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“Chilling effect”, towards an additional standard for the protection of freedom of expression

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I. ABSTRACT

In a democratic society, no one should be hindered to exercise his/her rights, rather he/she should be encouraged, especially when these rights are not merely individual but linked to the interests of society as a whole. This is also the aim of this article, to encourage the public to recognize a little-known concept in our country and to contribute to the Albanian legal literature on understanding and applying the concept of chilling effect, according to the ECtHR’s standard. In this line, the article after introducing the terminology, the forms in which the chilling effect appears and the subjects that exercise and “suffer” it, handles the latest ECtHR’s trends, and focuses even in cases where the chilling effect appears in the Albanian practice.

KEY WORDS: *chilling effect, freedom of expression, ECtHR, legal provision, administrative act, conducts, actions*

ABBREVIATIONS

COP	Center of Official Publications
dt.	date
ECtHR	European Court of Human Rights
no.	number
v.	against

II. INTRODUCTION

The chilling effect concept is not a European creature, although today the European Court of Human Rights has elaborated a consolidated case law regarding the standard of its application by Member States, but it was imported into Europe by the United States case law. It has been in use in the United States since the early 1950s¹ and the United States Supreme Court first refers to the “chilling effect” in the context of the United States Constitution in its *Wieman v. Updegraff* judgment in 1952². According to the Oxford Dictionary³, it is defined as “*A discouraging or deterring effect on the behaviour of an individual or group, especially the inhibition of the exercise of a constitutional right, such as freedom of speech, through fear of legal action*”. Even

¹P. A. Freund, “The Supreme Court and Civil Liberties”, *Vanderbilt Law Review*, vol. 4, 1950–1951, pg. 533

²“The Chilling Effect in Constitutional Law”, *Columbia Law Review*, vol. 69, no. 5, May 1969, pg. 808–842

³<https://en.oxforddictionaries.com/> (accessed in 20 August 2017)



according to the legal dictionary of Merriam Webster⁴, the concept is defined in almost the same way as “*A usually undesirable discouraging effect or influence*”.

However, these and other definitions would be insufficient without the ECtHR's meaning of the concept and how it is displayed. ECtHR has adapted the concept to the features of the European legal system and since the Convention itself is a “living instrument”, the concept continues to be in constant updating.

III. MODES/FORMS HOW THE CHILLING EFFECT DISPLAYS

In order to have a more concrete picture of the chilling effect on freedom of expression, in the following part of this article will be presented some considerations on how the chilling effect displays, accompanied with illustrative cases from the ECtHR's practice. These cases and their classification are not exhaustive, as the chilling effect can be manifested in various forms, from the simplest ones to the cases that face difficulties to be perceived as such. Thus, the chilling effect can be manifested through legal provisions, administrative measures, court decisions, as well as actions and conducts which have the same effect.

The chilling effect can be manifested through a legal provision, even if it has a temporary effect and it is a constitutional provision⁵, in cases where the latter operates as a sanction. In this regard, in the case of *Baka v. Hungary*, the Venice Commission in its opinion has stated that “... *the law can operate as a kind of a sanction of the former president of the Supreme Court. Even if this is not the case, the impression, that this might be the case, bears the risk of causing a chilling effect, thus threatening the independence of the judiciary*”⁶.

The legislation can have a chilling effect even in cases where it is ambiguous and leaves room for multiple interpretations, or leaves room for appraisal of administrative authorities, as in the case of *OrlovskayaIskra v. Russia*⁷.

