to the admissibility, he opined that the applicant did not raise the issue of freedom of expression before the domestic courts. His sole argument was about his rights as an electoral observer, which is why Russian courts did not elaborate their judgments in details concerning this right or the proportionality of the restriction. Secondly, electoral observers cannot be equated with journalists, reasoned judge Lobov. The observers’ primary role is “not to broadcast the events through video channels“, but to flag off violations of the process[para. 5 of the dissenting opinion]. Many CoE Member States explicitly ban the filming of polling stations, reasoned the judge. Thirdly and finally, the majority did not discuss enough the effect of the applicant’s behavior (making a video) on private interests (the privacy of the PEC members) or public interests (an environment in which officials can perform their tasks without harassment). There was no justification for filming the officials’ faces and why it was required for responsible reporting or his duties as an observer.