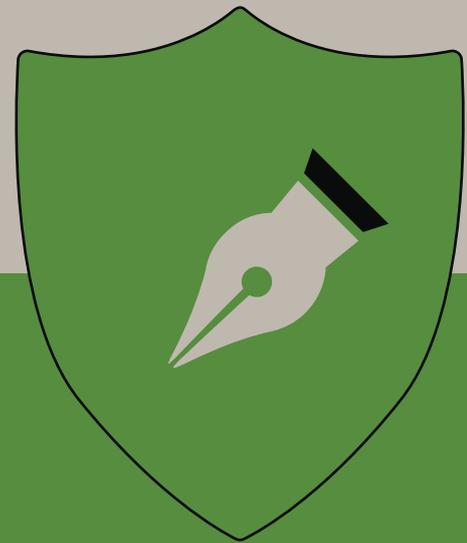


JOURNALISTS AND MEDIA WORKERS SAFETY



REALITY OR CONTINUOUS THREAT

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INTRODUCTION

Free media are essential for the functioning of a democratic society. This means that journalists and media workers do their job without risk and fear of pressure, threats, blackmail, or violence, but also to be adequately protected from such problematic phenomena.

The Preamble to the Council of Europe Recommendation 2016 CM / Rec (2016) 4 states that journalists and other media actors are increasingly threatened, harassed, monitored, intimidated, arbitrarily deprived of their liberty, physically assaulted, tortured, and even killed for their investigative work, opinions, or reporting, especially when they focus on the abuse of power, corruption, human rights abuses, criminal activity, terrorism, and fundamentalism¹.

Pressures and threats against journalists and media workers are of various kinds, including physical, psychological, economic, etc. They come from a wide range of actors, including various centres of power, including politicians, businessmen, public figures, hostile interlocutors, social media activists, Internet trolls, and more.

The reality in the Republic of North Macedonia confirms that such phenomena continue to exist continuously, and in the Association of Journalists of Macedonia (AJM) Register in the period from 2018 to 2020 were registered a total of 21 attacks on journalists and media workers, which include physical threats, verbal threats, harassment, threats to life, as well as threats to the media and journalistic organizations². These are attacks of a more serious nature and are noted in accordance with the methodology for registering attacks on media and journalists, which AJM harmonized with six associations of journalists in 2017. Other attacks and violations of the rights of journalists and media workers, for which AJM reacted publicly in this period are in greater numbers, especially if it is assumed that other pressures and/or attacks are not reported at all.

Such phenomena affect the work of journalists and media workers, the choice of topics they will cover, as well as the way they will inform about them. Attacks on journalists or media workers may have a deterrent effect on others, especially when perpetrators act with impunity³. Although the number of physical attacks

1 Council of Europe, Recommendation CM / Rec (2016) 4 of the Committee of Ministers to member states on the protection of journalism and the safety of journalists and other media actors, available at: https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2016-4-of-the-committee-of-ministers-to-member-states-on-the-protection-of-journalism-and-safety-of-journalists accessed on 24.01.2022

2 Spirovski, M., Todorovska - Kostovska, V. (2020), Indicators of the degree of media freedom and safety of journalists in 2020, Skopje, Association of Journalists of Macedonia

3 European Union Agency for Fundamental Rights (2016), Violence, threats and pressures against journalists and other media actors in the EU, Vienna, available at: <https://fra.europa.eu/en/publication/2016/violence-threats-and-pressures-against-journalists-and-other-media-actors-european>, accessed on 22.01.2022.

is decreased, it is worrying the fact that there are increased threats to the lives of journalists on social networks. In addition, cases of gender discrimination are registered.

AJM continuously demands from the institutions of the system to guarantee the safety of journalists and media workers, and from the Public Prosecutor's Office (PPO) to act actively in the prosecution of those who threaten and violate their rights.

Two serious incidents in the Republic of North Macedonia that directly affect and endanger the rule of law and freedom of expression – December 24, 2012, or the so-called “Black Monday” and April 27, 2017, the so-called “Bloody Thursday.” The peculiarity for these two events is that they took place in the Assembly, a place where freedom of expression should be a supreme feature of democracy.

“Black Monday” was a violation of the freedom to receive and disseminate information under the guise of “journalists’ safety”, while “Bloody Thursday” was a violation of the journalists’ safety, as part of freedom of expression, for one and only one purpose - failure to take preventive security measures by the state to protect the safety of all present in the Assembly, including journalists, along with media workers (camera operators, photo reporters) who were present at the event.

“Bloody Thursday” is perhaps the most serious violation of freedom of expression in the country, and in addition to the stress and fear of journalists and media workers for their lives, there were also journalists who suffered physical injuries.

Five years after this incident, the question arises again how much the institutions of the system have contributed to improving the safety of journalists and media workers and what are the consequences of impunity for such problematic phenomena. In an attempt to answer these questions, qualitative interviews were conducted with five journalists and media workers whose security was directly affected by the intrusion in the Assembly, as well as with six domestic and international media experts (AJM, MIM, SSNM, Resis, UNESCO, Alliance of Independent Press Councils of Europe (AIPCE)). At the same time, the purpose of this analysis is to determine how the legal framework and key systemic gaps have affected the security and protection of journalists and media workers and freedom of expression and media freedom in general. For that purpose, two court rulings were analysed, one of which is final, and the other on appeal, the Law on Obligations and the European Convention on Human Rights, as well as decisions of the European Court of Human Rights.

The review of the case of the intrusion in the Assembly in 2017 provides an overview of the implications of the attacks on journalists and media workers, both on themselves and the quality of their work. In parallel with the analysis of the legislation and its (inconsistency) in addressing such phenomena by the Basic Civil Court Skopje and the Skopje Court of Appeals, the consequences regarding the protection of freedom of expression are also analysed. This analysis follows the path of journalists in the judicial system for the protection of their rights, the conclusions of the criminal prosecution bodies and the civil courts.

Initially, some of the journalists started giving statements as damaged before the Basic Public Prosecutor's Office Skopje (BPPO), which was initially in charge of investigating for "Bloody Thursday". The purpose was for the journalists to give statements about their views on the events in the Assembly and possible recognition of the people from the crowd that "violently" stormed the Parliament. Following the takeover of the case by the Public Prosecutor's Office for Organized Crime and Corruption, the need to hear journalists as victims ceased. There is no answer to this day why this happened, but the journalists played a significant role in providing evidence to the Prosecution to prosecute those perpetrators who were known, but unfortunately, in those proceedings, the journalists involved could not appear as victims. This is so due to the simple reason that those crimes, especially the crime of terrorist endangerment of the constitutional order are a crime against the state, i.e., the object of protection is the state and its institutions, so consequently, any journalists who have suffered some damage (physical or mental) cannot be compensated in the proceedings, but the prosecution should open an investigation and find the perpetrators of the crimes against the journalists. Unfortunately, such a case has not been opened yet, and even after a conversation with the journalists concerned, they have not been called to the prosecutor's office to give any statement, to find the perpetrators.

The other alternative for the journalists was to file a civil lawsuit before the Basic Civil Court Skopje, with which they will seek compensation for non-pecuniary damage for fear and violation of freedom of expression in terms of safety of journalists, which will be analysed below as separate legal basis.