With regard to legislative ambiguities, the ECtHR has a consolidated case law. In the case of *Vajnai v. Hungary*⁸, it stated that “*the uncertainties resulting from a general legislative ban on a special symbol, in this case the Red Star might have arisen entailing a chilling effect on freedom of expression and self-censorship on press, given that the multiple meanings of this symbol*”. Moreover, in the *Gawaeda v. Poland* case, while the domestic authorities, based on Article 20 of the Polish Press Act, refused to register two periodicals (the first periodical, because of its untrue and misleading title and the second one, because of the title was in conflict with the reality), the ECtHR found that this legal provision breached the applicant's freedom of expression, stating

⁴<https://www.merriam-webster.com/legal> (accessed in 20 August 2017)

⁵See the effect of Article 11 (2) of the Transitional Provisions of the Hungarian Fundamental Law in *Baka v. Hungary*, no. 20261/12, 23 June 2016 (decision)

⁶Case *Baka v. Hungary*, no. 20261/12, 23 June 2016 (decision), § 115

⁷Case *OrlovskayaIskra v. Russia*, no. 42911/08, 21 February 2017 (judgment)

⁸Case *Vajnai v. Hungary*, no. 33629/06, 8 July 2008 (judgment), § 54



that “... While the terms used in this limb were ambiguous and lacked the clarity that one would expect in a legal provision of this nature, they suggested at most that registration could be refused where the request for registration did not conform to the technical details specified by section 20 of the Press Act.”⁹ “...The Court concludes that the law applicable in the present case was not formulated with sufficient precision to enable the applicant to regulate his conduct.”¹⁰

Even in cases in which the provision does not provide sufficient guarantees to protect the freedom of expression, its effect may be chilling on it. Namely, such an effect was created by the insufficient legal framework in Moldova for the protection of public broadcaster's independence from the Government's interventions, in the *Manole and Others v. Moldova*¹¹ case and from the absence of safeguards for journalists publishing materials obtained from the internet¹². Furthermore, even lack of procedural safeguards to a provisional measure on prohibition of reporting, may constitute a chilling effect at a period of intense political debate regarding the Presidential elections. Thus, in the *Cumhuriyet Vakfi and others v. Turkey*¹³ case, after imposing the provisional measure to prohibit the applicant to report regarding Mr. Gül, it was noted that not only he, but no other media had reported.

The above examples, and especially the latter are typical indicators that divulge how the freedom of expression is undermined and the effect that this measure has on other involved subjects.

The chilling effect is also manifested through an administrative measure, which itself acts in the same way as the aforementioned legislation. As such we can mention the Administrative Decree (order) of the French Minister of the Interior, in the case of *Ekin v. France*¹⁴, which prevented the circulation, distribution and sale of a material allegedly promoting separatism and posing a potential risk to public order. Such a measure is considered to cause chilling effect, as it has prevented not only the applicant but also others to publish materials in a foreign language (non-French) or of foreign origin.

Following its case law, ECtHR has assessed as an administrative obstacle with chilling effect even the maintenance of the monopoly of information by the courts, fact which turned into a form of censorship against public information and contribution to a public debate on the legislation regarding the drug's crimes¹⁵. Moreover, even the refusal of the Serbian Intelligence Agency to provide an association with the requested information as how many persons were subjected to electronic surveillance by this Agency in 2005, despite the Commissioner's decision

⁹Case *Gawaeda v. Poland*, no. 26229/95, 4 March 2002 (judgment), § 43

¹⁰*Ibid*, para. 48

¹¹Factsheet on other acts having chilling effects on the media freedom of journalists, Council of Europe, July 2017, pg. 5

¹²*Ibid*, pg. 3 and *Pravoye Deloand Shtekel v. Ukraine*, no. 33014/05, 05 May 2011 (judgment)

¹³Case *Cumhuriyet Vakfiand Others v. Turkey*, no. 28255/07, 08 October 2013 (judgment), § 63

¹⁴Factsheet on other acts having chilling effects on the media freedom of journalists, Council of Europe, July 2017, pg. 2 and *Ekin v. France*, no. 39288/98, 17 July 2001 (judgment)

¹⁵*Ibid*, pg. 4 and *Társaság A Szabadságjogokért v. Hungary*, no.37374/05, 14 April 2009 (judgment)



in its favour, constituted a chilling effect on its activity and in the activity of such associations in general. As the applicant himself expressed, his ability to exercise his role as a public watchdog was undermined.¹⁶

In the context of administrative measures with chilling effect, the ECtHR in *Bono v. France*¹⁷ has also included a disciplinary measure against a lawyer if the authority that has imposed the measure has not assured that the measure does not have such an effect, because otherwise it would discourage lawyers in defending their client's interests. In the present case, against Mr. Bono was imposed a reprimand accompanied by ineligibility to the professional bodies for a period of five years, because his statements before French domestic courts (while defending his client's interests), constituted a serious accusation and violated the moral integrity of magistrates. In addition to legislative and administrative measures, the chilling effect is manifested through actions and other measures which have the same effect. In relation to them, the ECtHR has elaborated a broad case law, particularly related to the freedom of expression of journalists.

Thus, according to the ECtHR in *Gözel and Özer v. Turkey*, even an automatically indicated court decision, without taking into account the journalists' objections or the right of the public to be informed on a contradictory situation from another point of view may be considered as a measure having a chilling effect.¹⁸ In the present case, the applicants had been convicted for publishing three texts that the domestic courts had characterized as "terrorist organization statements" without taking into account their context or content. This lack of judges' reasoning stemmed from the wording of a domestic law, which contained no obligation for the judges to carry out a textual or contextual examination of the writings, applying the criteria established and implemented by the Court under Article 10. Therefore, the court's decision constituted a virtually automatic repression, which could not be reconciled with the freedom to receive or impart information or ideas.¹⁹

Furthermore, even a court decision obliging journalists to submit documents able to lead to the identification of their confidential or anonymous source from which they have received information has a chilling effect on their daily work.²⁰ The same situation is also identified in the case of *Goodwin*²¹, where a court order for the disclosure of the source of information, which might have a chilling effect on the exercise of the freedom of expression.

¹⁶Case *Youth initiative for Human Rights v. Serbia*, no. 48135/06, 25 June 2013 (judgment), § 22

¹⁷Factsheet on protection of reputation, ECtHR, June 2017, pg. 18

¹⁸Factsheet on other acts having chilling effects on the media freedom of journalists, Council of Europe, July 2017, pg. 2

¹⁹Press release, ECtHR, no. 541, dated 06.07.2010, pg. 3

²⁰*Ibid*, pg. 7 and *Financial Times Ltd and Others v. United Kingdom*, no. 821/03, 15 December 2009 (judgment)

²¹Case *Goodwin v. United Kingdom*, no. 17488/90, 27 March 1996 (judgment), § 39



In its case law on court decisions having chilling effect, the ECtHR has also considered as such the violation of a person's reputation through a court decision, namely a historian, stating that “... *the measure imposed on the applicant, namely, the duty to retract in a matter which affects his professional credibility as a historian, is capable of producing a chilling effect*”.²²

Certain actions or conducts of the Prosecution or investigative bodies, as well as the bodies or persons "wearing" public authority may also have the same chilling effect. In this regard, actions of the Prosecutor's Office or investigative bodies which have a chilling effect are considered an urgent warrant of the Prosecutor to search the home of a journalist involving the seizure of the equipment containing his source of information²³; the detention of investigative journalists for almost a year as the result of criminal proceedings for serious crimes against them²⁴; as well as the long and unjustified period of prosecution.

In relation to the latter, the ECtHR has found that criminal prosecutions of journalists instigated on the basis of criminal complaints and leading to a three-year stay of proceedings, even though the criminal proceedings were lifted after that period in the absence of a conviction, constituted interference on account of their dissuasive effect on journalists.²⁵

Following its case law, even in the most recent findings, such as those in *Dilipak v. Turkey*, the ECtHR continues to confirm the same standard and to further consolidate the case law. Thus, the ECtHR has stated that “...*six-and-a-half years of criminal proceedings conducted against the applicant, partly before the military courts, for very serious crimes, in view of the chilling effect which those proceedings may well have caused, cannot be viewed as solely comprising purely hypothetical risks to the applicant, but that they constituted genuine and effective restrictions per se.*”²⁶