Five journalists and two media associates filed lawsuits before the Basic Civil Court Skopje, for compensation for fear suffered and violation of freedom of expression (journalists' safety).

The lawsuits were filed, at the initiative and the support from the Association of Journalists of Macedonia (AJM), where through a public call were called

those journalists who were in the Assembly on April 27, 2017, individually to protect their rights before the Basic Civil Court Skopje, because the Basic Public Prosecutor's Office in Skopje did not take any action to protect the journalists, and especially those who were attacked in the Assembly.

The current situation as of March 2022 is four active lawsuits, one final case where the plaintiff's lawsuit was rejected as unfounded, and a procedure is underway before the Constitutional Court of the Republic of North Macedonia. Out of the four active lawsuits, three are on appeal before the Skopje Court of Appeals, and one is in the process of being heard by parties.



**CONSEQUENCES
OF ATTACKS AND
PRESSURE ON
JOURNALISTS AND
MEDIA WORKERS**

2.1 Concerns about personal safety and impact on the emotional state

“In our country, there has always been the pressure of journalists of different types. Sometimes they are brutal and direct, sometimes they are subtle, manipulative. This profession is one of the most vulnerable to threats and pressure from many parties”.⁴

Physical attacks and pressure on journalists and media workers cause great concern for their lives and safety at work. The interviewed interlocutors assess as the most serious attack in their professional career exactly what happened in the Assembly on April 27, 2017. “It all happened in an institution that was supposed to be the guardian of democracy”⁵. The psychological effects of attacks and threats are also strong. The consequences of this are often fear and insecurity in doing the job.

“My right to freedom of expression and information and security during those three and a half hours while I was locked in the press centre of the Parliament was seriously hindered. I also suffered physical injuries, too many insults, provocations and humiliation.”⁶ “Usually I’m not afraid of anything, but April 27 was very stressful, scary, there were detonations, shock bombs, loud noises were heard”⁷.

Online harassment also has a deterrent effect. “The attackers or those who are putting pressure send a message to all journalists, not only to their victims ... Keep in mind that most of the killings of journalists started with attacks, threats and pressure”⁸.

Online harassment, threats and harassment are thought to be more common in women. “Data in the last few years show that female journalists and media workers are more exposed to attacks and threats, especially through social networks.

4 Interview with Biljana Petkovska, Director of the Macedonian Media Institute, conducted on 10.02.2022

5 Interview with Natasha Stojanovska, journalist, conducted on 09.02.2022

6 Interview with Dushica Mrgja, journalist, conducted on 02.02.2022

7 Interview with Ivan Popovikj, Camera operator, conducted on 05.02.2022

8 Interview with Adeline Hulin, UNESCO, conducted on 08.02.2022

First, female journalists are more represented in the media. Journalism is slowly growing into a so-called ‘female’ profession, and by that, there are several attacks on them. Of course, there are other reasons that we should discover and work to stop these attacks, insults and the like”⁹.

Female journalists often suffer insults and humiliation when reporting on sensitive topics. “Qualifications are used that refer only to women, in a pejorative sense, based on prejudices and gender stereotypes. A phenomenon that indirectly affects their professional future and their private life”¹⁰.

At the event on April 27, 2017, the attacked journalists also pointed out the insults based on gender. “Our fellow journalists received only blows and curses, while we, female journalists received blows and insults on sexist and gender grounds, as well as vulgarities. Female journalists are always more susceptible to this type of sexist and vulgar attacks on social networks and in the field. In terms of physical attacks, I would not make a difference. If someone decides to attack a journalist, he will attack him, whether he is a man or a woman”¹¹.

Although there are no accurate statistics on whether female journalists and media workers are more exposed to attacks, pressure, harassment and blackmail, “it seems that our environment is still such that female journalists can suffer greater insults than their colleagues only because they are women”¹².

Comments and/or messages rarely criticize their professional result, as opposed to physical appearance, private life, etc. “They probably feel more courage to turn to us, and that causes us a problem in functioning and professionalism The problem is that no one condemns such events, nor is there a reaction from the institutions”¹³. However, the interviewed journalists believe that we should react more often and seek a solution to such problems, because online violence is also violence, and it is only a matter of time before those messages could be turned into a real attack. “The harassers are sending a message to all journalists, not just their victims”¹⁴.

9 Interview with Darko Duridanski, Independent Trade Union of Journalists of Macedonia, conducted on 08.02.2022

10 Interview with Milan Spirovski, AJM, conducted on 09.02.2022

11 Interview with Dushica Mrgja, journalist, conducted on 02.02.2022

12 Interview with Snezana Trpevska, media expert, conducted on 08.02.2022

13 Interview with Natasha Stojanovska, journalist, conducted on 09.02. 2022

14 Interview with Adeline Hulin, UNESCO, conducted on 08.02.2022

2.2 Impact on the quality of work and media productive operation

Fear of attacks, pressure and threats affect the quality of reporting, and cause distrust in journalism as a profession and media work in general. “The fear caused by the threats and attacks themselves contributes to the journalists and media workers withdrawing in situations when this should not be the case, not investigating a certain topic or not starting to be interested and dealing with certain anomalies in the country”¹⁵.

However, some of the interlocutors say that even such events do not prevent them from continuing to do their job professionally. “It’s more of a challenge for me. They do not stop me. To be more professional, more direct, more open and to say things in detail as they are ... the louder and more professional I am, the more the citizens perceive things as they are in this political swamp”¹⁶.

Whether it is threats and attacks or pressure, this is an extremely serious problem with wider consequences. “They are a serious problem for the journalist’s desire to remain in the profession and the motive and the freedom to research and write critically and without fear about how politicians work or about the occurrence of corruption or crime”¹⁷. When we add to this the fact that journalists are under greater pressure, including from management, as well as owners and politicians, the consequences are even greater. Journalists refrain from speaking openly about these phenomena and rarely report when their fundamental rights are violated. Although it is estimated that journalists in the newsrooms generally have more freedom, there are still many influences on daily work that are not so visible, i.e., there is more self-censorship than direct pressure¹⁸. “Only a freelance journalist who works without pressure, attacks and threats, can work profession-

15 Interview with Darko Duridanski, Independent Trade Union of Journalists of Macedonia, conducted on 08.02.2022

16 Interview with Dushica Mrgja, journalist, conducted on 02.02.2022

17 Interview with Snezana Trpevska, media expert, conducted on 08.02.2022

18 Spirovski, M., Todorovska - Kostovska, V. (2020), Indicators of the degree of media freedom and safety of journalists in 2020, Skopje, Association of Journalists of Macedonia

ally and with quality. It is impossible to expect commitment, enthusiasm and quality if you do not have complete freedom as a journalist”¹⁹.

“In some situations, in advance, before a show, especially if the president of a political party is a guest, we know that the threats will be much greater and at the very beginning you try to be more careful, which can turn into a form of self-censorship ... When I conduct an interview, normally, I will not lead myself in a position to do it unprofessionally, but any critical question that I know will not be appropriate and will be criticized in various ways and I will be lynched on social media”²⁰.

The consequences are also felt concerning the overall operation of the media. “If we consider the low-quality product as part of the overall work of the media, we can consider that in the end they contribute to the worse financial performance of the media, and thus to a worse financial, i.e., socio-economic situation of media workers”²¹.