The Court also considers that by prosecuting the applicant (Mr. Dilipak) for serious crimes over a considerable length of time, the judicial authorities had a chilling effect on the applicant's desire to express his views on matters of public interest. It accepts the applicant's submission that commencing such proceedings is liable to create a climate of self-censorship affecting both himself and (all) other journalists who might be considering commenting on the actions and statements of members of the armed forces relating to general politics in the country.²⁷

²² Case *Karsai v. Hungary*, no. 5380/07, 01 December 2009 (judgment), § 36

²³ Factsheet on other acts having chilling effects on the media freedom of journalists, Council of Europe, July 2017, pg. 7 and *Nagla v. Latvia*, no. 73469/10, 16 July 2013 (judgment)

²⁴ See *Nedim Sener v. Turkey*, no. 38270/11, 8 July 2014 (judgment), §§ 94-96 and *Şık v. Turkey*, no. 53413/11, 8 July 2014 (judgment), § 83-85

²⁵ See *Yaşar Kaplan v. Turkey*, no. 56566/00, 24 January 2006 (judgment), § 35

²⁶ See *Dilipak v. Turkey*, no. 29680/05, 15 September 2015 (judgment), § 50

²⁷ *Ibid.*, § 72



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Other acts committed by power-borne authorities that have a chilling effect on freedom of expression are also forcible removal of journalists from press gallery of the Parliament. In the case of *Selmani and Others v. Former Yugoslav Republic of Macedonia*²⁸, the journalists were forcibly removed during a disturbance in Parliament. In this way, not only were they prevented from exercising their function, presenting to the public the events from their personal experience, but also such a measure, according to the applicants, constituted a chilling effect on the reporting of similar cases.

Despite the abovementioned cases, the ECtHR has also considered as a conduct having chilling effect, the announcement by a Head of State of his intention not to appoint the applicant, a magistrate, to any other public office on the grounds that the latter had expressed an opinion on a constitutional issue, whose opinion had allegedly contradicted that of the Head of State²⁹.

IV. RECENT TRENDS OF THE ECtHR'S CASE LAW ON CHILLING EFFECT

The above mentioned examples give rise to the impression that freedom of expression and in particular, the application of the standard of the chilling effect in assessing this freedom is a *domain* of journalism and journalistic activity, since the dominant part of case law refers to the latter.

However, the ECtHR in its recent decision-making has continued to extend this standard in terms of freedom of expression for judges, lawyers and law practitioners. In this line, though, as mentioned above, the chilling effect arose to guarantee the freedom of expression, it also helps in the separation and balancing of powers, while mostly protecting the independence of the judiciary. To illustrate these considerations, we will refer to the ECHR findings in the *Baka v. Hungary* and *Morice v. France* cases, as typical issues in this regard. Both issues relate respectively to the freedom of expression of judges and lawyers.

In the case of *Baka v. Hungary*, the ECtHR has stated that “*the fear of sanction had a “chilling effect” on the exercise of freedom of expression and, in particular, risked discouraging judges from making critical remarks about public institutions or policies.*”³⁰ Furthermore, the premature termination of the applicant’s mandate (mandate of the President of the Supreme Court of Hungary) undoubtedly had a “chilling effect” in that it must have discouraged not only him but also other judges and court presidents in future from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary.”³¹

²⁸See *Selmani and Others v. former Yugoslav Republic of Macedonia*, no. 67259/14, 09 February 2017 (judgment), § 57