2.3 The institutions’ response – there is no justice for “April 27”

AJM and the Independent Trade Union of Journalists and Media Workers (SSNM) continuously ask the institutions seriously and effectively to investigate all attacks on journalists and media workers and to punish the responsible people. Without such a responsible attitude of the institutions, the attacks will continue and will become more aggressive, and this may jeopardize the journalists’ lives²². “In the context of the April 27 incidents, the state made no effort to bring justice for journalists and media workers who were subject to attacks and threats. On the contrary, journalists and media workers were con-

19 Interview with Biljana Petkovska, Director of the Macedonian Media Institute, conducted on 10.02.2022

20 Interview with Natasha Stojanovska, journalist, conducted on 09.02.2022

21 Interview with Darko Duridanski, Independent Trade Union of Journalists of Macedonia, conducted on 08.02.2022

22 Association of Journalists of Macedonia, “AJM and SSNM: Selective justice for April 27 is an injustice for citizens and journalists”, 02.11.2021, available at: <https://znm.org.mk/зnm-и-сснм-селективната-правда-за-27ми-а/>, accessed on 01.02.2022

strained by the state to seek justice on their own before the courts with private lawsuits against the perpetrators and thugs at those events”²³.

The attitude of the institutions towards this problem is also condemned by other journalistic and media organizations. “The state has not protected journalists at all and has not provided them with justice. The concerned journalists were exposed to life-threatening and psychological trauma that is difficult to overcome”²⁴.

Most of the criticism related to the April 27 case is that the judiciary had a different yardstick and assessment of the situation, compared to others who were attacked in Assembly. “Attacks on journalists and media workers while on duty, especially if it is the legislature house, where the state and its institutions should create safe working conditions must be punished, i.e., in our case we believe that these attacks on media workers should have been assessed different as well as the disruption of their work”²⁵.

Although the state and the current government have promised justice for the events, journalists and the professional media community believe that this is not the case. “Loudly and unequivocally - there was none. The shameful Law on Selective Amnesty on the part of those responsible for April 27 (I refer to the amnestied MPs) was the first blow to justice. We experienced absurd situations in the courts that we consciously endangered our safety, because we did not wear helmets, or deny that some of us are not our colleagues at all. This is, literally, only the last blow as a consequence of the shameful irresponsibility and injustice for the journalists ... it is absurd and shameful to dispute our right to be journalists, that we have suffered fear, shock, trauma, although there are reports, expertise from court experts that some of us had no injuries, and those who had physical injuries should have worn a helmet”²⁶.

The journalists react sharply to the fact that the Public Prosecutor only initiated proceedings against the attacked politicians in the Assembly, and they were forced to lead private civil disputes. “It is a shame for the whole country, the judiciary, but also for the politicians who literally, seems their reactions and support to disappeared

23 Interview with Milan Spirovski, AJM, conducted on 09.02.2022

24 Interview with Biljana Petkovska, Director of the Macedonian Media Institute, conducted on 10.02.2022

25 Interview with Darko Duridanski, Independent Trade Union of Journalists of Macedonia, conducted on 08.02.2022

26 Interview with Dushica Mrgja, journalist, conducted on 02.02.2022

after proceedings were initiated against them. And we were called as witnesses in the Public Prosecutor's Office and the disputes are lost again"²⁷.

The concerned journalists react that even though on April 27, 2017, they faced serious threats to their lives, they still did not stop doing their job professionally. "We, several journalists, were literally on the verge of losing our lives. Locked in a room where I did not know what could happen to me, but I did not stop 'streaming' for the public ... Although then we were protecting the interests of the state, I do not see that the state stood behind what happened to us ... The state made enough effort so that there was no justice for the journalists, the opposite of what was needed"²⁸.

The prevailing view is that it is the impunity of attacks on journalists and media workers that causes incidents of this kind or increases the risk of them.

27 Interview with Natasha Stojanovska, journalist, conducted on 09.02.2022

28 Ibid



**THE MEDIA DO NOT
COVER THE TOPIC
IN-DEPTH AND
THE PUBLIC IS
INSUFFICIENTLY
INFORMED**

The common impression of the interviewed interlocutors is that the media in the country do not inform sufficiently and irregularly about the security problems and the pressures on journalists and media workers. Hence, the public is insufficiently aware of these problems.

“I think that the general public has a negative opinion of journalism as a profession and in that context, we can see threats and attacks on journalists. If the public thinks that journalists are generally unprofessional, then it is very likely that they will not be concerned or interested in the safety of journalists”²⁹. Hence, the problems faced by journalists and media workers are not known. “A lot of things happen to people during the day that affects them more than what affects us as a group”³⁰.

“Many times, when I was on the field, I told people that it was the same as when someone came to their workplace and verbally threatened them. I do my job, I record, they attack me verbally or physically, they do not understand what they are doing by that, they do not understand our profession, they act aggressively...”³¹.

AJM continuously responds to the challenges and problems related to these issues, and “in cooperation with domestic and international partners works on research, comparative analysis and prepares publications in the public interest, i.e., informing citizens about these problems”³². AJM analyses are continuously included in the reports for the European Commission. More specifically, based on AJM data, the 2021 report states³³ that two physical attacks and 12 different forms of verbal threats to life and intimidation were reported.

Even when these problems are reported in the media, their essence is rarely pointed out. It is usually informed about the anniversary of an event, a lawsuit filed, AJM and other media associations press conference, if there is a significant incident or if the attacking team. “Usually, we solve the problems of others, but not our own ... We always go with something the more important and influential issue of civic interest. We put ourselves on the sidelines of reporting. I think that the

29 Interview with Snezana Trpevska, media expert, conducted on 08.02.2022

30 Interview with Natasha Stojanovska, journalist, conducted on 09.02.2022

31 Interview with Ivan Popovikj, Camera operator, conducted on 05.02.2022

32 Interview with Milan Spirovski, AJM, conducted on 09.02.2022

33 European Commission (2021) Report on the Republic of North Macedonia, available at: https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en, accessed on 25.01.2022

citizens are not fully aware of what happened on the darkest day of Macedonian democracy and what we, journalists survived. As if we are second-class citizens, and as such we are treated in court rulings”³⁴.

The interlocutors believe that the focus in media coverage is mainly on politics and other topics that attract the audience, while the situation with the safety and protection of journalists is not considered a very attractive topic. “As if there is an unwritten rule not to write about other journalists and media”³⁵.

Some of the media workers believe that “the reasons for this treatment of the topics by the newsrooms are often the economic interest of the media owners”³⁶.

Apart from the fact that the media should pay more attention to these topics, they also need internal protocols, documents, training and information for the employees, which will help them to behave appropriately when reporting risky events or to deal with attacks, threats, harassment, whether they are online or not. “It is much more important for the media, journalists and media workers to try to do their job as objectively as possible and to try to get closer to the citizens to remove the rumour that all media are not good and are representatives of everything, which is negative and bad in society”³⁷.

Solidarity between journalists and media workers when it comes to protection against attacks is assessed at a satisfactory level. “According to my experience so far, there has been no situation where we did not protect ourselves or someone is left behind and others run away”³⁸.