²⁹ See *Wille v. Liechtenstein*[GC], no. 28396/95, ECtHR, 1999-VII, § 50

³⁰Case *Baka v. Hungary*, no. 20261/12, 23 June 2016 (judgment), § 125

³¹*Ibid.*, § 173



Whereas, earlier on, in the case of *Morice v. France*, when assessing the nature of sanction imposed to lawyers for public defamation, the ECtHR has stated that “...*The relatively moderate nature of the fines does not suffice to negate the risk of a chilling effect on the exercise of freedom of expression, this being all the more unacceptable in the case of a lawyer who is required to ensure the effective defence of his clients.*”³² *The Court has emphasized on many occasions that re-interference with freedom of expression may have a chilling effect on the exercise of that freedom (see, mutatis mutandis, Cumpăună and Mazăre v. Romania [GC], no. 33348/96, § 114, ECHR 2004-XI, and Mor, cited above) – a risk that the relatively moderate nature of a fine would not suffice to negate (see Dupuis and Others, cited above, § 48). It should also be noted that imposing a sanction on a lawyer may have repercussions that are direct (disciplinary proceedings) or indirect (in terms, for example, of their image or the confidence placed in them by the public and their clients).*”³³ ...”

From the above extracts, the ECtHR's approach regarding the chilling effect is clearly outlined, as a standard which must necessarily be taken into account when assessing the proportionality of intervention in freedom of expression. Moreover, it once again emphasized that the chilling effect on law professionals whose duty is to contribute to the expression of professional opinions constitutes an effect that acts to the detriment of all society.

V. ON SOME ASPECTS OF CHILLING EFFECT IN ALBANIA

With regard to the chilling effect on freedom of expression, Albania lacks specific monitoring and the statistics are scarce. For this reason, this part of the paper refers mainly to the findings of the Council of Europe and the monitoring of the Human Rights Watch organization.

Freedom of expression in Albania is part of the fundamental rights of the individual and enjoys protection at the constitutional level in Article 22 of the Constitution of the Republic of Albania. However, there have been times when individuals and mostly journalists have been subjected to sanctions and chilling effect measures.

As such, referring to the above ECtHR's practice on the legislative norms that have a chilling effect, we can mention the provisions of the Criminal Code on insult³⁴ and defamation³⁵. Although, with subsequent amendments to the Criminal Code, these offenses were decriminalized, in the case of imposing the fines provided by the provisions to individuals and particularly journalists, such a conviction could constitute a chilling effect on their work, referring to the ECHR's case law on *Kasabova v. Bulgaria*³⁶, *Romanenko and Others v. Russia*³⁷,

³²Case *Morice v. France*, no. 29369/10, 23 April 2015 (decision), § 127

³³*Ibid*, § 176

³⁴Article 119 of Criminal Code of Republic of Albania (updated), COP, Tirana, May 2017

³⁵Article 120, *ibid*.

³⁶See *Kasabova v. Bulgaria*, no. 22385/03, 19 April 2011 (judgment)

³⁷See *Romanenko and Others v. Russia*, no. 11751/03, 8 October 2009 (judgment)



*Dlugolecki v. Poland*³⁸. This is for two reasons, first that these fines are given pursuant to the Criminal Code and as such become part of the criminal record of individuals³⁹; and secondly that fines to such extent are considered a heavy burden for the salary level of journalists in Albania (According to the Albanian Journalists Union, the average journalist's gross monthly salary is about 320 EUR)⁴⁰.

Meanwhile, with regard to a clear and sufficient legal framework, we will refer to the example of investigative journalism regulations. In Albania, such regulations are deficient and do not provide sufficient safeguards to maintain the source of information, while if we simply refer to Kosovo, we will find that it is more advanced in this process, as it has a specific law⁴¹ on the protection of journalistic sources. Even Article 159 of the Code of Criminal Procedure, which can be used to protect professional confidentiality, is very wide and leaves a high margin of interpretation for the courts.

Referring to the latter, there have been cases in Albania in which court decisions and non-compliance with procedural guarantees have been estimated to have had a chilling effect on the exercise of freedom of expression. Regarding the decisions of domestic courts and other actions or conducts with chilling effect, those decisions that have had impact on the media were selected as typical cases in this paper, while regarding the conduct with chilling effect, some threats and violent attacks against journalists committed by police forces during the period of 1997 and onwards, as well as that of the June 2001 general elections were chosen.