“The more united and solidary the field is and the more professional and stronger in its ranks is, it will be stronger before all pressures and blows from politicians, business powerful people, and even those who give themselves the right to attack the profession because an attack on a journalist is an attack on the whole fella”³⁹.

34 Interview with Dushica Mrgja, journalist, conducted on 02.02.2022

35 Interview with Snezana Trpevska, media expert, conducted on 08.02.2022

36 Interview with Trajche Ilievski, conducted on 03.02.2022

37 Interview with Darko Duridanski, Independent Trade Union of Journalists of Macedonia, conducted on 08.02.2022

38 Interview with Trajche Ilievski, conducted on 03.02.2022

39 Interview with Dushica Mrgja, journalist, conducted on 02.02.2022



**THE STAKEHOLDERS
ARE UNANIMOUS:
PRACTICE REQUIRES
LAW ENFORCEMENT**

Interviewees believe that there is always room for improvement of legislation, but as they say “The Republic of North Macedonia is known as one of the countries with good laws, but they are not implemented in practice. That is one of the remarks we constantly receive in every field”⁴⁰

AJM believes that the Criminal Code should be amended to have systemic guarantees related to the safety of journalists. AJM has been working on this issue together with SSNM for several years. In addition, AJM is continuously seeking specialized units in the Criminal Court and the Prosecutor’s Office to increase efficiency in protecting the rights of journalists. Implementing systemic reforms in the media sector in the context of amendments to the Criminal Code, which provides systematic protection of journalists in case of violation of their rights, as well as the Law on Civil Liability against Defamation and Insult, which reduces non-pecuniary damage for journalists as early as July 2021, were entered into the parliamentary procedure and are expected to be adopted during 2022.

One of the problems with this law is that attacks on journalists and media workers are not prosecuted and they are almost always directed to seek justice in court themselves, by filing criminal charges. Or it is considered that the case is stalled in the Prosecutor’s Office. “Therefore, we believe that with the final adoption of the amendments to the Criminal Code, which would consider an attack on a journalist or media worker as an attack on an official, would change significant things in this area.”⁴¹ The professional media community believes that the adoption of this legal solution will be a serious step forward in reducing the impunity of attacks on journalists and media workers.

Some journalists are restrained and think that the idea with the new legal changes will change the situation, but it remains to be seen how it will work. “Again, the change will have to come directly from the parties. As the source of the problems is there, there is no other. Everything is politically motivated. Even the threats are”⁴².

40 Interview with Dushica Mrgja, journalist, conducted on 02.02.2022

41 Interview with Darko Duridanski, Independent Trade Union of Journalists of Macedonia, conducted on 08.02.2022

42 Interview with Natasha Stojanovska, journalist, conducted on 09.02.2022

5

**ANALYSIS OF THE
CIVIL-COURT CASE FOR
“BLOODY THURSDAY”**

We are providing a small overview of the factual situation, to clarify certain legal dilemmas which will be analysed further below.

The journalists, on the critical day of April 27, 2017, arrived to report on the developments regarding the election of a new parliamentary majority and President of the Assembly of the Republic of North Macedonia. At the same time, there was a public gathering in front of the Assembly, which was attended by a large number of people, dissatisfied with the political situation, something that was common at that time.

It is also common knowledge that at one point in the Assembly Plenary Hall, there was tension between MPs, which resulted in the adoption of a new parliamentary majority and the election of a new President of the Assembly. After the tense atmosphere, the present MPs and the journalists headed to the press conference hall. During the speech of Zoran Zaev, the MP at that time, on the TV screens placed in the press centre, the public gathering in front of the Parliament was broadcast live. At one point, it was clear that the mob was becoming violent and that there were not enough police officers to guard the Assembly building. At one point, the mob has overcome the obstacles placed in the yard of the Assembly and headed to the front door, which was secured by a corridor of several police officers. Despite this event, the press conference in the Parliament continued and no one believed that the crowd would be allowed to enter the Assembly. At one point, the doors of the Assembly were opened from the inside by MP Krsto Mukovski, and the mob began to enter the Assembly.

All this was broadcast live through several media outlets. At that moment, the journalists present had a feeling of disbelief that the police officers and the Assembly security had allowed, i.e., done nothing to prevent the entry into the Assembly building. The crowd quickly dispersed and arrived at the press room shortly after. Although attempts were made to prevent the mob from entering the press room, they were unsuccessful, with the mob forcibly opening the door and throwing objects at everyone present in the press room, including journalists.

Almost all journalists who found themselves at the scene or wanted to leave were asked by the mob that stormed the Assembly at which media they are employed and that if they are not from the media of their choice, they will be attacked. In short, they were exposed to torture. Some of the journalists were also recognized by the crowd, and as a result, were physically and mentally abused, their microphones confiscated, and even locked in the other rooms.

One journalist, against his will, was placed as a human shield in front of the MPs who were attacked.

What makes the situation worse is the fact that the journalists were taken out of the Assembly more than three hours after the event, and some even longer.

All this results in consequences for the psycho-physical health of the journalists, from a calm state of reporting, they suddenly find themselves in a situation where they do not know whether they will be harassed, beaten or even deprived of life. All this is a result of the failure of the state to take preventive actions in terms of appointing a sufficient number of police officers to secure the Assembly as the highest state body.

As a result of the events of that day, the journalists experienced stress with strong intensity and fear, followed by a prolonged reaction of mental pain.

As a reminder, the notorious fact is that during that period there were several public gatherings and demonstrations, and during the peaceful protests the state used equipment and forced the crowd to flee, in order not to harm the Assembly or enter it. But on this day, April 27, 2017, is the day when the state did not take the necessary preventive measures for protection, for which the Basic Criminal Court passed a verdict finding several people guilty of the crime of terrorist endangerment of the constitutional order, including holders of public functions as organizers of this event.

As mentioned above, five journalists and two media associates filed lawsuits before the Basic Civil Court Skopje. The lawsuits were based on two grounds: compensation for non-pecuniary damage caused - fear suffered and compensation for non-pecuniary damage for violation of freedom of expression from the aspect of journalists' safety. Although the factual situation is the same on both grounds, in the following text we will elaborate on the legal grounds due to the legal dilemmas arising from the Law on Obligations and the European Convention on Human Rights of the Council of Europe regarding the safety of journalists as part of the freedom of expression.

5.1 Final Judgment XMALVP-705/20 of the Basic Civil Court Skopje

5.1.1. Analysis for the compensation for non-pecuniary damage for fear suffered

In the Law on Obligations (hereinafter LO), section 6 entitled “Special cases of liability” there is an article 166 entitled: Liability for terrorist acts, public demonstrations or manifestations, which reads

(1) The state shall be liable for damage caused by death, bodily injury or damage, i.e., destruction of the property of a natural or legal person, due to acts of violence or terror, as well as during public demonstrations and manifestations, regardless of the existence of guilt, unless otherwise not determined by another law.

(2) The organizers, participants, instigators and helpers in the acts of violence or terror, in the public demonstrations and manifestations, which are aimed at undermining the constitutional order, have no right to compensation according to this basis.

(3) The state has the right and obligation to request compensation of the paid amount from the person who caused the damage.

(4) That right shall become obsolete within the deadlines prescribed for the obsolescence of the compensation claims.

As it can be concluded from the text of the article, in situations described in paragraph 1 of this article, which are acts of violence or terror, as well as in public demonstrations and manifestations, the state always responds regardless of guilt, unless with another law is not otherwise prescribed. It is the so-called objective responsibility, i.e., in a situation if the state finds and condemns the persons who did the damage, the state is responsible again because it was obliged to protect the property and health of the citizens. But one important note and difference. The April 27 event was not violent in itself. The journalists reported from a calm,

normal atmosphere in the Assembly and the assumption is that the Assembly is always protected from any attack. Therefore, and as a basis for filing a lawsuit is this article 166 of the LO. However, journalists are obliged to follow the instructions of law enforcement officers when reporting in situations of violence, such as reporting from a public demonstration or similar, as in this way the state protects the journalist from being injured.

Taking into consideration the factual situation and the above-mentioned article of the Law, however, the court was faced with a dilemma whether compensation for non-pecuniary damage - fear suffered can be awarded, as the text of paragraph 1 listed the grounds on which damage could be claimed, and these are: “damage caused by death, bodily injury or damage, i.e., destruction of the property of a natural or legal person.”

The legal thesis of the journalists in the civil procedure is that this article of the law cannot be interpreted so restrictively, because the text also contains the word damage, which means damage in a general sense, and damage is the reduction of someone’s property (ordinary damage) and preventing its increase (lost benefit), as well as violation of personal rights (non-pecuniary damage) (see Article 142 of the Law on Obligations).

The legal thesis of the state defence is that there can be no compensation for non-pecuniary damage for fear suffered because Article 166 of the LO does not cover that damage, that if such damage is required there must be bodily injury, and that the state cannot be liable for actions taken by another.

During the trials for all journalists, a Legal Opinion of the Civil Affairs Department of the Supreme Court of the Republic of North Macedonia was submitted, on the occasion of discussing a legal issue of interest to the work of all councils in the court and unification of court practice, at a session held on February 22, 2011, on which the following was adopted:

“Determining the responsibility, type, extent and amount of damage caused in terms of the provision of Article 166 ‘Liability for terrorist acts, public demonstrations or manifestations of the Law on Obligations, is determined following this provision and other provisions of the same law of the department. 2, entitled - Causing damage, from Article 141 to Article 198.”

What does this mean? This means that the Supreme Court of the Republic of North Macedonia gives a legal opinion to all basic and appellate

courts that if there is any damage to health and property in acts of violence or terror, as well as in public demonstrations and manifestations, the state is responsible, i.e., obliged to compensate the damage caused.

In the context of the suffered fear as a basis for compensation of non-pecuniary damage, the Law on Obligations, namely Article 189 paragraph 1 and 2 provides:

“(1) In case of violation of personal rights, the court, if it finds that the severity of the injury and the circumstances of the case justify it, will award a fair monetary compensation, regardless of the compensation of the material damage, as well as in its absence.”

“(2) When deciding on the request for fair monetary compensation, the court shall take into account the strength and duration of the injury that caused physical pain, mental pain and fear, as well as the purpose for which the compensation is served, but also for the compensation not to be contrary to aspirations that are incompatible with its nature and social purpose.”

The question arises again - What does this mean? From paragraph 1 of Article 189, it can be concluded that the court can determine compensation for fear suffered and in the absence of material damage (existence of bodily injury), and paragraph 2 provides that the court, when deciding on fair monetary compensation should take into account for the strength and duration of the injury which caused the physical pain, mental pain and fear, as well as for the purpose for which the compensation is served, but also for the compensation not to conflict with the aspirations that are not compatible with its nature and social purpose.

However, four out of five lawsuits were rejected since journalists do not have the right to seek compensation for the fear they suffered, as they did not suffer bodily injuries. The fifth lawsuit is still pending. In the following text, we will analyse some of those judgments.

As mentioned above, with this judgment, in the part for compensation for suffered fear, the lawsuit was rejected as unfounded because the plaintiff-journalist did not suffer bodily injuries. The explanation of the Basic Civil Court Skopje is as follows:

“The plaintiff requests the compensation of non-pecuniary damage for the suffered fear under Article 166 paragraph 1 of the Law on Obligations and having in mind the provision, it is clear that the defendant, i.e., the State is liable only for damages caused by death, bodily injury

or damage, i.e., destruction of property of a natural or legal person due to acts of violence. As a consequence of the event on April 27, 2017, the plaintiff not only suffered a bodily injury but there is no damage to his property. So for the court is indisputable the fear that the plaintiff suffered, (because it is human and normal for any person to experience fear, but to what extent it depends on the character of the person and his emotional state) but the defendant is not obliged to pay compensation for non-pecuniary damage, because the legal provision states the grounds on which he pays compensation, and fear as such is not covered with the provision.”

“Hence, the court believes that such fear, in the absence of bodily injury, is legally relevant for compensation for non-pecuniary damage, but only from the persons who caused the event. Moreover, the above arises from the very provision that the state is obliged to pay compensation for bodily injuries suffered, which is determined in Article 189 paragraphs 1 and 2 of the LO.”

“Public demonstration and manifestation are considered events that the State should keep under control, and it is obliged to take care of the security of the integrity of the people, as for serious violations of integrity there is a responsibility, and the State is obliged to take care not to come to acts of terrorism and violent demonstrations. In this case, it is considered that human integrity is also important and cannot be left without compensation, as the responsibility is objective. “According to the type of property that is subject to protection, the physical integrity of the plaintiff was not affected, so the defendant cannot be held liable when the plaintiff has not suffered damage.”

“The abovementioned is also the position of the Court of Appeals Skopje, regarding the armed conflict in the village Arachinovo, expressed in the decision GZ.No.2143 / 10 from 15.09.2010, where the first instance court rejected the claim of the plaintiffs for compensation of non-pecuniary damage and assessed that they do not have the right to compensation for non-pecuniary damage for suffered mental pain due to violation of freedom or rights of the person, fear and violation of reputation following the provisions of Article 189 v.v. (in connection with) Article 166 of the LO. The Court of Appeals found that the plaintiffs had not suffered any bodily injury or death due to the acts of violence from the armed conflict that took place at that time, hence, the plaintiffs did not have the right to compensation for non-pecuniary damage due to violation of these rights for which the state is not responsible.”

Following a timely appeal, the Skopje Court of Appeals rejected the appeal as unfounded and upheld the judgment of the Skopje Basic Civil Court for the same reasons as stated here.

Given the reasons for the rejection of the plaintiff journalist's claim, I would not agree with the following:

This conclusion of the first instance court on Article 166 v Article 189 paragraphs 1 and 2 is confusing. Does the first instance court mean that they can seek compensation only if they have been attacked by persons identified by the state as part of the mob? What if the state cannot identify those people? Does this mean that the journalist is not entitled to compensation (material or non-material)? It is also unclear why the court tied such a conclusion with Article 189 paragraphs 1 and 2 of the Law on Obligations? If the intention was to be related to Article 166 paragraph 1 of the LO, then the application is wrong. In such a situation, the application of Article 166 above would be justified with Article 189 paragraph 1 given the severity of the injury and the circumstances of the case. The severity of the injury is the caused fear, which existed, as there were direct threats and a real possibility of inflicting injuries, in a place and circumstance that should not have happened, i.e., where the state had to take immediate action to prevent such violence.