According to Human Rights Watch, in five out of six trials against some journalists sued for defamation⁴² (even though early cases are typical illustrative of forms of chilling effect), they were found guilty and sentenced because they could not prove the authenticity of the statements published by them, or the fact that they had been in good faith.

In each of these cases, the presumption of innocence, was turned upside down into a presumption of guilt and violation to the rights of the fair trial resulted in verdicts undermining the right to freedom of expression. The Albanian courts also failed to recognize the right of journalist defendants to withhold the identity of confidential sources⁴³, therefore causing a chilling effect.

³⁸See *Dlugolecki v. Poland*, no. 23806/03, 24 February 2009 (judgment)

³⁹See D. Matlijaand Th. Alexandridis, "Decriminalising defamation-International trends and legal developments in Albania", prepared within the framework of *South East European Media Observatory (SEEMO) project* "Promoting responsible investigative journalism, pg. 3

⁴⁰*Ibid*, f. 3

⁴¹Law no. 04/L-137 "For the protection of sources of journalism", Official Gazette of Republic of Kosovo, no. 30, 23 August 2013

⁴²Trials of *Petro Koçi v. Astrit Patozit*; *Ndre Legisi v. Artan Hoxha*; *Monika Kryemadhi v. Astrit Patozi*; *Monika Kryemadhi v. RedinHafizi*; *Monika Kryemadhi v. Shemsi Peposhi*; *Skënder Gjinushi v. Pandi Gjata*

⁴³Referred to the Report "The cost of speech: Violation of media freedom in Albania", Human Rights Watch vol.14, no.5 (D), June 2002, pg. 4



Furthermore, unjust defamation trials “chill” the entire media environment by fostering self-censorship and widespread uncertainty about the limits of legitimate criticism. By shrinking the sphere of protected speech, the Albanian judiciary’s handling of such cases undermines democratic debate and good governance in general⁴⁴.

Similarly, according to Human Rights Watch monitoring, actions and conducts that illustrate the chilling effect in Albania can include the actions that consist in abductions,⁴⁵ physical attacks,⁴⁶ gun attacks,⁴⁷ verbal insult,⁴⁸ detention,⁴⁹ and denial of access to government institutions.⁵⁰ Such acts certainly constitute a chilling and self-censoring effect on freedom of expression, as they prevent journalists from reporting similar cases by deterring threats and escalating violence, in extreme cases they were even forced to abandon their profession and to leave Albania.

Since the above cases are selected among the most illustrative cases regarding the chilling effect and which constitute a diversity in its manifestation, it is likely that today such cases are minimized and appear isolated and sporadic. However, the chilling effect in Albania continues to be present and hampers the normal flow of information to the public, so that they can also be involved in issues related to their interests.

According to the Report of Balkan Investigative Reporting Network, Albania, “...*the journalists do not perceive journalism in Albania today as independent and objective, due to the censorship and self-censorship imposed by political and economic pressures, financial insufficiency, lack of professionalism and ethics and the lack of respect for the rights of journalists.*”⁵¹ Furthermore, in this respect, even the European Commission indicates that “... *journalism in Albania is a precarious profession with low wages and little job security. Poor implementation of the labor code remained a major concern and most journalists work without contracts or have contracts which can be terminated arbitrarily. Delays in paying salaries and missing years of social contribution payments are a widespread phenomenon, often leading to self-censorship.*”⁵²

Referring to the above cases and Reports the biggest confrontation with the chilling effect occurs outside the court doors or the administration, perhaps occurring on a daily basis with concrete actions which, with the complexity characterizing the chilling effect, can be passed even without

⁴⁴*Ibid*, pg. 46

⁴⁵*Ibid*, abduction of journalist Fatmir Terziu, pg. 12-13

⁴⁶*Ibid*, physical attacks against journalist Fatmir Terziu, pg.12-13 and cameraman Flamur Hasbergu, pg. 15-16