Second, it is not clear why both the Basic Civil Court Skopje and the Court of Appeals Skopje equate the event of "Bloody Thursday" with the armed conflict in Arachinovo? It is legally correct to apply the same to a similar or the same factual situation. It is not right to draw an analogy in law from two different factual situations. Those two factual situations are opposite and cannot be subject to the same legal analogy.

Third, it is not explained why the Basic Civil Court Skopje and the Court of Appeals Skopje did not consider the legal opinion of the Department of Civil Cases of the Supreme Court of the Republic of North Macedonia.⁴³ The legal opinion of the Supreme Court aims to influence the lower courts (basic and appellate) to improve the case law for the harmonized application of the laws.

There are also other judgments from other basic courts of the Republic, where

43 "Determining the responsibility, type, extent and amount of damage caused in terms of the provision of Article 166" Liability for terrorist acts, public demonstrations or manifestations of the Law on Obligations, is determined in accordance with this provision and other provisions of the same law of the department. 2, entitled - Causing damage, from Article 141 to Article 198." Legal opinion of the Department of Civil Affairs of the Supreme Court of the Republic of North Macedonia, on the occasion of discussing a legal issue of interest to the work of all councils in the court and unification of the court practice, at a session held on 22.02.2011.

the plaintiff's claim for fear of fear was accepted for a traffic accident, and in the absence of bodily injury.

Finally, PhD. Milka Ristova, former judge of the Supreme Court of the Republic of North Macedonia, in her professional work "Compensation for non-pecuniary damage", published on the website of the Supreme Court of the Republic of North Macedonia⁴⁴, regarding fear as a special form of non-pecuniary damage, will state:

"Fear does not have to be caused by bodily injury; it can be caused by other actions as a special form of mental disorder."

5.1.2. Compensation for non-pecuniary damage for violation of freedom of expression

The other basis of the journalists' lawsuit is to establish a violation of the freedom of expression, which, in addition to the right to transmit and receive information, also protects the psycho-physical security in exercising this right.

Article 3 paragraphs 1 and 2 of the Law on Media prescribe what constitutes freedom of expression:

"(1) Freedom of expression and freedom of the media are guaranteed."

"(2) Freedom of the media includes in particular: freedom of expression, independence of the media, freedom of gathering, researching, publishing, selecting and transmitting information to inform the public, pluralism and diversity of the media, freedom of flow of information and openness of the media for different opinions, beliefs and various contents, access to public information, respect for human individuality, privacy and dignity, freedom to establish legal entities to perform the activity of public information, printing and distribution of print media and other media from the country and abroad, production and broadcasting of audio/audiovisual programs, independence of the editor, journalist, authors or content creators or program collaborators and other persons, following the rules of the profession."

44 Ristova, M. (2013) Compensation for non-pecuniary damage, available at <https://bit.ly/3MKoXMG> accessed on 28.01.2022

Freedom of expression, within the meaning of Article 10 of the Council of Europe Convention on Human Rights (hereinafter referred to as the ECHR), means not only the freedom to transmit and receive information of a political or other nature but also image, photography, humour and satire, plays and all other forms of expression.

Article 10 of the ECHR reads:

“1. Everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article does not prevent states from imposing work permit regimes on radio, film and television companies.”

„2. The exercise of these freedoms, which includes obligations and responsibilities, may be subject to certain formalities, conditions, restrictions and sanctions provided by law, which in a democratic society are measures necessary for state security, territorial integrity and public safety, protection of order and prevention. riots and crimes, the protection of the health or morals, reputation or rights of others, the prevention of the dissemination of confidential information or the preservation of the authority and impartiality of the judiciary.”

For these forms to be expressed without any fear, Article 10 of the ECHR imposes on the state the so-called positive obligations aimed at protecting freedom of expression, in this case, the safety of journalists in the performance of their duties.

What does this obligation mean? According to the interpretations of Article 10 of the European Convention on Human Rights, the European Court of Human Rights (hereinafter the ECtHR) will state: “States are obliged to create a favourable environment for the participation of all stakeholders in public debates, enabling them to express their opinions and ideas without fear⁴⁵”, as well as that no one would reach out to their safety when transmitting public information.

How does the ECtHR evaluate whether there is a positive obligation?

In the case of *Özgür Gündem v. Turkey*, 2000 The European Court of Human Rights, in paragraph 43 will state:

45 *Dink v. Turkey*, § 137

- ✓ the type of rights of expression.
- ✓ their ability to contribute to public debates.
- ✓ the nature and scope of the restrictions on the rights of expression.
- ✓ the ability of alternative places of expression; and
- ✓ the severity of the conflicting rights of others or the public.⁴⁶

This means that the state must preventively create an atmosphere in which journalists will feel safe to exercise their freedom of expression, without anyone else being able to endanger the journalists' lives and bodies in exercising this freedom. Journalists are, by definition, the European Court of Human Rights, the “watch-dog” of democracy,⁴⁷ or the 4th power. One of the tasks of journalism is to correct injustice, to help protect human rights and freedoms, to uncover corruption, and to drive a more just society.

In the case of *Özgür Gündem v. Turkey*, 2000 The European Court of Human Rights, in paragraph 43 will state:

“The court recalls the importance of freedom of expression as a precondition for a functioning democracy. Indeed, the effective exercise of this freedom is not based solely on the obligation of the state not to intervene, but can also create positive protection measures, even in the field of relations between individuals. In determining whether there is a positive obligation, one should look at whether a fair balance has been set between the public interest in society and the interest of the individual, something that is inherent in the Convention. The scope of this obligation will inevitably vary, considering the diversity of situations in the Contracting States, the difficulty in creating the policies of modern societies and the choices that must be made depending on priorities and resources. However, such obligation should not be interpreted in a way that imposes an impossible or disproportionate burden on the authorities.”

In another case, *Dink v. Turkey*. 2010, it was the murder of journalist Firat Dink, known as Hrant Dink alias, which took place at a time when he was being sued for defamation of Turkism, a lawsuit filed at the request of a nationalist group. The European Court of Human Rights found a violation of Article 10 in the sense that the proceedings against it, combined with the lack of protection it required,

46 *Appleby and Others v. the United Kingdom*, §§ 42-43 and 47-49

47 *Observer and Guardian vs. United Kingdom*, 1991;

constituted an interference with his right to freedom of expression. Further, in the same case, that court will find that: “States are obliged to create a favourable environment for the participation of all stakeholders in public debates, enabling them to express their opinions and ideas without fear (Dink v. Turkey, § 137). And that no one will endanger their safety when transmitting public information.”

Also, one of the important documents of the Council of Europe is Recommendation CM / Rec (2016) 4 of the Committee of Ministers to the Member States on the protection of journalists and the safety of journalists and other media actors, in Part II. Principles of point 21 are stated:

“The essential dimension involves a primary obligation for the state to ensure the right to life in a way that introduces effective penal provisions that deter them from committing acts against individuals, supported by a coercive apparatus for prevention, suppression and punishment for violating such provisions.” This, too, in appropriate circumstances, extends to the positive obligation of the authorities to take preventive operational measures to protect individuals whose lives are at risk from the criminal activities of other individuals. Given the difficulties in policymaking in modern societies, the unpredictability of human behaviour, and the operational decisions that must be made following priorities and resources, the scope of positive obligation must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. Nevertheless, the authorities must pay attention to the vulnerable position in which journalists are placed to cover politically sensitive topics vis-à-vis those in power.”