⁴⁷*Ibid*, gun attack against journalist Artan Hoxha, pg. 15

⁴⁸*Ibid*, verbal insult against journalist Fatmir Terziu, pg. 12-13

⁴⁹*Ibid*, keeping in detention the cameraman Flamur Hasbergu, pg. 15-16, the journalist Kujtim Boriçi, pg. 17 and the cameraman Eni Fani, pg. 19

⁵⁰*Ibid*, denial of access to government institutions for journalists Matilda Tërpollari dhe Redin Hafizi, f. 21

⁵¹Balkan Investigative Reporting Network, Albania, “*A blind eye on news: Self-censorship in the Albania Media*”, Tirana 2015, pg. 5

⁵²European Commission, “*Albania 2016 Report*”, Brussels, 09.11.2016, pg. 23.



being noticed by the subjects affected. Not everyone can identify such an effect, or understand it, as it has a lot to do with the way it is perceived. Its measurement is difficult, because it relates, *inter alia*, to perceptual and emotive considerations.

Concerning recent developments in the ECtHR's case law, which has extended the analysis of the chilling effect even in cases involving the freedom of expression of judges, lawyers, other law practitioners, and the reputation of freelancers, on the very best knowledge, we can say that in Albania such a practice is lacking. For the protection of their rights and independence, not only this group of subjects, but also the responsible institutions, which fail to take into account the chilling effect their decisions or conducts may have, do not refer to the chilling effect.

VI. CONCLUSIONS AND RECOMMENDATIONS

The concept of chilling effect, from an emotive argument⁵³ in its beginnings, has now evolved into an additional standard for the protection of freedom of expression. Even the forms of its demonstrations are the most varied, but since the Convention is considered a "living instrument", they will continue to be in constant change.

However, it is noteworthy from the above considerations that the thread that unites these forms of chilling effects' demonstration is, on the one hand, a legal, administrative, or even the conduct of organs which are "coated" with state power, and on the other, despite the identity of the concrete subject affected by the chilling effect, ultimately, it is the society as a whole which "suffers" its long-term consequences. Thus, despite the concrete subject, any act is against the participation and involvement of the public in issues affecting their interests.

For this reason, interested parties should use this standard to object measures that have chilling effect, as a further guarantee in their hands for the protection of freedom of expression, while state institutions coated with power, since they enjoy "dominant" position to other subjects, should be cautious during the process of decision-making, analyzing the chilling effect that their acts or actions may have.

The legislature, administration and domestic courts are not simply charged in solving specific and short-term situations but as holders of state power should have a longer-term approach, which affects society as a whole. In particular, referring to the recent ECtHR's case law trends, the judicial power as the guarantor of the rights and freedoms of the society should play an active role in this process. In this respect, in Albania we are still far from achieving this standard, as the judiciary does not make any observation on policies that they do not consider closely related to it, such as public policy and legislation changes, which the ECtHR considers to be part of the public goods and belongs to all citizens.

⁵³F.Schauer, "Fear, Risk and the First Amendment: Unraveling the Chilling Effect", *Faculty publications*, College of William & Mary Law School William & Mary Law School Scholarship Repository, 1978, pg. 685



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The judiciary has the duty to say its word not only through decisions but also to play a preventative role when adopting laws that violate the interests of the society as a whole and undermine the functioning of democracy in particular.

Concretely, the ECtHR's findings in *Baka v. Hungary* may translate into the Albanian reality as a guarantee for all those judges who want to engage in debates in general, and especially in those debates on legislative reforms affecting the judiciary. Such a case was reflected on the Albanian judicial reform's debate, as an issue that affects not only the judiciary, but also the interests of the society as a whole, in which the Union of Judges participated actively.

In conclusion, in order to synthesize the great importance of the chilling effect on a society, I would like to invite you to imagine a society where the chilling effect would be unfold in every profession and anyone would be afraid to express freely what he/she would find or think. Consequently, an "eyes shut" society would be created, unable to present its problems and solve them. In this context, the repression would penetrate deeper and deeper into the sub consciousness of society and lead it to the emergence of an imaginary and inexistent reality. In this context, just think how dangerous this is for the overall development of the society and democracy.