That the safety of journalists is of great importance is shown by the fact that within the Council of Europe since December 2014, the Platform for Promotion of Protection of Journalism and Safety of Journalists is functioning.⁴⁸ This Platform is a public space where incidents and risks related to media freedom and safety of journalists in the member states of the Council of Europe, which are guaranteed by Article 10 of the European Convention on Human Rights, are registered, processed and published. The purpose of this platform is to protect journalists and address problems to relevant institutions within the member states. Regarding the events of April 27, 2017, AJM has reported an event in which two journalists were physically attacked in the Assembly⁴⁹.

48 <https://www.coe.int/en/web/media-freedom/the-platform>, accessed on 16.02.2022

49 Safety of Journalists Platform (2017) «Two reporters injured during storming of Parliament», Skopje, <https://fom.coe.int/alerte/detail/25653705>, accessed on 16.2.2022

What does all this mean for the analysis of “Bloody Thursday”? Previously only briefly, a reminder of the factual situation: insufficient police officers (in the yard) in front of the Assembly to prevent such a crowd, help from a then Member of Parliament to remove the protection on the front door of the Assembly and open the doors for the crowd to enter, throwing cases against journalists in the press centre, harassment of journalists, disclosure of which media they work for to be attacked, journalists forcibly locked in premises and state intervention after 3 hours after the crowd entered the Assembly.

On such simple and notorious facts, the applicable domestic law and the standards of the ECtHR in the Council of Europe, we could conclude that the country has not fulfilled its positive obligation. However, we have a different view from the Basic Civil Court Skopje and the Court of Appeals Skopje, which is the freedom of expression in terms of the safety of journalists.

In the final judgment X MALVP-705/20 of the Basic Civil Court Skopje, in the part of the request for determining the violation of the freedom of expression from the aspect of the security of the journalists, it will state:

“In this case, Article 10 of the European Convention on Human Rights and the interpretation of this article refers to enabling everyone to express their opinion in everyday life, and not in conditions when acts of violence occur, such as the event on April 27, 2017. The interpretation of this article in conditions such as this one is that the plaintiff as a journalist was unable to report, and it is an interpretation of the provision outside its purpose for which it was determined. In such a situation of an event as on April 27, 2017, the State should take care of the health, life and property of all individuals and legal entities, so it cannot be said that the State did not provide the plaintiff as a journalist and other persons as journalists to express their opinions and ideas without fear.”

“The plaintiff as a journalist in the sense of Article 2 of the Law on Media is a person who performs activities of collecting, analysing, processing, shaping and classifying information that is published in a media, so it was not limited in this right which arose from his statement that he did not try as a journalist to report on events and express his opinion during the events. Moreover, in acts of terrorism and demonstrations, the state has to protect human integrity, so in this case, it was obliged to ensure the life and health of the plaintiff as a journalist, and not to protect his journalistic right, in a situation where what he was accredited i.e., to report, was interrupted by an act of other persons. This court considers that the fact that the terrorist act or public demonstration took place

at a time and place where the plaintiff practised his journalistic profession, does not mean interference of the State in his right, so the State on the principle of objective responsibility - because of the type of event can be held accountable for a violation of this right. It should be noted that freedom of expression is two-sided, journalists have the right to report, and citizens have the right to receive information, so the fact that citizens were prevented from receiving accurate and detailed information about the event does not mean that the state has an objective responsibility. against them for violating this right.”

“Reference to Article 3 of the Law on Media means that freedom of expression is a right that is exercised without interference by public authority. Any restriction, condition or any form of interference with freedom of expression may be applied only to a specific exercise of that freedom. State interference must be seen as any form of intrusion coming from anybody performing public authority and duties, public service (courts, prosecution, law enforcement, Assembly, Ministries, local government, military, intelligence, etc.), the scope of possible interference (formalities, conditions, restrictions or penalties) in the exercise of the law is wide and there are no predetermined limits, so the court in each special case examines whether there is interference through criminal judgments, fines, means of prohibition of opinion, ban on performing the journalistic activity, etc. As far as freedom of the press is concerned, the State has a positive obligation to take measures to protect individuals from unlawful interference with others and a negative obligation to refrain from unlawful interference with the exercise of the right to freedom of expression.”

From this conclusion of the Basic Civil Court, one gets the impression that the journalist, because he was not restricted in his right to collect and transmit information about an event that became violent, the state did not violate its positive obligation - to create a security atmosphere.

But that is not the focus, and the purpose of the protection provided by Article 10 is, inter alia, **safety**, not only the right to collect, impart information or express opinions.

So, the event was no different from the previous days when it was reported before and in the Assembly. There was a normal parliamentary atmosphere inside the Assembly. The journalist-prosecutor was present in the Assembly, and knowing that there are public demonstrations outside, he did not feel fear, because he knows that the state has a monopoly on the use of force and if any unwanted acts of mob occur, the state can disperse them and to deal with them. No one at the

time feared for their safety, as they could not have guessed that the state would not take precautionary measures to prevent the mob from entering Assembly. On the contrary, the criminal prosecution of certain persons only confirms the fact that this was organized and that the state did not plan to take preventive measures.

There is a violation of freedom of expression in terms of the safety of journalists. Failure to take precautionary measures by the monopoly on the use of force - the state, not whether journalists could report. In such a situation, their human instinct was to save themselves, not to do interviews with the crowd or to broadcast live what was happening. It does not matter whether certain journalists that day broadcast live what was happening in the Assembly, at the expense of their personal lives. The point is that the state has not taken on its positive obligation - to secure the Assembly and not allow the crowd to enter the Assembly. Something that failed, which is a notorious fact and that makes the violation of freedom of expression.

5.1.3. Other verdicts

But not everything is so black. However, there is a decision of the Skopje Court of Appeals, also for “Bloody Thursday” but for another journalist, which revokes the verdict of the Basic Civil Court Skopje, which rejects the journalist’s claim on both grounds. Regarding the violation of the freedom of expression, the Skopje Court of Appeals will state:

“The plaintiff’s appeal allegations are grounded in the part of the rejected claim for non-pecuniary damage due to violation of freedom of expression. Namely, the court rejected the claim on this ground with the explanation that in the case there can be no question that the state did not allow all persons to express their opinions and ideas without fear, citing Article 10 of the European Convention on Human Rights, which considered that the interpretation of this provision is beyond its scope for which it was determined because it was indisputable that the plaintiff as a journalist in the following period reported on the events and expressed her opinion in debate shows.”

However, the court, in this case, did not consider it sufficient that it was not a request of the plaintiff due to the inability of the state to provide her freely to express her opinion and ideas about the event, but that in the case of the plaintiff no security conditions were provided in which she as a journalist could

carry out his journalistic activity and continue to inform the public about what happened on the critical day in the Assembly premises. In addition, the application of Article 10 of the European Convention correlates with the application of the Platform for the Promotion for Protection of Journalism and the Safety of Journalists. Due to which the court insufficiently assessed that Article 10 of the Convention should be applied in a wider range, including not only the freedom of the media but also their security, and in that regard to assessing whether on the critical day the state provided normal and a safe atmosphere for the uninterrupted performance of the journalist activity of the plaintiff, whether she undertook activities for the protection of her physical or mental integrity. The court accepted that the plaintiff's freedom of expression was not in question because she exercised that freedom in debate shows in the following days, but in this case, it remains unclear whether she had the opportunity to exercise that freedom on the critical day, or because her security was endangered and that right, which is essential for this civil dispute, was denied."

At the same time, with the Decision itself, the Skopje Court of Appeals gives directions to the Basic Civil Court Skopje in the area of security:

"... At the same time, the court should assess the application of Article 10 of the European Convention on Human Rights and determine with certainty whether the plaintiff suffered non-pecuniary damage in the case due to violation of freedom of expression, or whether the state provided conditions on the critical day to safely performs his / her journalistic activity and freely, unhinderedly informs the public about the circumstances in the parliamentary premises without taking care of his / her security and thus exercising his / her right to free expression."

As evident from this explanation of the Court of Appeals Skopje, however, there is a contrary opinion from the conclusions of the Court of Appeals in the case X MALVP-705/20 which was analysed above. However, such different views of the same Court of Appeals in Skopje create legal uncertainty. Legal uncertainty is a fear of uneven case law on the same factual and legal situation, which creates confusion in the interpretation and application of the law. Therefore, continuous training of judges, lawyers and public prosecutors and continuous monitoring of the development of the concept of freedom of expression is needed, especially through the judgments of the European Court of Human Rights at the Council of Europe.



CONCLUSIONS

One of the main conclusions arising from the interviews conducted and the analysis of the legal framework and case law is that the risk of violence, pressure and threats against journalists and media workers affects the quality of their work. Those who have experienced direct violence point to the consequences of it, i.e., the impact on their psychological state, self-censorship and professional work in general. Women are increasingly faced with various forms of harassment, insults and pressure, especially on social networks.

The wider impact of such attacks is that they create a culture of self-censorship in the media and society. At a wider societal level, self-censorship results in significant barriers to true public information. This, in turn, leads to a decrease in public confidence in democratic institutions, including the media, and an increased use of social networks as a relevant source of information, although there is a great deal of misinformation, manipulative content, etc.

Hence, the more journalists have to adhere to the ethics of their profession, the stronger the need to protect their rights and safety while performing their professional duty.

The incidents in the Assembly of the Republic of North Macedonia on April 27, 2017, not only indicate a gross abuse of basic human and civil rights but, more importantly, emphasize the inconsistencies in the actions of institutions and the implications for the rights of journalists and media workers. AJM proposed draft amendments to the Criminal Code, to strengthen the protection of journalists and other media workers by placing them in the group of professions that would receive additional protection when exposed to attacks and threats due to the nature of their work. The European Commission's latest report on the Republic of North Macedonia states that "national and international media associations have noted that threats from politicians and public officials, online harassment and verbal attacks on journalists, including on social networks, have increased. The authorities/judiciary need to demonstrate a more active and systematic condemnation of the attacks"⁵⁰.

If we start from the UNESCO definition that security is a broader category that extends from preventive, protective and control measures, by dealing with impunity and promoting a social culture that fosters freedom of expression and freedom of the media, then the Republic of North Macedonia still has a long way to go with the process of ensuring adequate protection for journalists and media workers.

50 Европска комисија, Извештај за Република Северна Македонија за 2021 година, достапен на: https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en, пристапено на 27.1.2022

It is obvious that freedom of expression, as a concept, is not sufficiently represented as part of the professional training of all actors in the justice system. This does not only apply to the specific case analysed above, but also to lawyers, judges and public prosecutors. And not only this example in terms of the safety of journalists as part of the concept of freedom of expression, but there are other segments for which there is insufficient training such as defamation and insult, the role of journalism in society, protection of the source of information, whether specific actions of journalists are criminal acts in revealing certain information that the state considers confidential, etc.

Such a court case in the future may create the so-called “chilling effect”. This means that such a verdict can only discourage journalists from filing lawsuits in the future in situations where their security has been compromised in a peaceful atmosphere. And not only lawsuits against the state, but also lawsuits against individuals who would encroach on the psychophysical integrity of journalists.

Greater education must be provided on the concept of freedom of expression, namely the safety of journalists, as it happens every day that it is endangered in the absence of bodily injuries. Threats are a real fear, that exists, and which discourages the journalistic profession from performing its basic function - collecting, analysing and transmitting information of public interest.

The biggest shortcoming in the functioning of our judicial system is the fact that journalists are left alone to protect their rights through the civil legal mechanism. The basic public prosecutor’s offices are not at all zealous in dealing with threats against journalists and the violation of their security. Effective investigation is needed, as well as preventive measures to discourage the perpetrators of these crimes. Only in that way, the state would create a safe atmosphere in which journalists will be able to fully carry out their profession.



RECOMMENDATIONS

- ☑ Comprehensive training of police, lawyers, public prosecutors, and judges on the role of journalists, media associates and the media in a democratic society needs to be conducted. In addition, with the amendments to the Criminal Code, they are recognized as officials. This means that law enforcement agencies, in certain cases, should act preventively in protecting the safety of journalists and media associates, and preventive action means effective investigation.
- ☑ Joint efforts are needed between various actors in society, i.e., the media, the public, civil society, international organizations, and state institutions in initiating strategic activities aimed at effectively addressing the issues related to the safety of journalists and media workers. This would coordinate the various initiatives aimed at protecting journalists and media workers and ensure progress in addressing this issue overall.
- ☑ Establishment of a security fund and emergency response mechanisms to support vulnerable journalists and media workers.
- ☑ AJM continuously to receive support for providing services to support journalists and media workers, through counselling, legal advice and advocacy, psychological support, as well as shelters or any other appropriate accommodation for journalists and other media professionals who have become victims of violence, crime etc.
- ☑ Organizing training for journalists' safety and assessment of the risks they face as part of professional development programs/projects implemented by professional media/journalistic organizations.
- ☑ Organizing training for representatives of the judiciary for freedom of expression and safety of journalists.
- ☑ Creating guidelines/instructions in the newsrooms for the safety of journalists or using instructions/recommendations from AJM.
- ☑ Editorial offices should work to raise the awareness of owners, directors and journalists and implement internal emergency mechanisms, such as cyberbullying hotlines, to provide support and protection to journalists and media workers who are directly affected. from threats, pressures, and harassment.

- ☑ Create networks/alliances for the exchange of best practices. In these networks would be included editors, media managers, media experts, representatives of media organizations, digital security experts, lawyers, as well as journalists, international experts, etc.
- ☑ The newsrooms should allocate more space and regularly report and in-depth cover the topics related to the safety and protection of journalists and media workers, and thus contribute to building awareness among the public, government officials and journalists themselves.
- ☑ Continuous monitoring of the safety of journalists and timely response, with established methodology and tools grouped according to special categories of violence.
- ☑ Implementation of public awareness campaigns would help to understand that this is not an attack on an individual or a group of people from one profession, but the right of citizens to be informed.
- ☑ Public condemnation of serious incidents by public officials, especially by the legislature, the executive, and the judiciary, to discourage future attacks.

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